

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

Subpart A—General Provisions

Sec.

- 372.1 Scope and purpose.
- 372.3 Definitions.
- 372.5 Persons subject to this part.
- 372.10 Recordkeeping.
- 372.18 Compliance and enforcement.

Subpart B—Reporting Requirements

- 372.20 Process for modifying covered chemicals and facilities.
- 372.22 Covered facilities for toxic chemical release reporting.
- 372.23 SIC and NAICS codes to which this Part applies.
- 372.25 Thresholds for reporting.
- 372.27 Alternate threshold and certification.
- 372.28 Lower thresholds for chemicals of special concern.
- 372.30 Reporting requirements and schedule for reporting.
- 372.38 Exemptions.

Subpart C—Supplier Notification Requirements

- 372.45 Notification about toxic chemicals.

Subpart D—Specific Toxic Chemical Listings

- 372.65 Chemicals and chemical categories to which this part applies.

Subpart E—Forms and Instructions

- 372.85 Toxic chemical release reporting form and instructions.
- 372.95 Alternate threshold certification and instructions.

AUTHORITY: 42 U.S.C. 11023 and 11048.

SOURCE: 53 FR 4525, Feb. 16, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 372.1 Scope and purpose.

This part sets forth requirements for the submission of information relating to the release of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. The information collected under this part is intended to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to

assist research, to aid in the development of regulations, guidelines, and standards, and for other purposes. This part also sets forth requirements for suppliers to notify persons to whom they distribute mixtures or trade name products containing toxic chemicals that they contain such chemicals.

§ 372.3 Definitions.

Terms defined in sections 313(b)(1)(c) and 329 of Title III and not explicitly defined herein are used with the meaning given in Title III. For the purpose of this part:

Acts means Title III.

Article means a manufactured item: (1) Which is formed to a specific shape or design during manufacture; (2) which has end use functions dependent in whole or in part upon its shape or design during end use; and (3) which does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishments.

Beneficiation means the preparation of ores to regulate the size (including crushing and grinding) of the product, to remove unwanted constituents, or to improve the quality, purity, or grade of a desired product.

Boiler means an enclosed device using controlled flame combustion and having the following characteristics:

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery sections(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber

and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in § 260.32 of this chapter.

Coal extraction means the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and encompasses all extraction-related activities prior to beneficiation. Extraction does not include beneficiation (including coal preparation), mineral processing, in situ leaching or any further activities.

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

Disposal means any underground injection, placement in landfills/surface impoundments, land treatment, or other intentional land disposal.

EPA means the United States Environmental Protection Agency.

Establishment means an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed.

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A

facility may contain more than one establishment.

Full-time employee means 2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.

Import means to cause a chemical to be imported into the customs territory of the United States. For purposes of this definition, to cause means to intend that the chemical be imported and to control the identity of the imported chemical and the amount to be imported.

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

Industrial furnace means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(1) Cement kilns.

(2) Lime kilns.

(3) Aggregate kilns.

(4) Phosphate kilns.

(5) Coke ovens.

(6) Blast furnaces.

(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces).

(8) Titanium dioxide chloride process oxidation reactors.

(9) Methane reforming furnaces.

(10) Pulping liquor recovery furnaces.

(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid.

(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(13) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) The use of the device in common industrial practice to produce a material product; and

(vi) Other factors, as appropriate.

Manufacture means to produce, prepare, import, or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical or mixture of chemicals as an impurity.

Mixture means any combination of two or more chemicals, if the combination is not, in whole or in part, the result of a chemical reaction. However, if the combination was produced by a

chemical reaction but could have been produced without a chemical reaction, it is also treated as a mixture. A mixture also includes any combination which consists of a chemical and associated impurities.

Otherwise use means any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms "manufacture" or "process." Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:

(1) The toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or

(2) The toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical.

Overburden means the unconsolidated material that overlies a deposit of useful materials or ores. It does not include any portion of ore or waste rock.

Previously classified means properly classified, according to § 372.22(b) under a given Standard Industrial Classification (SIC) code, as identified in the Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget.

Process means the preparation of a toxic chemical, after its manufacture, for distribution in commerce:

(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance, or

(2) As part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.

RCRA approved test method includes Test Method 9095 (Paint Filter Liquids

§ 372.5

40 CFR Ch. I (7–1–12 Edition)

Test) in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any toxic chemical.

Senior management official means an official with management responsibility for the person or persons completing the report, or the manager of environmental programs for the facility or establishments, or for the corporation owning or operating the facility or establishments responsible for certifying similar reports under other environmental regulatory requirements.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

Title III means Title III of the Superfund Amendments and Reauthorization Act of 1986, also titled the Emergency Planning and Community Right-To-Know Act of 1986.

Toxic chemical means a chemical or chemical category listed in § 372.65.

Trade name product means a chemical or mixture of chemicals that is distributed to other persons and that incorporates a toxic chemical component that is not identified by the applicable chemical name or Chemical Abstracts Service Registry number listed in § 372.65.

Treatment for destruction means the destruction of a toxic chemical in waste such that the substance is no longer the toxic chemical subject to reporting under EPCRA section 313. Treatment for destruction does not include the destruction of a toxic chemical in waste where the toxic chemical has a heat value greater than 5,000 British thermal units and is combusted

in any device that is an industrial furnace or boiler.

Tribal Chairperson or equivalent elected official means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

Waste stabilization means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquid as determined by a RCRA approved test method for evaluating solid waste as defined in this section. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are “stabilization,” “waste fixation,” or “waste solidification.”

[53 FR 4525, Feb. 16, 1988, as amended at 55 FR 30656, July 26, 1990; 62 FR 23891, May 1, 1997; 71 FR 32474, June 6, 2006; 73 FR 76960, Dec. 18, 2008; 77 FR 23418, Apr. 19, 2012]

§ 372.5 Persons subject to this part.

Owners and operators of facilities described in §§ 372.22 and 372.45 are subject to the requirements of this part. If the owner and operator of a facility are different persons, only one need report under § 372.30 or provide a notice under § 372.45 for each toxic chemical in a mixture or trade name product distributed from the facility. However, if no report is submitted or notice provided, EPA will hold both the owner and the operator liable under section 325(c) of Title III, except as provided in §§ 372.38(e) and 372.45(g).

[53 FR 4525, Feb. 16, 1988, as amended at 73 FR 32470, June 9, 2008]

§ 372.10 Recordkeeping.

(a) Each person subject to the reporting requirements of this part must retain the following records for a period of 3 years from the date of the submission of a report under § 372.30:

(1) A copy of each report submitted by the person under § 372.30.

(2) All supporting materials and documentation used by the person to make the compliance determination that the facility or establishments is a covered facility under § 372.22 or § 372.45.