

Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Proposed Rule: Technical Amendments to the EPCRA Hazardous Chemical Inventory Reporting Requirements to Conform to the 2024 OSHA Hazard Communication Standard RIN 2050-AH40

I am writing on behalf of the National Association of SARA Title III Program Officers (NASTTPO) in support of the proposed changes to 40 C.F.R. 370 – Hazardous Chemical Reporting: Emergency Planning and Community Right-to-Know (EPCRA reporting regulations). The existing EPCRA reporting regulations, and their inconsistencies with the regulations in 29 C.F.R. 1910.1200 (OSHA regulations) create confusion for both Local Emergency Planning Committees (LEPCs) and facility operators and hinder the ability of LEPCs to both form cooperative and collaborative relationships with facility operators and obtain critical information necessary for emergency planning. The proposed changes in will help to resolve these issues and support the statutorily mandated work of LEPCs. We support this proposal.

NASTTPO thanks you for the opportunity to comment on this proposal. NASTTPO is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), various federal agencies, and private industry. Members include state, tribal, or local government employees, as well as private sector representatives with Emergency Planning and Community Right-to-Know (EPCRA) program responsibilities, such as health, occupational safety, first response, environmental, and emergency management. The membership is dedicated to working together to prepare for possible emergencies and disasters involving hazardous materials, regardless of the cause.¹ These organizations work with the EPCRA reporting regulations daily and any changes to them will directly impact NASTTPO members.

NASTTPO believes that the proposed revisions are appropriate for several reasons. First, the EPCRA reporting regulations' definition of "Hazard category" does have the same definition provided by the OSHA regulations, despite a statutory mandate that EPCRA's definition of the term be identical to the definition in the OSHA regulations.² The EPCRA reporting regulations' definition of "Hazard category" references various types of health and physical hazards.³ This definition coincides with the OSHA regulations' definition of "Hazard *class*."⁴ The OSHA regulations' definition of "Hazard category" instead refers to narrower divisions that "compare

¹ <https://nasttpo.com/>.

² 42 U.S.C. § 11021(e) ("[T]he term 'hazardous chemical' has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations").

³ 40 C.F.R. 370.66

⁴ 29 C.F.R. 1910.1200(c) ("Hazard class means the nature of the physical or health hazards, e.g., flammable solid, carcinogen, oral acute toxicity.").

hazard severity *within* a hazard class.”⁵ The OSHA regulations’ definition of “Hazard category” therefore encompasses more granular information than the definition in the EPCRA reporting regulations. EPA’s proposal to align the EPCRA reporting regulations’ definition with OSHA’s therefore ensures the regulations more fully comply with EPCRA’s statutory requirements.⁶ Furthermore, enacting this change will support LEPCs by helping to eliminate obstacles that often interfere with their ability to devise emergency response plans.

As mentioned previously, the OSHA regulations’ definition of “Hazard category” refers to a much more detailed characterization of the threats posed by different hazardous chemicals. This additional level of detail is often essential for an LEPC’s planning needs.⁷ However, because of the current mismatch in definitions between the OSHA and EPCRA reporting regulations, facility operators often mistakenly fail to provide LEPCs with this information that they need, and are entitled to, under EPCRA. This forces LEPCs to rely on their authority to request such information from the facility, thereby delaying delivery of the information, creating additional hassle for both facility operators and LEPCs, and promoting conflict between them. Resolving this confusion clarifies what information facility operators must voluntarily provide. This will help eliminate the otherwise unnecessary conflict that often arises and help promote the cooperative and collaborative relationships necessary for effective emergency planning.⁸

By realigning these hazards to match OSHA’s classifications, EPA will promote uniformity in EPCRA and the OSH Act’s reporting requirements. This will not only ease the burden on facility operators, by ensuring they have just one cohesive set of information to report but also supports the role of LEPCs by ensuring the information contained in Tier II information sheets directly translates to OSHA’s standards.

An additional source of confusion will be resolved by EPA’s proposal to change the EPCRA reporting regulations’ use of material safety data sheet (MSDS) to safety data sheet (SDS). EPCRA defines the term “material safety data sheet” as “the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.”⁹ Following amendments to the OSHA regulations, section 1910.1200(g) no longer uses the term “MSDS” and instead uses “SDS.”¹⁰

This mismatch also creates unnecessary conflict between LEPCs and facility operators that impedes cooperative and collaborative relationships. EPCRA requires facility operators to provide LEPCs with data sheets prepared under the OSH Act and its regulations.¹¹ However, because the

⁵ *Id.* (emphasis added).

⁶ 42 U.S.C. § 11021(e)

⁷ See 42 U.S.C. § 11003(d)(3).

⁸ AMERICAN SOCIETY FOR TESTING AND MATERIALS, STANDARD GUIDE E3241-20, 6.3 (2020).

⁹ 42 U.S.C. 11049(6).

¹⁰ 89 F.R. 44356.

¹¹ 42 U.S.C. § 11021(a).

OSHA regulations require preparing an SDS, whereas the EPCRA reporting regulations refer to the outdated MSDS, there is often confusion over what information facility operators must provide.

Facility operators can mistakenly believe they have no obligation to satisfy the requirements of Section 311 of EPCRA and provide LEPCs with their data sheets. Resolving this mistake often requires LEPCs to rely on their authority to request information under EPCRA and force facility operators to provide information they are already obligated to disclose.¹² That unnecessary conflict creates friction and undermines LEPCs by interfering with their ability to form cooperative and collaborative relationships with local industry. EPA's proposal to remove the use of the term MSDS from the EPCRA reporting regulations will therefore significantly reduce this unnecessary conflict and promote the types of cooperative and collaborative relationships between LEPCs and facility operators that improve outcomes for both parties.

Aligning the EPCRA reporting regulations' definition of "Hazard category" to match the definition contained in the OSHA regulations therefore comports with the statutory requirements imposed by EPCRA, streamlines the reporting requirements by creating uniformity between the regulations, and supports the role of LEPCs by clarifying operators' obligations to provide LEPCs with the level of information they both need, and are entitled to, under EPCRA. Furthermore, replacing the EPCRA reporting regulations' use of the term MSDS with SDS will prevent unnecessary conflict between LEPCs and facility operators and promote cooperative and collaborative relationships. For these reasons, NASTTPO supports EPA's proposed changes to the EPCRA reporting regulations.

Sincerely,

Timothy R Gablehouse
Director, Government Affairs

¹² 42 U.S.C. §§ 11003(d) and 11021(c)(1).