

Environmental Protection Agency

§ 355.40

coordinator. The owner or operator shall notify the local emergency planning committee (or the Governor if there is no committee) of the facility representative on or before September 17, 1987 or 30 days after establishment of a local emergency planning committee, whichever is earlier.

(d) *Provision of information.* (1) The owner or operator of a facility subject to this section shall inform the local emergency planning committee of any changes occurring at the facility which may be relevant to emergency planning.

(2) Upon request of the local emergency planning committee, the owner or operator of a facility subject to this section shall promptly provide to the committee any information necessary for development or implementation of the local emergency plan.

(e) *Calculation of TPQs for solids and mixtures.* (1) If a container or storage vessel holds a mixture or solution of an extremely hazardous substance, then the concentration of extremely hazardous substance, in weight percent (greater than 1 percent sign), shall be multiplied by the mass (in pounds) in the vessel to determine the actual quantity of extremely hazardous substance therein.

(2)(i) Extremely hazardous substances that are solids are subject to either of two threshold planning quantities as shown on appendices A and B (i.e., 500/10,000 pounds). The lower quantity applies only if the solid exists in powdered form and has a particle size less than 100 microns; or is handled in solution or in molten form; or meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3 or 4 for reactivity. If the solid does not meet any of these criteria, it is subject to the upper (10,000 pound) threshold planning quantity as shown in appendices A and B.

(ii) The 100 micron level may be determined by multiplying the weight percent of solid with a particle size less than 100 microns in a particular container by the quantity of solid in the container.

(iii) The amount of solid in solution may be determined by multiplying the weight percent of solid in the solution

in a particular container by the quantity of solution in the container.

(iv) The amount of solid in molten form must be multiplied by 0.3 to determine whether the lower threshold planning quantity is met.

§ 355.40 Emergency release notification.

(a) *Applicability.* (1) The requirements of this section apply to any facility: (i) at which a hazardous chemical is produced, used or stored and (ii) at which there is release of a reportable quantity of any extremely hazardous substance or CERCLA hazardous substance.

(2) This section does not apply to:

(i) Any release which results in exposure to persons solely within the boundaries of the facility;

(ii) Any release which is a *federally permitted release* as defined in section 101 (10) of CERCLA;

(iii) Any release that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8(b). Exemption from notification under this subsection does not include exemption from:

(A) Initial notifications as defined in 40 CFR 302.8 (d) and (e);

(B) Notification of a "statistically significant increase," defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range, which is to be submitted to the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release;

(C) Notification of a "new release" as defined in 40 CFR 302.8(g)(1); or

(D) Notification of a change in the normal range of the release as required under 40 CFR 302.8(g)(2).

(iv) Any release of a pesticide product exempt from CERCLA section 103(a) reporting under section 103(e) of CERCLA;

(v) Any release not meeting the definition of release under Section 101(22) of CERCLA, and therefore exempt from Section 103(a) reporting; and

(vi) Any radionuclide release which occurs;

(A) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land.

(B) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw (not beneficiated or processed) materials; and replacing in mined-out areas coal ash, earthen materials from farming or construction, or overburden or other raw materials generated from the exempted mining activities.

(C) From the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.

(D) From piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.

(vii) Any release in amounts less than 1,000 pounds per 24 hours of:

(A) Nitrogen oxide (NO) to the air that is the result of combustion and combustion-related activities.

(B) Nitrogen dioxide (NO₂) to the air that is the result of combustion and combustion-related activities.

NOTE TO PARAGRAPH (a): Releases of CERCLA hazardous substances are subject to the release reporting requirements of CERCLA section 103, codified at 40 CFR part 302, in addition to the requirements of this part.

(b) *Notice requirements.* (1) The owner or operator of a facility subject to this section shall immediately notify the community emergency coordinator for the local emergency planning committee of any area likely to be affected by the release and the State emergency response commission of any State likely to be affected by the release. If there is no local emergency planning committee, notification shall be provided under this section to relevant local emergency response personnel.

(2) The notice required under this section shall include the following to

the extent known at the time of notice and so long as no delay in notice or emergency response results:

(i) The chemical name or identity of any substance involved in the release.

(ii) An indication of whether the substance is an extremely hazardous substance.

(iii) An estimate of the quantity of any such substance that was released into the environment.

(iv) The time and duration of the release.

(v) The medium or media into which the release occurred.

(vi) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(vii) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordination pursuant to the emergency plan).

(viii) The names and telephone number of the person or persons to be contacted for further information.

(3) As soon as practicable after a release which requires notice under (b)(1) of this section, such owner or operator shall provide a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required under paragraph (b)(2) of this section, and including additional information with respect to:

(i) Actions taken to respond to and contain the release,

(ii) Any known or anticipated acute or chronic health risks associated with the release, and,

(iii) Where appropriate, advice regarding medical attention necessary for exposed individuals.

(4) *Exceptions.* (i) Until April 30, 1988, in lieu of the notice specified in paragraph (b)(2) of this section, any owner or operator of a facility subject to this section from which there is a release of a CERCLA hazardous substance which is not an extremely hazardous substance and has a statutory reportable quantity may provide the same notice required under CERCLA section 103(a) to the local emergency planning committee.

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(ii) An owner or operator of a facility from which there is a transportation-related release may meet the requirements of this section by providing the information indicated in paragraph (b)(2) to the 911 operator, or in the absence of a 911 emergency telephone number, to the operator. For purposes of this paragraph, a *transportation-related release* means a release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee.

[52 FR 13395, Apr. 22, 1987, as amended at 54 FR 22543, May 24, 1989; 55 FR 30188, July 24, 1990; 63 FR 13475, Mar. 19, 1998; 64 FR 13115, Mar. 17, 1999; 71 FR 58533, Oct. 4, 2006]

§ 355.50 Penalties.

(a) *Civil penalties.* Any person who fails to comply with the requirements of § 355.40 shall be subject to civil penalties of up to \$25,000 for each violation

in accordance with section 325(b)(1) of the Act.

(b) *Civil penalties for continuing violations.* Any person who fails to comply with the requirements of § 355.40 shall be subject to civil penalties of up to \$25,000 for each day during which the violation continues, in accordance with section 325(b)(2) of the Act. In the case of a second or subsequent violation, any such person may be subject to civil penalties of up to \$75,000 for each day the violation continues, in accordance with section 325(b)(2) of the Act.

(c) *Criminal penalties.* Any person who knowingly and willfully fails to provide notice in accordance with § 355.40 shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than two (2) years, or both (or, in the case of a second or subsequent conviction, shall be fined not more than \$50,000 or imprisoned for not more than five (5) years, or both) in accordance with section 325(b)(4) of the Act.

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES
[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
75-86-5	Acetone Cyanohydrin		10	1,000
1752-30-3	Acetone Thiosemicarbazide		1,000	1,000/10,000
107-02-8	Acrolein		1	500
79-06-1	Acrylamide	l	5,000	1,000/10,000
107-13-1	Acrylonitrile	l	100	10,000
814-68-6	Acrylyl Chloride	h	100	100
111-69-3	Adiponitrile	l	1,000	1,000
116-06-3	Aldicarb	c	1	100/10,000
309-00-2	Aldrin		1	500/10,000
107-18-6	Allyl Alcohol		100	1,000
107-11-9	Allylamine		500	500
20859-73-8	Aluminum Phosphide	b	100	500
54-62-6	Aminopterin		500	500/10,000
78-53-5	Amiton		500	500
3734-97-2	Amiton Oxalate		100	100/10,000
7664-41-7	Ammonia	l	100	500
300-62-9	Amphetamine		1,000	1,000
62-53-3	Aniline	l	5,000	1,000
88-05-1	Aniline, 2,4,6-Trimethyl-		500	500
7783-70-2	Antimony Pentafluoride		500	500
1397-94-0	Antimycin A	c	1,000	1,000/10,000
86-88-4	ANTU		100	500/10,000
1303-28-2	Arsenic Pentoxide		1	100/10,000
1327-53-3	Arsenous Oxide	h	1	100/10,000
7784-34-1	Arsenous Trichloride		1	500
7784-42-1	Arsine		100	100
2642-71-9	Azinphos-Ethyl		100	100/10,000
86-50-0	Azinphos-Methyl		1	10/10,000
98-87-3	Benzal Chloride		5,000	500
98-16-8	Benzenamine, 3-(Trifluoromethyl)-		500	500
100-14-1	Benzene, 1-(Chloromethyl)-4-Nitro-		500	500/10,000
98-05-5	Benzeneearsonic Acid		10	10/10,000
3615-21-2	Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)-	g	500	500/10,000