

CR 90-175

Tommy G. Thompson
Governor



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State of Wisconsin State Emergency Response Board

4802 Sheboygan Avenue, Room 99A • Madison, Wisconsin

WISCONSIN)
) SS
STATE EMERGENCY RESPONSE BOARD)

I, ROBERT M. THOMPSON, Chairman of the State Emergency Response Board and custodian of the official records, certify that the annexed rules, relating to requirements for submission of chemical inventory reports by public agencies and private agencies were duly approved and adopted by the State Emergency Response Board on April 11, 1991.

I further certify that this copy has been compared by me with the original on file with the State Emergency Response Board and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the State Emergency Response Board at 99A, Hill Farms State Office Building in the City of Madison, this 26th day of September, 1991.

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ROBERT M. THOMPSON, Chairman
State Emergency Response Board

12-1-91

**ORDER OF THE STATE EMERGENCY RESPONSE BOARD
ADOPTING RULES**

Relating to requirements for the submission of toxic chemical inventory reports by public agencies and private agencies.

To create chapter SERB 3.

Analysis prepared by State Emergency Response Board:

The rule requires a public or a private agency to submit toxic chemical inventory reports if it owns or operates a facility that has 10 or more full time equivalent employees and the facility manufactured, imported, processed or otherwise used a toxic chemical in excess of an applicable threshold for the chemical.

The rule establishes the thresholds levels.

It establishes the reporting requirements, requiring the use of a U.S. Environmental Protection Agency form. It establishes the due date for the submission of the initial form as July 1, 1991 and requires an annual submission by July 1, every year there after.

It provides that the exemptions from reporting of toxic chemicals established under the federal law shall also apply to public and private agencies, with the exception of the exemption for activities in laboratories which are not exempt under state law.

It provides for the purpose of applying provisions concerning trade secret determinations, the State Emergency Response Board shall follow the regulations established by U.S. EPA.

It requires the State Emergency Response Board to develop procedures to implement the rule prior to its effective date.

Pursuant to the authority vested in the State Emergency Response Board by ss.166.20(2)(b) and 227.11(2)(a), Stats., the State Emergency Response Board hereby proposes to create rules interpreting s.166.20(5)(a) and (b), Stats., as follows:

SECTION 1, Ch. SERB 3 is created to read:

CHAPTER SERB 3

PRIVATE AND PUBLIC AGENCY RULE

SERB 3.01 PURPOSE. The purpose of this chapter is to define reporting requirements for submission of toxic chemical inventory reports by private agencies and public agencies as required by s.166.20(5)(a) 4 to 6, Stats.

SERB 3.02 DEFINITIONS. In this chapter:

- (1) "Board" has the meaning given in s. 166.20(1)(a), Stats.
- (2) "EPA" means the United States Environmental Protection Agency
- (3) "Facility" has the meaning given in s.166.20(1)(c), Stats.
- (4) "Full Time Employee" means 2,000 hours per year of full-time equivalent employment.
- (5) "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.
- (6) "Manufacture" means any of the following:
 - (a) To produce, prepare, import or compound a toxic chemical.
 - (b) To produce a toxic chemical 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 by-product, and toxic chemical that remains in that other chemical or mixture of chemicals as an impurity.
- (7) "Otherwise use" or "use" means any use of a toxic chemical that is not covered by the terms "manufacture" or "process" and includes use of a toxic chemical contained in a mixture or trade name product. Relabeling or redistributing a container of a toxic chemical where no repackaging of the toxic chemical occurs does not constitute use of the toxic chemical.
- (8) "Private agency" has the meaning given in s.166.20(1)(h), Stats.
- (9) (a) "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 or mixture containing the toxic chemical or trade name product.
- (b) "Process" does not include the relabeling or redistribution of a container of a toxic chemical where no repackaging of the toxic chemical occurs.
- (10) "Public agency" has the meaning given in s.166.20(1)(i), Stats.
- (11) "Threshold quantity" has the meaning given in s.166.20(1)(j), Stats.
- (12) "Toxic chemical" has the meaning given in s.166.20(1)(k), Stats.

SERB 3.03 TOXIC CHEMICAL RELEASE REPORTING COVERED FACILITIES. A facility owned or operated by a private agency or a public agency shall submit toxic chemical release inventory reporting forms as required by s.166.20 (5)(a)4, Stats. if the following apply:

- (1) The facility has 10 or more full-time employees.

NOTE: A facility shall calculate the number of full-time employees by totalling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.

- (2) The facility manufactured, imported, processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical as established in s. SERB 3.04.

SERB 3.04 THRESHOLD AMOUNTS. The threshold amounts for the purpose of reporting under s.166.20(5)(a)4, Stats. for toxic chemicals are one or both of the following:

- (1) 25,000 pounds of the chemical manufactured, imported, or processed at the facility for the year
- (2) 10,000 pounds of the chemical otherwise used at the facility during the year.

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SERB 3.05 TOXIC CHEMICAL RELEASE REPORTING REQUIREMENTS AND SCHEDULE FOR REPORTING.

- (1) For each toxic chemical known by the owner or operator to be manufactured, imported, processed or otherwise used in excess of an applicable threshold quantity under s. SERB 3.04 at its covered facility described under s. SERB 3.03 for a calendar year, the owner or operator shall submit to the department of natural resources, office of technical services a completed EPA Form R and shall comply with all requirements of 40 CFR Part 372 - Toxic Chemical Release Reporting; Community Right-To-Know.
- (2) Each report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility shall be submitted on or before July 1 of the next year.

NOTE: A copy of the EPA Form R - Toxic Chemical Inventory Reporting Form may be obtained at no charge by contacting the Department of Natural Resources, Office of Technical Services, P.O. Box 7921, 101 South Webster Street, Madison, Wisconsin 53707, telephone (608) 266-9255. Completed copies of Form R are submitted to the Department of Natural Resources, Office of Technical Services, P.O. Box 7921, 101 South Webster Street, Madison, Wisconsin 53707.

SERB 3.06 EXEMPTIONS. Exemptions established under 40 CFR 372.38 shall apply to this chapter with the exception of the exemption for activities in laboratories under 40 CFR 372.38(d).

SERB 3.07 TRADE SECRETS. For the purpose of applying s.166.20(5)(a)5 to public agencies and private agencies, procedures established for trade secrets claims by EPA in 40 CFR Part 350 Trade Secrecy Claims for Emergency Planning and Community Right-To-Know Information and Trade Secret Disclosures to Health Professions shall be effective. The board shall have the powers and duties granted to the administrator of the EPA under 42 USC 11042.

EFFECTIVE DATE. This chapter shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s.227.22(2)(intro.), Stats.

INITIAL REGULATORY FLEXIBILITY ANALYSIS. There is no additional impact to small businesses as a result of this rule. In fact, it reduces the impact of complying with s.166.20(5)(a)4 and (b), Stats. on public agencies and small businesses who are private agencies (ie: research facilities or educational institutions). It establishes criteria similar to that established under federal law for manufactures. Manufacturers are required to file the toxic inventory report, form R, if the facility employs 10 or more full time employes and the facility manufactures, processes, imports or otherwise used one of the listed toxic chemicals above the appropriate threshold.

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SERB3PROposal/ADMIN disk1

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Governor



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State of Wisconsin
State Emergency Response Board

4802 Sheboygan Avenue, Room 99A • Madison, Wisconsin

September 30, 1991

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Gary Poulson
Revisor of Statutes
119M Martin Luther King, Jr. Blvd.
Second Floor
Madison, WI 53707

Dear Mr. Poulson:

Attached is a copy of SERB 3 which is being transmitted to you to be published in the Register. Enclosed is a floppy disk which contains the Rule.

If you have any questions, please contact Jan Grunewald at 267-7315.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert M. Thompson".

Robert M. Thompson, Chairman
State Emergency Response Board

RMT:am