

NOTICE OF INTENT OF PROPOSED RULEMAKING BY THE HAWAII DEPARTMENT OF HEALTH

The Hawaii Department of Health is preparing administrative rules to better implement and improve compliance with requirements of the Hawaii Emergency Planning and Community Right-to-Know Act (HEPCRA), Chapter 128E, Hawaii Revised Statutes (HRS).

BACKGROUND

In 1986, the Emergency Planning and Community Right-to-Know Act (EPCRA), a federal law, established requirements for Federal, State, and local governments and industry regarding emergency planning and “Community Right-to-Know” reporting on hazardous and toxic chemicals. The Community-Right-to-Know provisions help increase the public’s knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment. In 1993, HEPCRA became law (HRS 128E) and promulgated the federal EPCRA requirements in the State of Hawaii. EPCRA created five separate reporting requirements for subject facilities, including:

- Emergency planning and notification (EPCRA sections 301 through 303)
- Emergency and accidental release notification (EPCRA section 304)
- Chemical hazard reporting requirements (EPCRA section 311)
- Chemical inventory reporting requirements (commonly referred to as Tier II) (EPCRA section 312)
- Toxic release reporting requirements (commonly referred to as TRI or Form R) (EPCRA section 313)

Under EPCRA, each state must establish a State Emergency Response Commission (SERC). In addition to other duties and responsibilities, the SERC designates local planning districts, appoints members of a Local Emergency Planning Committee (LEPC), and reviews emergency plans prepared by LEPCs. The Hawaii State Emergency Response Commission (HSERC) has designated local planning districts in the counties of Honolulu, Hawaii, Maui, and Kauai.

The LEPC in each district is crucial to local planning and community right-to-know programs and has many responsibilities, mandates, and deadlines. Members of the LEPC come from the local area and are familiar with factors that affect public safety, the environment, and the economy of the community. The LEPC focuses on community preparedness through activities designed to promote cooperation between facilities, first responders, and community members. The LEPC also has substantial information gathering authority and is responsible for collecting and disseminating Tier II and related data and using that information to foster closer cooperation between regulated facilities and the first responder community.

For more information, please see: HRS 128E [Hawaii Revised Statutes 128E, HEPCRA]

For more information, please contact: Sharon Leonida, State of Hawaii Department of Health Office of Hazard Evaluation and Emergency Response. 808-586-4249 ; sharon.leonida@doh.hawaii.gov. Beryl Ekimoto, State of Hawaii Department of Health Office of Hazard Evaluation and Emergency Response. 808-586-4249; beryl.ekimoto@doh.hawaii.gov.

Why are administrative rules for HEPCRA needed?

HEPCRA provides authority to the Hawaii Department of Health to create administrative rules implementing the requirements of the law. However, since the adoption of HEPCRA, the Department has not issued any administrative rules. In March 2007, the four chairs of the LEPCs informed the HSERC of a number of issues which they believe can only be addressed by having the Department issue rules to clarify requirements and provisions in the law. Issues concern administration, implementation, and enforcement of HEPCRA. The LEPC chairs also stated that the reporting requirements for covered facilities require further clarification to improve compliance and prevent misinterpretation. The Department agrees with the LEPC chairs and has decided that administrative rules are needed to clarify and better implement the requirements of HEPCRA (HRS 128E). The Department has formed a rule development workgroup to prepare the rules.

What will the administrative rules cover?

- Clarify definitions of hazardous substances, extremely hazardous substances, reportable quantities, and other key terms identified under HEPCRA
- Identify extremely hazardous substances and hazardous substances subject to HEPCRA reporting requirements
- Identify facilities subject to HEPCRA reporting requirements
- Provide clear and understandable requirements for reporting releases of hazardous substances, extremely hazardous substances, and hazardous chemicals to prevent misinterpretation of the reporting requirements and improve compliance for covered facilities
- Clarify the responsibilities, duties, administration, and implementation of HEPCRA requirements by the SERC and LEPCs
- Establish a state chemical inventory form to be used for reporting Tier II information
- Establish information required for hazardous substance release reports
- Identify procedures and timeframes for processing Tier II reports and disseminating Tier II information to counties and the general public
- Address enforcement of HEPCRA requirements, including inspection procedures and response to violations

How and when will the Department issue administrative rules for HEPCRA?

The Department will prepare rules following administrative procedures established by Hawaii law and relevant policies and guidance developed by the Department. First, the Department will draft proposed rules and seek public comment on those rules. The Department will then issue final rules after reviewing and responding to public comments. The Department expects to issue final administrative rules for implementing HEPCRA in late 2008.