

**Statement Supporting the Renewal of the Information Collection Request
for the Community Right-to-Know Reporting Requirements of the
Emergency Planning and Community Right-to-Know Act**

1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title of the Information Collection Request

Community Right-to-Know Reporting Requirements under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA)(Renewal) – EPA No. 1352.11

1(b) Short Characterization

This information collection request (ICR) was previously approved as OMB No. 2050-0072 through January 31, 2008, for, 2,028,700 hours. The owner or operator of any facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical under the Hazard Communication Standard of the Occupational Safety and Health Administration (OSHA) must submit an MSDS to the state emergency response commission (SERC), the local emergency planning committee (LEPC), and the local fire department for each hazardous chemical stored on-site in a quantity greater than the reporting threshold. Alternatively, a list of subject chemicals, grouped by hazard type, may be submitted instead. The current reporting threshold is 10,000 pounds unless the chemical is specifically listed as an extremely hazardous substance (EHS) under EPCRA section 302, in which case the reporting threshold becomes 500 pounds or the threshold planning quantity (TPQ), whichever is less. The reporting threshold for gasoline (all grades combined) is 75,000 gallons and for diesel fuel (all grades combined) is 100,000 gallons, when stored entirely underground at retail gas stations that are in compliance with UST regulations. Section 311 of EPCRA allows the public the same access to MSDSs that facilities provide to their employees.

The submittal of a list of chemicals or MSDSs was a one-time requirement, to be completed by October 17, 1987. However, facilities must submit updates to the list or MSDSs, within three months, when a hazardous chemical comes on-site above the reporting threshold. If significant new information arises concerning a previously submitted MSDS, a facility must submit a revised MSDS. Additionally, if the SERC or LEPC receives a request, the facility must provide an MSDS, even if the hazardous chemical is stored below the reporting threshold.

Section 312 of EPCRA requires owners and operators of facilities subject to section 311 to annually report the inventories of those chemicals reported under section 311. The Environmental Protection Agency (EPA) is required to publish two emergency and hazardous chemical inventory forms, known as “Tier I” and “Tier II,” for use by these facilities. The Tier I Form provides the minimum amount of information necessary to comply with the section. Any facility that is required to submit an MSDS or list of chemicals under section 311 must submit a Tier I form annually on March 1, incorporating the chemicals reported under section 311. Tier I Forms are submitted to the SERC, LEPC, and local fire department. The Tier II Form, which provides chemical-specific information, is submitted in lieu of the Tier I Form only if specifically requested by the SERC or LEPC. Many States have more stringent requirements, such as additional chemicals and lower reporting thresholds.

EPCRA authorized EPA to publish regulations and the forms for hazardous chemical reporting, codified in 40 CFR part 370. On October 15, 1987, EPA published the final rule and the emergency and hazardous chemical inventory reporting forms (Tier I and Tier II). The regulations were revised in July 26, 1990 and February 11, 1999. EPA published a proposed rule on June 8, 1998 to streamline the reporting requirements for hazardous chemical reporting. A portion of this proposed rule was finalized on February 11, 1999. Other issues that were proposed will be finalized in the near future.

EPA estimates that 350,000 manufacturing and non-manufacturing facilities are currently subject to reporting and recordkeeping requirements under EPCRA sections 311 and 312. The total annual burden to all facilities is estimated to be 3,655,572 hours at a cost of \$5,990,842,393. There are estimated to be 3,552 SERCs and LEPCs. The total annual burden associated state and local activities is estimated to be 136,840 hours at a cost of \$3,127,680. MSDSs, chemical lists, and Tier I/II forms are not submitted to EPA. Therefore, no Agency burden is estimated in association with this ICR.

2. NEED FOR AND USE OF THE COLLECTION

2(a) Need/Authority for the Collection

The authority for these requirements is EPCRA sections 311 and 312 (42 U.S.C. §11011 and §11012).

Section 311 requires the owner or operator of any facility that is required to prepare or have available an MSDS for a hazardous chemical under OSHA regulations to submit an MSDS for each such chemical, or a list of chemicals, to the SERC, LEPC, and local fire department. This submittal allows local emergency planners/responders and the community to have the same information regarding the hazards of a chemical at the facility.

Section 312 requires the same owners or operators of facilities to annually report the inventories of the chemicals reported under section 311. Section 312(g) requires EPA to publish emergency and hazardous chemical inventory forms for use by facilities subject to this section. In final rules published in the *Federal Register* on October 15, 1987, and July 26, 1990, EPA published the two “formats” required under EPCRA, “Tier I” and “Tier II.” Tier I is the minimum amount of information necessary to comply with the section. Using Tier I, facilities aggregate reportable chemicals by hazard type and provide the quantities and locations of the chemicals. The Tier II Form is chemical-specific information and only needs to be submitted (in lieu of the Tier I Form) if specifically requested by the SERC or LEPC.

2(b) Practical Utility/Users of the Data

The reports required under sections 311 and 312 are submitted to the state and local officials which will be then accessible to the public. The public will have knowledge of the hazards in their community. State and local officials also use the information submitted to them for developing emergency response plans for their community.

3. NON-DUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) Non-Duplication

Many states have laws that require information similar to that called for by sections 311 and 312 of EPCRA. EPA allows the state program to suffice for reporting provided that the minimum reporting requirements are met. The burden estimate in this ICR also includes burden imposed on facilities that comply with State requirements.

3(b) Consultations

EPA received information from the Regions on the number of facilities that may be covered under EPCRA sections 311 and 312. EPA also contacted few industries to estimate the burden imposed by the requirements under sections 311 and 312 of EPCRA.

Omaha Steaks “F” Street Plant
Omaha, NE
(402) 597-3000
Tom Ovichi

Stafford Water Treatment Plant
Novato, CA
(415) 897-4133
Robert Clark

Valero Refining Co.
Corpus Christi, TX
(361) 289-8406

Willow Brook Foods, Inc.
Springfield, MO
(417) 833-1648

Pfizer Global Mfg.
Groton, CT
(860) 686-2595
Jim Constantine

East Penn Mfg.
Lyon Station, PA
(610) 682-6361
Karyn George

United States Cold Storage
Minooka, IL
(773) 844-9110
Jim Morrela

KIK Custom Products
Danville IL
(217) 442-1400
Melvin Sneed

Terra Nitrogen
Claremore, OK
(918) 266-1511
Jim Schellhome

3(c) Public Notice

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Agency has notified the public through the Federal Register notice on the renewal of this ICR on August 6, 2007 (72 FR 43636). EPA received comments from two industry trade associations. Both have raised same concerns on the Agency’s burden estimates and the burden caused by inconsistent implementation in different States. One commenter also raised that EPA should finalize some revisions that were proposed previously to minimize burden imposed on facilities. EPA addresses responses to each of the comments below.

Commenters stated that the supporting statement was not available on www.regulations.gov so the comments submitted were on the previously approved ICR. Commenters were concerned that EPA may use the same estimates that EPA developed in the previous ICR. For the initial public comment period, the Agency requested comments on the ICR that is currently active, which was approved by OMB. The Agency used the same burden obtained from facilities but the cost was estimated based on the recent information from Bureau of Labor and Statistics. In the previous ICR, EPA used the weighted average making some assumptions on the percentage of each sector that may be complying with EPCRA sections 311 and 312. The Agency applied hours that was reported by the facilities that the Agency contacted. In previous ICRs, EPA only contacted small to medium size facilities. EPA assumed that these facilities, specifically, small facilities would find more difficulty in complying than larger facilities that may have more resources and electronic capabilities. Commenters are well aware that since EPA does not receive any of the information filed under sections 311 and 312, EPA must rely on the best information available to estimate the burden. EPA used the number of establishments from the U.S. Census data and the number of facilities that comply with other EPA programs to determine the number of facilities in each sector to develop the weighted average. Commenters may be also aware that under the Paperwork Reduction Act, an Agency is not allowed to conduct a survey of more than 9 without an approval from OMB for the survey. Therefore, the Agency had to take a sample from the estimated number of universe (560,000 facilities) that may be subject to the requirements under EPCRA sections 311 and 312. During the public comment period for this ICR,

the Agency has contacted large facilities as well as small and medium size facilities in both manufacturing and non-manufacturing sectors to develop estimates.

The commenters also stated that EPA contacted food industry to develop burden estimates although food and food additives are excluded from the reporting requirements under EPCRA sections 311 and 312. EPA agrees with the commenters that there is an exemption under EPCRA section 311 from the definition of hazardous chemical for any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration (FDA). However, EPA would like to clarify that this exemption only applies to those substances that are regulated by the FDA. Facilities may have other chemicals on site that may not be covered by this exemption and those are reportable under EPCRA sections 311 and 312 if they meet the applicable threshold.

Commenters were also concerned that EPA only contacted small to medium size facilities. The reason that the Agency contacted only these facilities is because we believe that these facilities may lack resources and technical personnel to assist the owner or operator to comply with the requirements. We also believe that they may not have the electronic capabilities to store information from previous year that they may be able to duplicate. Most of the facilities that EPA has contacted mentioned that they report same information from the previous year. As one of the commenter stated, the Agency agrees that large facilities have experience in complying with the requirements under EPCRA sections 311 and 312 since the regulations were promulgated since October 1987. EPA is also aware that large facilities have the resources, technical expertise and electronic capabilities to keep track of chemical inventory, hazard information etc. However, EPA contacted large facilities as well as small and medium size facilities to develop burden estimates for this ICR. EPA also contacted non-manufacturers to determine how the requirements affect these sectors. See Section 6 of this supporting statement on the details of the development of burden and cost estimates.

Commenters also stated that the most significant cause for unnecessary burden is the inconsistent implementation among States. EPCRA was created to encourage and support State and local planning for emergencies caused by the release of hazardous chemicals and to provide citizens and governments with information concerning potential chemical hazards present in their communities. EPCRA section 303 requires each LEPC to prepare emergency plan for their community and submit the plan to the SERC for review. The SERC then review the plan and make recommendations to the LEPC to revise the plan if necessary to ensure coordination of emergency response plans with other emergency planning districts. EPA believes that each State and local entity has a unique use and need for the information that is reported under EPCRA sections 311 and 312. The hazardous chemical information received is used for developing emergency response plans. Therefore, these entities are given the flexibility to implement the program as they need, to have additional requirements, set lower reporting thresholds and require different method for reporting the information, which includes electronic reporting. 40 CFR sections 370.40 and 370.41 state that in lieu of the forms published by EPA, the facility owner or operator may submit a State or local form. The preamble to the October 15, 1987 final rule provides flexibility to States and local governments on the medium to be used in reporting, including electronic reporting. In the June 8, 1998 proposed rule, EPA provided draft guidance to State and local agencies on various options they may use to implement reporting under sections 311 and 312. EPA stated that even without finalizing the guidance, States and local officials may implement any of the options, including electronic reporting provided in the draft guidance. The Agency believes that, by collecting information electronically will allow State and local officials, especially emergency responders to have information readily available in emergencies rather than searching through submissions in paper.

Soon after the regulations were promulgated in 1987, State and local officials that receive the information filed under EPCRA sections 311 and 312 began to express concern of the tremendous burden imposed on these entities to manage the submissions in paper from thousands of facilities. Their concerns were mainly focused on finding the information during an emergency situation, since these entities may have to search through their filing system. Therefore, they were given the flexibility to create electronic tools to accept the Tier II information. Many States have created their own software for facilities to use for reporting. EPA also created an electronic software,

Tier II*Submit for those States that do not have the resources to create their own software. As mentioned above, the information submitted under EPCRA sections 311 and 312 is used for developing emergency response plans and preparing the community. EPA does not believe that there is tremendous burden imposed on facilities as commenters stated due to the variation in State Tier II requirements. Facilities are not required to create any software to report information since the States either require Tier II* Submit or the State created software. It is easier for the State and local officials to access information if stored electronically. Also, as mentioned above, each State or a local agency has a unique need for the information. Therefore, they are given the flexibility to implement the program as necessary. To prevent and prepare a community from a chemical release, it is a joint effort by industry, State and local officials. EPA encourages facilities to use available resources to ensure that the community is better prepared in an emergency, which is the purpose of EPCRA. EPA believes that keeping the community safe is more valuable than the resources used by facilities to comply with the reporting requirements.

One of the commenters requested that EPA should revise the regulations to reduce some burden under the reporting requirements for sections 311 and 312. This commenter also requested clarification on some of the issues proposed in March 1989 and June 1998. One of the revisions that the commenter suggested was proposed on June 8, 1998. EPA proposed to provide relief from routine reporting of substances with minimal hazards and minimal risks. The Agency may finalize this issue as well as other issues that were proposed in Jun 1998 in the near future.

The second revision that the commenter requested was proposed on March 29, 1989. In that notice, EPA proposed to allow establishments located on a single site to submit separate reports as long as the entire facility as a single unit (all establishments combined) is used as the basis for determining compliance. EPA received approximately fifteen comments on this issue in 1989. Of these, twelve commenters opposed EPA's proposal. Therefore, as requested by these commenters, EPA did not finalize this revision at that time. EPA may review all the comments submitted in 1989 once more and the comments submitted with this ICR renewal and then the Agency may either provide guidance or revise the regulations. In the meantime, EPA encourages facilities to contact their States and local officials to find out the best way to comply with the requirements of sections 311 and 312 for facilities with multi-establishment units. As mentioned above, the information reported under sections 311 and 312 is used for developing emergency response plans and for responding chemical releases. This information is best used at local levels to protect the community.

This commenter also requested clarification on threshold determinations for mixtures containing hazardous chemicals that are not extremely hazardous substances. EPA proposed four revisions to the threshold determinations and reporting of mixtures in the regulations under sections 311 and 312. EPA is currently in the process of finalizing some of the revisions that were proposed in June 8, 1998. EPA will consider all the comments that the Agency received to make a final decision on any revisions that were proposed.

The commenter also requested clarifications on these issues:

- Groupings for EPCRA section 311 reporting
- On-site Storage versus percent on-site
- Mixture vs. Chemical for some CAS#
- Combining similar material materials for reporting purposes
- Scope of the laboratory exemption

EPA will update the Agency's website under *EPCRA Frequently Asked Questions and Answers* to clarify these issues.

3(d) Effects of Less Frequent Collection

The reporting deadlines for sections 311 and 312 are set by statute. EPA has no authority to allow less frequent collection.

3(e) General Guidelines

The collection activities specified in this renewal ICR adhere to the guidelines specified by OMB.

3(f) Confidentiality

The respondent may claim specific chemical identities as trade secret in reports submitted under Section 312 and in the list of chemicals and material safety data sheets submitted under Section 311. Such information must be submitted according to EPCRA sections 322 and 323 (40 CFR Part 350).

All trade secrecy claims submitted to EPA under Title III are handled and stored according to procedures set out in the Manual for Physical Handling, Security, and Protection of Files containing Trade Secret Claims Submitted under Sections 303, 311, 312 and/or 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), December 2003. These procedures were developed for Title III trade secrecy claims with the knowledge that these documents are sensitive. Handling and review of documents containing Title III trade secret information is permitted only by persons who have obtained formal clearance to access the information based on a work-related need to engage in these activities. When not being processed or reviewed by authorized individuals, the claim submissions containing trade secret information are stored in restricted access areas. To ensure that appropriate handling procedures are activated and the confidentiality of Title III trade secret submissions is maintained, the Agency attaches a cover sheet to the top of each trade secret document and otherwise marks the document to clearly identify the document as Title III confidential.

3(g) Sensitive Questions

The information gathering activities under this renewal ICR do not involve any sensitive questions.

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

4(a) Respondents/SIC Codes

Sections 311 and 312 are applicable to all facilities that are required to prepare or have available an MSDS for a hazardous chemical as required under OSHA.

Section 1910.1200 of the OSHA regulations provides exemptions from the definition of hazardous chemical.

In addition, Section 311(e) of EPCRA excludes the following substances:

- Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
- Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
- Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;
- Any substance to the extent it is used in a research laboratory, hospital, or other medical facility under the direct supervision of a technically qualified individual; and

- Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Also, reporting thresholds have been established under sections 311 and 312. A facility must report those hazardous chemicals that are present at the facility at any time at or above the following levels:

- For hazardous chemicals other than EHSs, the reporting threshold is 10,000 pounds.
- For EHSs, 500 pounds or the threshold planning quantity (TPQ), whichever is less.
- For gasoline, 75,000 gallons (all grades combined) and 100,000 gallons for diesel fuel (all grades combined), when stored entirely underground at retail gas stations that are in compliance with UST regulations.

4(b) Information Requested

4(b)(i) Data Items

Facilities having chemicals subject to section 311 are required to submit MSDSs for these chemicals. These MSDSs are the same as those required under OSHA regulations. A facility can also fulfill its section 311 reporting obligation by submitting a list of chemicals that are subject to the requirements, grouped by the following hazard types: fire, sudden release of pressure, reactivity, immediate health hazard, and acute health hazard.

On or before March 1 of each year, facilities having chemicals that need reporting must submit a Tier I Form. However, the Tier II Form may be submitted in lieu of the Tier I. The Tier I Form includes the following information as required by the statute:

- An estimate in ranges of the maximum amount of hazardous chemicals in each hazardous category present at the facility at any time during the previous year; and
- An estimate in ranges of the average daily amount of hazardous chemicals on-site in each hazard category.

EPA has added the following information by regulation:

- Primary SIC code and Dun and Bradstreet number of the facility
- Two emergency contacts (added to give SERCs, LEPCs, and local fire departments a contact at the facility who could clarify information at any time, particularly in the event of an emergency); and
- Number of days on-site (added to produce a more accurate estimate of the average daily amount, particularly for those chemicals that are on-site for only a short period of time each year).

Even if Tier II information is not submitted in lieu of Tier I, it must be submitted upon request by the SERC, LEPC, or local fire department. The Tier II Form includes the following information as required by statute:

- The chemical name;
- An estimate in ranges of the maximum daily amount of the hazardous chemical present at the facility at any time;

- An estimate in ranges of the average daily amount of hazardous chemicals present at the facility during the previous year;
- A brief description of the manner of storage of the hazardous chemical; and
- The location of the hazardous chemical within the facility.

EPA has added the following items in its regulations:

- CAS number to identify more accurately each chemical that is reported;
- The physical state to help identify the type of hazard a chemical represents in an emergency;
- The physical and health hazards associated with the chemical;
- Primary SIC code and Dun and Bradstreet number of the facility
- Two emergency contacts (added to give SERCs, LEPCs, and local fire departments a contact at the facility who could clarify information at any time, particularly in the event of an emergency); and
- Number of days on-site (added to produce a more accurate estimate of the average daily amount, particularly for those chemicals that are on-site for only a short period of time each year).

4(b)(ii) Respondent Activities

To determine if it is subject to section 311, a facility must look at inventory records for all of its chemicals that are required to have MSDSs. The facility would also have to review the EHS list to determine if any of its chemicals are subject to a lower reporting threshold.

If the facility determines that it has chemicals that must be reported, it must determine the address of the SERC, LEPC, and local fire department. Copies of the MSDSs for these chemicals may be submitted, or if preferred, the facility may provide a list of the subject chemicals grouped by hazard type. To use the list option, the facility would have to read the MSDS to determine into which of the five hazard types the chemical falls and to identify it on the list.

The same chemicals that a facility would need to report under section 311 would need to be reported under section 312. To complete the Tier I form, the facility would need to monitor its inventory records for the chemical (to determine the inventory information), add the quantities together for chemicals having the same hazards, and determine the correct code for the total quantity.

A site map may be easier to show locations of hazardous chemicals, or the facility may choose to provide the general location.

5. THE INFORMATION COLLECTED: AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5(a) Agency Activities

No information provided under sections 311 and 312 is sent to EPA. All of the information is collected and kept at the state and local agencies.

5(b) Collection Methodology and Management

EPA does not receive the data; therefore, EPA does not have any special data collection methodology and management. EPA created a computer software for use by facilities to submit Tier II reports. Some states have also created softwares using their own resources. Facilities in states having the ability to receive section 311 and 312 information electronically are encouraged to use that option.

5(c) Small Entity Flexibility

The burden hours for small businesses are considered to be smaller than those for large facilities because of the reduced number of chemicals present at smaller facilities.

5(d) Collection Schedule

The frequency of collection for these sections of EPCRA is required by statute. Also, facilities are required to report any relevant changes when they occur. The submittal of a list of chemicals or MSDSs under Section 311 is a one-time requirement, unless significant new information arises concerning a previously submitted MSDS, in which case, a facility should submit a revised MSDS. Facilities must submit updates to the list or MSDSs, within three months, when a new hazardous chemical comes on-site above the reporting threshold. The facilities subject to Section 312 is required to submit either Tier I or Tier II on March 1 annually.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

6(a) Estimating Respondent Burden

EPA estimated the respondent burden hours and costs associated with all recordkeeping and reporting requirements of EPCRA sections 311 and 312. EPA contacted the Regions to obtain an estimate on the number of facilities that comply with EPCRA sections 311 and 312. Based on the information received and taking into account for facilities in non-compliance, EPA estimates that there are 350,000 facilities that may be subject to the requirements covered by this ICR. For this ICR, EPA used the ratio reported in the U.S. Census data to estimate the number of manufacturers and non-manufacturers. EPA estimates that out of 350,000 facilities, there are 105,000 manufacturers and 245,000 non-manufacturers. EPA also estimated the number of small, medium and large facilities in both manufacturers and non-manufacturers reported by U.S. Census.

According to the Census data in 2002 and 2004, there is a decline in the number of manufacturing facilities. This may be due to mergers and acquisition. However, EPA estimates that during the period covered by this ICR, there will be a slight increase in the number of manufacturers. In the previous ICR, the Census data reported an increase of 0.4 percent. In this ICR, EPA also assumes that there will be an increase of 0.4 percent. For the three years covered by this ICR, there will be 420 (140 annually) new facilities covered by the requirements under sections 311 and 312.

The initial reporting burdens such as reading and understanding regulations and section 311 submission(s) for currently covered facilities under EPCRA sections 311 and 312 are assumed to have occurred and are not included in this ICR. This ICR accounts for reporting updates under section 311, annual reporting and recordkeeping activities under section 312 that apply to all currently regulated facilities, as well as all initial reporting burdens for new facilities that are expected to become subject to the reporting requirements over the three-year ICR-approval period. The estimated burden to complete each reporting and recordkeeping activity is outlined below.

There are estimated to be 3,500 LEPCs and 52 SERCs. These numbers are assumed to remain the same during the period covered by this ICR.

The unit burden estimates associated with this collection for facilities is in Exhibit 1. For State and local agencies the unit burden estimate is in Exhibit 1.

Read and Understand Regulations

EPA estimates that 140 newly regulated facilities will need to read and understand the regulations (40 CFR Part 370). As stated above, this estimate is determined by applying a growth rate of 0.4 percent in the three years covered by this ICR to the number of manufacturing facilities subject to the regulation. SERCs and LEPCs are assumed to have already completed the rule familiarization activities. EPA assumes that it takes an average of 11.0 hours per facility to read and understand regulations in 40 CFR Part 370.

Section 311: MSDS Reporting for Facilities (40 CFR 370.21)

EPA estimates that 140 newly regulated facilities will need to determine which chemicals exceed the threshold limits. Of this universe, EPA estimates that 30 percent (39 facilities) will submit MSDSs to LEPCs, SERCs, and local fire departments. Alternatively, facilities may submit a list of hazardous chemicals grouped by hazard category or a list of the chemical or common names of each hazardous chemical in lieu of submitting an MSDS. Based on these options, 70 percent (91 facilities) are expected to submit such lists.

Of those facilities submitting lists in lieu of MSDSs, all facilities (91 facilities) are expected to elect the option of submitting a list of hazardous chemicals grouped by hazard category. Facilities may comply with this option by simply copying their Tier II form.

In addition, EPA estimates that 17,500 facilities (five percent of the 350,000 facilities reporting under section 312) will need to submit a revised MSDS(s) and the same number of facilities (17,500 facilities) will need to submit a new MSDS(s) in accordance with 40 CFR 370.21(c)(1) and (2). This activity represents the incremental burden for a facility that has acquired a new chemical or has otherwise changed its inventory. Because little information is required from facilities after the initial submittal, EPA also estimates that only one percent of the total universe (3,500 facilities) may be specifically requested to submit an MSDS in accordance with 40 CFR 370.21(d). Unit burden for each activity under section 311 is in Exhibit 1.

Section 312: Inventory Reporting for Facilities (40 CFR 370.25)

The inventory reporting burden applies to new and currently covered facilities. Although EPA published two inventory forms, Tier I and Tier II, all the States accept only Tier II or form developed by States. EPA is not aware of any States that will accept Tier I form. Therefore, EPA did not account any burden for complying with Tier I form. Tier II form or State developed forms are useful for developing emergency response plans since these forms contain detailed information than Tier I. EPA has developed an electronic reporting method, Tier II* Submit, which many States use. Some States have created their own electronic reporting method that they require facilities to use. As of December 2006, about 29 States require facilities to use Tier II* Submit. Eleven States accept Tier II using a web-based system. Only 12 States accept Tier II in paper form.

EPA contacted nine facilities, small, medium and large. For this ICR, EPA assumes small facilities are those less than 100 employees, medium facilities are those that have up to 500 employees, and large facilities are those greater than 500 employees. These assumptions are used for both manufacturers and non-manufacturers. The majority of facilities in the non-manufacturing sector store few chemicals in amounts that exceed reporting thresholds in relation to the number stored at manufacturing facilities. The corresponding burden estimates for completing Tier II inventory forms are lower for non-manufacturing facilities. Small manufacturers and non-manufacturers that EPA contacted have stated that it takes only 1 to 8 hours annually to gather information and submit Tier II. These facilities have indicated that they may have up to four chemicals that exceed reporting

thresholds. For this ICR, EPA applied the average of 6 hours for small manufacturers and 4 hours for small non-manufacturers. These entities have stated that when the regulations were promulgated in 1987, gathering information and completing the form took longer time. It is now easier since the information is usually same as previous year. Medium size facilities have informed that it takes 8 hours to 80 hours annually. These facilities may have up to 15 chemicals that may exceed reporting thresholds. For this ICR, EPA applied 80 hours for medium manufacturers. Large manufacturers that EPA contacted have informed us that it takes 8 hours to 120 hours to gather information and complete the form. These facilities may have up to 25 chemicals that may exceed reporting thresholds. For these facilities, EPA applied 120 hours for large manufacturers. EPA also contacted one small and one large non-manufacturer. They have informed the Agency that it takes 6 hours for small manufacturer and 40 hours for large non-manufacturer to complete and submit the form under section 312. EPA then used the average, 23 hours to apply for medium size non-manufacturers.

Most of the States require facilities to submit using electronic reporting method that State created or the Tier II* Submit. Therefore, the burden incurred on these facilities is lower than those submitting in paper form. EPA believes that those facilities submitting electronically will have the Tier II or the State form stored which can be revised easily. Most of the information may be the same as previous year. Although the burden incurred may be lower for those submitting electronically, EPA applied the same unit burden for both electronic submitters and paper submitters.

Information Requests for SERCs and LEPCs (40 CFR 370.30)

Information request burdens in 40 CFR 370.30 are incurred by LEPCs and SERCs. These agencies are required to provide public access to the MSDSs and Tier I/II forms submitted by facilities. EPA estimates that the LEPCs or SERCs will be requested to provide MSDSs to the public for one percent of the total universe of facilities reporting Tier I or Tier II inventories annually (3,500 facilities). SERCs and LEPCs are also estimated to provide Tier II information on one percent of the same universe of facilities (3,500 facilities) as a result of requests from the public for such information.

Data Management for SERCs and LEPCs

SERCs and LEPCs receive annual inventory forms from facilities, which they must make available to the public on request. The level of effort needed to manage these forms varies depending on both the number of forms received and the ways the LEPC or SERC uses the data. Smaller LEPCs receive few forms each year; LEPCs in industrialized areas or that cover several counties and SERCs may receive a large number of forms. The degree to which the information is used depends on whether the LEPC or SERC has the resources to actively handle the data. Based on earlier discussions with LEPCs, EPA determined that small LEPCs spend on average five hours a year handling the forms; large LEPCs may spend as much as three months processing the forms. SERCs supported by fees are also likely to spend considerable time on the data. EPA developed a weighted average of 32.5 hours a year, based on the assumption that 120 LEPCs and 27 SERCs would devote considerable effort organizing and checking the data. In addition, a limited number of SERCs and LEPCs have developed databases and input the 312 data into their CAMEO software systems. Based on discussions with LEPCs that have databases, EPA estimates that this effort would require two months or 320 hours. The number of SERCs and LEPCs with databases is estimated to be 45, a third of the SERCs and large LEPCs. About twenty nine states have the capability to accept Tier II forms electronically.

6(b) Estimating Respondent Costs

The annual costs to respondents were estimated by multiplying the respondent burden estimates for each labor category by the corresponding labor rate for that category. The unit costs for each respondent or activity are then multiplied by the number of respondents or activities performed on an annual basis to yield a total cost for each information collection activity in Section 6(d). These costs are shown in Exhibit 1.

EPA estimates an hourly respondent labor cost for manufacturing facility respondents of \$52.36 for managerial staff, \$52.36 for technical staff, and \$25.89 for clerical staff, including wages and benefits. Hourly respondent labor costs for non-manufacturing facility respondents are estimated at \$45.05 for managerial staff, \$45.05 for technical staff, and \$20.13 for clerical staff. Legal review is estimated at \$100 per hour.¹

EPA estimates an hourly respondent labor cost (including overhead) for LEPCs and SERCs of \$41.90 for managerial staff, \$28.76 for technical staff, and \$21.66 for clerical staff.

Capital and O&M Costs

Capital/start-up and operation and management (O&M) costs were also estimated for facilities and state and local governments. Exhibit 5 presents the capital and O&M costs for complying with sections 311 and 312. Capital costs include the cost of space required to store information in filing cabinets. Given that the standard-size, five-drawer, lateral file cabinet is expected to hold approximately 36,000 pages of material, EPA estimates that the SERC and LEPCS would need to purchase approximately 100 file cabinets within the time period of this ICR. (EPA assumed that MSDSs are four pages and inventory forms one page and that the SERC and LEPC or fire department (but not both) would maintain the records.) Facilities are assumed to need only 10 file cabinets to maintain copies of their annual inventory reports; the cost for storing MSDSs for facilities is covered by the OSHA's hazard communication standard (29 CFR 1910.1200). Using an estimated cost of \$600 per filing cabinet, the cost of purchasing the 100 filing cabinets is estimated to be \$60,000. Annualizing the costs over 15 years, a single file cabinet has annual cost of \$40.

State and local governments are assumed to incur capital costs in the form of filing cabinets for the storing new and revised MSDSs, lists of hazardous chemicals, and the annual inventory reports. State and local governments are expected to incur postage costs to provide MSDSs upon written request and to provide Tier II information upon written request. In addition, facilities were assumed to incur postage costs for mailing new and revised MSDSs, lists of hazardous chemicals, and the annual inventory reports. Postage is estimated to cost \$5 per certified package.

¹ In the previous ICR-approval period, U.S. Bureau of Labor Statistics (BLS), *Employer Cost for Employee Compensation*, Table 12: Private Manufacturing and Non-Manufacturing Industries, December 2003, was used to derive hourly labor costs for manufacturing and non-manufacturing facility respondents, including wages and benefits. The previous BLS Employment Cost Index (ECI) reporting results relied upon the 1987 Standard Industrial Classification (SIC) system and the 1990 Occupational Classification System (OCS). With Mexico and Canada, in order to provide comparability between the statistical systems of the three partners in the North American Free Trade Agreement (NAFTA), the United States adopted the 2002 North American Industry Classification System (NAICS) and 2000 Standard Occupational Classification System (SOC), which have now replaced the SIC and OCS systems respectively. Due to this major overhaul of systems, the ECI reporting results have changed and the hourly labor costs for manufacturing and non-manufacturing facility respondents used in the previous ICR are no longer available in the same format. Thus, for the purposes of this ICR-approval period, hourly labor costs have been pulled from *Employer Cost for Employee Compensation*, Table 9: Private Industry, Goods-Producing and Service-Providing Industries, by Occupational Group, June 2007. Table 9 is the nearest match to labor categories and hourly labor costs that were extracted from Table 12 under the previous BLS reporting system.

Note the above footnote regarding the change in BLS reporting practices. In the previous ICR-approval period, U.S. Bureau of Labor Statistics, *Employer Cost for Employee Compensation*, Table 4: State and Local Government By Occupational and Industry Group, December 2003, was used to derive hourly labor costs for state and local government respondents, including wages and benefits. For the purposes of this ICR-approval period, hourly labor costs have been pulled from *Employer Cost for Employee Compensation*, Table 4: State and Local Government, by Occupational and Industry Group, June 2007. Table 4 offers the nearest match to labor categories and hourly labor costs that were extracted from Table 4 under the previous BLS reporting system.

Although some facilities covered by these regulations are now submitting 312 reports electronically, EPA kept the estimates derived in the previous ICR for capital and O&M costs for SERCs, LEPCs and facilities.

Estimating Agency Burden and Cost

EPA estimates no annual Agency burden associated with this ICR. Only state and local government entities will incur burden and cost to manage information submitted by facilities.

6(d) Estimating Total Annual Respondent Burden

Exhibit 4 presents the respondent burden for each information collection activity and for the sum of all information collection activities performed by each respondent type. Exhibit 2 and 3 present the hour and cost burden for SERCs and LEPCs for implementing the program. Exhibit 5 and 6 show the capital and O&M costs to facilities over the three-year information collection period. The total average annual respondent burden for facilities is 3,655,592 hours, for a total annualized cost of \$197,936,905. The total average annual respondent burden for state and local governments for the three-year period is 136,840 hours, for a total annualized cost of \$3,127,680. These burden estimates are summarized in Exhibits 5 and 6.

6(e) Bottom Line Burden Hours and Cost

The total burden to facility respondents over three years is 10,966,776 hours at a cost of \$612,804,315. The total burden to LEPC and SERC respondents over three years is 410,520 hours at a cost of \$9.3 million. Exhibits 5 and 6 present a summary of the bottom line burden and cost estimates for section 311 and 312 reporting for facilities and state and local governments, respectively.

6(f) Reasons for Change in Burden

The estimated average annual burden for facilities for reporting and recordkeeping activities under EPCRA sections 311 and 312 is 3,655,592 hours per year. There is an increase of 1,626,892 hours from the previous ICR for the facilities. In previous ICRs, EPA had only contacted small and medium size facilities since the Agency assumed that these types of facilities will incur more burden than large facilities that have more resources, electronic capabilities and technical personnel. Then EPA applied the average of 3 hours across the universe to develop and submit the Tier II form, which EPA now believes that it was underestimated based on the comments we received under the first public notice of this ICR. Therefore, EPA contacted small, medium and large size facilities in both manufacturing and non-manufacturing sectors to develop burden for this ICR. Based on the conversation we had with each of the sectors we contacted, EPA applied the burden for each sector accordingly.

There is a decrease of approximately 209,948 respondents in the estimated universe from the previous ICR. EPA believes that the universe estimates in this ICR are more accurate since most States now collect Tier II electronically so they were able to provide EPA with a better estimate on the number of facilities subject to sections 311 and 312 than we estimated in previous years. Additionally, labor rates have been updated to account for inflation.

6(g) Burden Statement

The average burden for MSDS reporting (basic and additional reporting) is estimated at 6.75 hours for new facilities. Additional reporting, which is to submit revised and new MSDSs for currently covered and new facilities is 2 hours. The average burden for new and currently covered facilities to submit MSDS upon request is 1 hour.

The average burden to comply with Tier II inventory reporting for small, medium and large manufacturers is 8, 80 and 120 hours, respectively. The average burden to comply with Tier II inventory reporting for small, medium and large non-manufacturers is 6, 20, and 40 hours, respectively. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312 although it is assumed that they will maintain a copy of annual reports to use for future filings. The recordkeeping for MSDSs is mandated under OSHA rules.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be one hour per request. The average burden for managing and maintaining the reports and MSDS files is estimated to be 32.50 hours. The average burden for maintaining and updating a 312 database is estimated to be 320 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor such a request, and a person or facility is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID number EPA-HQ-SFUND-2004-0006, which is available for online viewing at www.regulations.gov, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Superfund Docket is (202) 566-0276. An electronic version of the public docket is available www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-SFUND-2004-0006 and OMB Control Number 2050-0072 in any correspondence.

Exhibit 1
Section 311 and 312 Reporting and Recordkeeping Requirements
Estimated Unit Burden and Cost

Facilities

Information Collection Activity	Annual Unit Hours				Total Hours	Annual Unit Cost
	Legal	Management	Technical	Clerical		
RULE FAMILIARIZATION						
Read and understand regulations	1.00	2.50	7.5	0.00	11.00	\$623.60
MSDS REPORTING						
Basic Reporting						
Determine which chemicals meet/exceed the thresholds (new facilities)	0.00	1.00	3.00	0.00	4.00	\$209.44
Submit MSDSs to SERC, LEPC, and fire department (new facilities)	0.00	0.25	1.00	0.50	1.75	\$78.39
Alternative Reporting						
Submit list of hazardous chemicals grouped by hazard category (new facilities)	0.00	0.00	1.00	0.25	1.25	\$58.83
Submit revised MSDSs (new and currently covered facilities)	0.00	0.25	0.50	0.25	1.00	\$45.74
Submit new MSDSs (new and currently covered facilities)	0.00	0.25	0.50	0.25	1.00	\$45.74
Additional Reporting						
Submit MSDS upon request (new and currently covered facilities)	0.00	0.25	0.50	0.25	1.00	\$45.74
INVENTORY REPORTING						
Basic Reporting						
Develop and submit Tier II (new and currently covered facilities)						
Manufacturers						
Small	1.00	1.00	6.00	0.00	8.00	\$466.52
Medium	2.00	4.00	74.00	0.00	80.00	\$4,284.08
Large	4.00	8.00	108.00	0.00	120.00	\$6,473.76
Non-manufacturers						
Small	1.00	1.00	4.00	0.00	6.00	\$325.25
Medium	2.00	2.00	16.00	0.00	20.00	\$1,010.90

Large	4.00	4.00	32.00	0.00	40.00	\$2,021.80
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Exhibit 2
Sections 311 and 312 Reporting and Recordkeeping Requirements
Estimated Unit Burden and Cost

State and Local Governments

	Annual Unit Hours				Total Hours	Annual Unit Cost
	Legal	Management	Technical	Clerical		
INFORMATION REQUESTS						
File and maintain annual inventory forms and data	0.00	0.00	5.0	27.5	32.50	\$957.00
Input data and maintain database of 312 data	0.00	0.00	40.0	280.00	320.00	\$9,238.80
Provide MSDSs upon written request	0.00	0.00	0.50	0.50	1.00	\$25.21
Provide Tier II information upon written request	0.00	0.00	0.50	0.50	1.00	\$25.21

Exhibit 3
Sections 311 and 312 Reporting and Recordkeeping Requirements
Estimated Annual Burden

State and Local Governments

	Number of Respondents	Annual Hours Burden				Total Hours Burden	Annual Cost
		Legal	Management	Technical	Clerical		
INFORMATION REQUESTS							
File and maintain annual inventory forms and data	3,552	0.00	0.00	17,760	97,680	115,440	\$2,626,526.40
Input data and maintain database of 312 data	45	0.00	0.00	1,800	12,600	14,400	\$324,684.00
Provide MSDS on written request	3,500	0.00	0.00	1,750	1,750	3,500	\$88,235.00
Provide Tier II information upon written request	3,500	0.00	0.00	1,750	1,750	3,500	\$88,235.00
Total						136,840	\$3,127,680.40

Exhibit 4
Section 311 and 312 Reporting and Recordkeeping Requirements
Estimated Annual Burden and Cost

Facilities

	Number of Respondents	Legal	Management	Technical	Clerical	Total Hours Burden	Annual Cost
RULE FAMILIARIZATION							
Read and understand regulations	140	140	325	975	0.00	1,440	\$82,068.00
MSDS REPORTING							
Basic Reporting							
Determine which chemicals meet/exceed the thresholds (new facilities)	140	0.00	140	390	0.00	530	\$27,750.20
Submit MSDSs to SERC, LEPC, and fire department (new facilities)	39	0.00	9.75	39	19.50	68.25	\$3,057.
Alternative Reporting							
Submit list of hazardous chemicals grouped by hazard category (new facilities)	91	0.00	0.00	91.00	22.75	113.75	\$5,353
Submit revised MSDSs (new and currently covered facilities)	17,500	0.00	4,375	8,750	4,375	17,500	\$800,493
Submit new MSDSs (new and currently covered facilities)	17,500	0.00	4,375	8,750	4,375	17,500	\$800,493
Additional Reporting							
Submit MSDS upon request (new and currently covered facilities)	3,500	0.00	875	1,750	875	3,500	\$160,098
Subtotal						40,652	\$1,879,312
INVENTORY REPORTING							
Basic Reporting							
Develop and submit Tier II (new and currently covered facilities)							
<i>Manufacturers</i>							
Small	93,975	93,975	93,975	563,850	0.00	751,800	\$43,841,217
Medium	7,875	15,750	31,500	582,750	0.00	630,000	\$33,737,130
Large	3,150	12,600	25,200	340,200	0.00	378,000	\$20,392,344
<i>Non-manufacturers</i>							
Small	240,590	240,590	240,590	962,360	0.00	1,443,540	\$78,251,898
Medium	2,940	11,760	11,760	211,680	0.00	235,200	\$11,241,972
Large	1,470	11,760	11,760	152,880	0.00	176,400	\$8,593,032

Subtotal						3,614,940	\$196,057,593
Total (Facilities)						3,655,592	\$197,936,905

**Exhibit 5
Summary of Total Burden and Cost Estimates**

Facilities

	Total Hours Burden (Hours)	Total Cost		
		Labor	Capital	O&M
Annual	3,655,592	\$197,936,905	\$900	\$6,330,300
Three-Year	10,966,776	\$593,810,715	\$2,700	\$18,990,900

**Exhibit 6
Summary of Total Burden and Cost Estimates**

SERCs and LEPCs

	Total Hours Burden (Hours)	Total Cost		
		Labor	Capital	O&M
Annual	136,840	\$3,127,680	\$2,700	\$56,000
Three-Year	410,520	\$9,382,920	\$8,100	\$168,000