

**Statement Supporting the Revisions to the Tier I and Tier II Hazardous Chemical Inventory  
Reporting Forms (Proposed Rule)  
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**

Revisions to the Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II), Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA); Proposed Rule – EPA No. 2436.01.

**1(b) Short Characterization**

This information collection request (ICR) estimates the burden and costs associated with proposing additional new data elements proposed to the Hazardous Chemical Inventory forms, Tier I and Tier II under section 312 of EPCRA.

Sections 311 and 312 of EPCRA apply to 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 Occupational Safety and Health Act of 1970 and its implementing regulations. Under section 311 of EPCRA, these facilities are required to 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. The 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 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. These forms were published in October 1987 and amended in July 1990. EPA is now proposing some additional data elements and revise some existing data elements to the Tier I and Tier II forms.

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 form is 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.

States were always given the flexibility to implement the EPCRA program as appropriate for their State to meet the goals of EPCRA, which is to prepare for and respond to releases of EHSs and to provide the public with information on potential chemical risks in their communities. This flexibility includes adding more chemicals, setting lower reporting thresholds and creating a reporting form or format that includes more information than is required by the federal reporting requirements. Many States have more stringent requirements, such as additional chemicals and lower reporting thresholds. Some States developed their own inventory reporting form, including electronic reporting format and certification. Other States use the federal inventory reporting form or the federal electronic reporting format, Tier2 Submit. The data elements that EPA is proposing to add are for the federal emergency and hazardous chemical inventory reporting forms, Tier I and Tier II. EPA is also proposing to revise some existing data elements to ease reporting for facilities and make the forms more user-friendly. The new data elements that EPA is proposing are requested by state and local agencies for improving their emergency response plans in their community.

EPA estimates that 390,000 manufacturing and non-manufacturing facilities are currently subject to reporting and recordkeeping requirements under EPCRA sections 311 and 312. EPA believes that this proposed rule would impose only minimal burden since the data elements EPA is proposing are readily available to facilities. The data elements that are proposing to add are related to facility identification information and contact information for the parent company, owner or operator of the company, facility emergency coordinator etc. These elements usually would not change from year to year. The data elements that we are revising would ease reporting for facilities and make forms more user-friendly. The total one-time burden for facilities is estimated to be 97,500 hours at a cost of \$5,009,700.

There are estimated to be 3,552 SERCs and LEPCs. As of 2010 reporting year, there are only 20 states have developed their own reporting format. EPA estimates that each of these states would spend approximately 200 hours, initially in the first year when the rule becomes effective to modify their electronic reporting software to add and revise existing data elements at a cost of \$50,000. Approximately 23 states currently use Tier2 Submit, the electronic reporting format that EPA developed. The cost associated with adding new data elements is estimated to be \$50,000.

## **2. NEED FOR AND USE OF THE COLLECTION**

### **2(a) Need/Authority for the Collection**

The authority for these requirements is EPCRA section 312 (42 U.S.C. §11012).

Section 312 requires the same owners or operators of facilities subject to section 311 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 amended on 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.

EPA is now proposing to revise Tier I and Tier II forms to require some additional data elements and revise some existing data elements.

### **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 use the information submitted to them for developing and modifying 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) 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(c) General Guidelines**

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

### **3(d) 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 EPCRA 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, and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), March 2010*. These procedures were developed for EPCRA trade secrecy claims with the knowledge that these documents are sensitive. Handling and review of documents containing EPCRA 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 EPCRA 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 “confidential”.

### **3(e) 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**

Section 312 is applicable to all facilities that are required to prepare or have available an MSDS for a hazardous chemical as required under OSHA and its implementing regulations. 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 (codified in 40 CFR part 370). 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**

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 must be submitted upon request by the SERC, LEPC or the fire department with jurisdiction over the facility. Currently all states require facilities to submit the federal Tier II inventory form or the state developed inventory reporting form or electronic reporting format.

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;
- An estimate in ranges of the average daily amount of hazardous chemicals on-site in each hazard category present at the facility during the preceding calendar year; and
- The general location of hazardous chemicals in each category.

EPA has added the following information on the Tier I form in the final rules published on October 15, 1987 (52 FR 38344), July 26, 1990 (55 FR 30632) and November 3, 2008 (73 FR 65452).

- NAICS code and Dun and Bradstreet number of the facility
- Emergency contact (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).

The Tier II Form includes the following information as required by statute:

- The chemical name or the common name of the chemical as provided on the material safety data sheet;
- An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year;
- An estimate (in ranges) of the average daily amount of hazardous chemical present at the facility during the preceding calendar year;
- A brief description of the manner of storage of the hazardous chemical; and
- The location of the hazardous chemical within the facility.

The following data elements were added to the Tier II form in the final rules published on October 15, 1987, July 26, 1990 and November 3, 2008.

- 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 NAICS 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).

EPA is now proposing to add some new data elements to Tier I and Tier II forms and revise some existing data elements on the Tier II form. EPA is proposing to add the following data elements to both Tier I and Tier II forms although Tier I inventory form is no longer used by any state, but the statute requires EPA to publish both forms.

- Phone number and the Latitude and Longitude of the facility;
- Number of full-time employees;
- Facility identification numbers assigned under the Toxic Release Inventory and the Risk Management Programs;
- Name, address, phone number and email address for the owner or operator of the company;
- Name, address, phone number, Dun & Bradstreet number and email address of the parent company;
- Name, title, email address, phone number and 24-hour phone number of the facility emergency coordinator;
- Name, title, email address, phone number of the person knowledgeable of the information reported on the Tier II form;
- Email address of the emergency contacts;
- To indicate whether the facility is subject to section 302 of EPCRA ; and
- To indicate whether the facility is subject to section 112 (r) of CAA.

Since the statute specifically states that an estimate in ranges for the maximum amount and average daily amount should be reported on the Tier I and Tier II inventory forms, the regulations may only require reporting of these amounts in ranges. The range codes currently listed in the regulations are very broad. However, in order for the States, local agencies and emergency response officials to have information on the maximum amount and average daily amount that are closer to the actual amounts present at the facility, EPA is proposing to narrow the ranges that are in the existing regulations.

The new range codes and the ranges that the Agency is proposing to both Tier I and Tier II forms make reporting easier for facilities and make information readily available to state and local agencies.

EPA is also proposing to revise some existing data elements under the chemical reporting section of the Tier II inventory form. Currently the form includes only one entry to report pure chemical and mixtures. The proposed form include two separate entries, one for pure chemical and one for mixture which will make reporting easier for facilities and make the form more user friendly for states and local agencies.

Currently the Tier II form requires facilities to report a code specified in the regulations for storage conditions and storage types. In this rule, EPA is also proposing facilities to report the storage types (i.e. steel drum, underground tank) and storage conditions (i.e. ambient temperature, ambient pressure) rather than reporting the codes.

#### **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.

As mentioned in the previous section of this document, all states now require facilities to submit the federal Tier II inventory form or the state developed inventory reporting format, including electronic submission.

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

### **5(a) Agency Activities**

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

EPA developed the electronic reporting format, Tier2 Submit and is modified annually. EPA also input State required data fields requested by the State. Approximately 10 states request EPA to input new data fields annually. The Agency would be revising the Tier2 Submit to include the new data elements and revise the existing data elements discussed in the proposed rule.

### **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, Tier2 Submit. Approximately 20 states use Tier2 Submit. Other states have created their own software using their own resources and require facilities to submit electronically (online or diskette). Few states still accept paper submission. .

### **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. For the additional data elements discussed in the proposed rule, EPA is considering the same burden for small and large facilities.

### **5(d) Collection Schedule**

The frequency of collection for these sections of EPCRA is required by statute. The facilities subject to Section 312 is required to submit either Tier I or Tier II (upon request) by March 1 annually.

## **6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION**

### **6(a) Estimating Respondent Burden**

EPA estimates that there are 390,000 facilities may be subject to reporting the new data elements in the proposed rule. EPA estimates that out of 390,000 facilities, there are 120,000 manufacturers and 270,000 non-manufacturers. As mentioned earlier in the document, EPA estimates the same unit burden for small, medium and large facilities since the time required to report the new data elements that EPA is proposing will be the same for all facilities.

All states now require facilities to submit the federal Tier II form or the state developed reporting form or format instead of the Tier I inventory form. Therefore this ICR only accounts the burden imposed for reporting the Tier II or the state developed reporting form or format. The new data elements that the Agency is proposing are readily available to facilities. EPA estimates that it takes approximately 15 minutes (0.25 hours) for a technical staff at each facility to record new data elements on the Tier II form. Total burden for manufacturers to report the new data elements on the Tier II form is 26,250 hours. Total burden for non-manufacturers to report the new data elements on the Tier II form is 61,250 hours. The



new data elements that EPA is proposing may not change yearly for any facilities. Approximately 40 states require facilities to submit their inventory form electronically. For these facilities, any changes that may occur for any of the new data elements can be revised with little or no burden. Therefore the burden associated with this ICR is not expected to incur after the initial reporting.

The existing data elements that EPA is proposing to revise on the Tier II form would ease reporting for facilities and make the form more user-friendly for state and local agencies.

As of reporting year 2010, approximately 20 states have their own electronic reporting tool for submitting hazardous chemical inventory. Based on the federal cost and hours to make changes to the Tier2 Submit, EPA estimates that each state would spend approximately 200 hours to add new data elements and revise existing data elements to their existing software at a cost of \$50,000. The costs include initial analysis, design, programming, alpha and beta testing, and field deployment.

Data management burden for State and local agencies is not estimated in this ICR since the new data elements will be part of the inventory form that these entities receive annually.

#### **6(b) Estimating Respondent Costs**

The annual costs to manufacturers were estimated by multiplying the respondent burden estimate for manufacturing facilities by the labor rate for the technical staff for reporting the information for the new data elements that EPA is proposing. The annual costs to non-manufacturers were estimated by multiplying the respondent burden estimate for non-manufacturing facilities by the labor rate for the technical staff responsible for recording the information for the new data elements that EPA is proposing.

EPA estimates an hourly respondent labor cost for a technical staff at a manufacturing facility is \$58.18, including wages and benefits. Hourly respondent labor cost for a technical staff at a non-manufacturing facility is estimated at \$48.36. (*Source: Bureau of Labor and Statistics, December 2010*)

#### **Capital and O&M Costs**

There are no capital or O&M costs associated with this proposed rule. States will be using their existing computer software to add the new data elements or revise the existing data elements.

#### **Estimating Agency Burden and Cost**

EPA estimates that it will cost the Agency approximately \$50,000 to make changes to the electronic reporting software, Tier2 Submit, for adding new data elements and revising the existing data elements.

#### **6(d) Estimating Total Annual Respondent Burden**

The total respondent burden for 390,000 facilities (120,000 manufacturers and 270,000 non-manufacturers) is 97,500 hours, at a cost of \$5,009,700. The data elements that EPA is proposing are expected to be the same year after year. Therefore, the burden imposed by this proposed rule is a one-time cost.

At least 20 states would have to make changes to their reporting software for the changes discussed in the proposed rule. For these states, EPA estimates that it may cost \$50,000 for each state, for a total cost of \$1,000,000. Approximately 23 states use Tier2 Submit and these states are not expected to incur any burden since EPA is modifying the system and making it available to states.

#### **6(e) Bottom Line Burden Hours and Cost**

The total one-time burden to facility respondents is 97,500 hours at a cost of \$5,009,700. The total one-time burden for 20 states that need to modify their reporting software is 4,000 hours at a cost of \$1,000,000.

#### **6(f) Burden Statement**

The average burden for reporting new data elements is estimated 0.25 hours for facilities. The average burden for each state to add new data elements and revise existing data elements in their electronic software is 200 hours. Most of the states may already require these data elements that EPA is proposing. Only a percentage may need to revise their regulations or software to require the new data elements that EPA is proposing.

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, EPA has established a public docket for the proposed rule, which includes this ICR, under Docket ID number EPA-HQ-SFUND-2010-0763, which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the superfund docket in the EPA docket center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 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 is (202) 566-0276. An electronic version of the public docket is available at [www.regulations.gov](http://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 OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID Number EPA-HQ-SFUND-2010-0763 and OMB Control Number 2050-0072 in any correspondence.