

Statement Supporting the Renewal of the Revisions to the Tier I and Tier II Emergency and Hazardous Chemical Inventory Forms for 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

Hazardous Chemical Reporting: Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II). EPA No. 2436.03, OMB No. 2050-0206.

1(b) Short Characterization

This information collection request (ICR) estimates the burden and costs associated with reviewing and updating the new data elements added in July 2012 to the Hazardous Chemical Inventory forms, Tier I and Tier II, under section 312 of EPCRA.

Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (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 Underground Storage Tanks (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 implementing regulations and reporting thresholds are codified in 40 CFR part 370.

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. On August 8, 2011 (76 FR 48093), EPA proposed some additional data elements in the facility information section of the Tier I and II forms and proposed to revise some existing data elements in the chemical reporting section of the Tier II form. The final rule was published on July 13, 2012 (77 FR 41300).

The Tier I form provides the minimum amount of information necessary to comply with section 312. 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 EPCRA 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 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 added in July 2012 are on the federal emergency and hazardous chemical inventory reporting forms, Tier I and Tier II. The data elements added were requested by state and local agencies for improving their emergency response plans and for coordinating response during an emergency. EPA also revised some existing data elements in the chemical reporting section of the Tier II form to ease reporting for facilities and make the forms more user-friendly for state and local agencies.

During the 2012 final rule phase, EPA estimated that approximately 390,000 manufacturing and non-manufacturing facilities are subject to reporting and recordkeeping requirements under EPCRA sections 311 and 312. However, the base ICR (ICR 1352.13, OMB Control No. 2050-0072) for the reporting and recordkeeping requirements for 40 CFR part 370, which was recently approved by OMB, estimates 400,000 facilities. For this renewal ICR, EPA estimates that 400,000 facilities subject to the regulations would incur burden for reviewing and updating the new data elements that were added to the Tier II form.

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. §11022).

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 added some new data elements to the Tier I and Tier II forms and revised some existing data elements in the chemical reporting section of the Tier II form on July 13, 2012 (77 FR 41300).

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.

3(b) 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 October 16, 2015 (80 FR 62526). EPA received one comment supporting the Tier II form revisions and the burden EPA estimated during the final rule phase.

3(c) Consultations

During the renewal process of the base ICR, 1352.13, EPA contacted few facilities to estimate the burden imposed for complying with the reporting and recordkeeping requirements under 40 CFR part 370 (see section 3(c) of that document). ICR 1352.13 shows burden hours and costs to comply with all the requirements of the regulations, including submitting the Tier II form. This ICR, 2436.03, only calculates the hours imposed on facilities reviewing and updating the new data elements finalized in 2012.

The new data elements that were added in 2012 were on page one of the Tier I and Tier II form, related to facility personnel contact information, such as emergency personnel, facility emergency coordinator etc. The facilities that EPA contacted for the base ICR informed us that our original estimate of 15 minutes (0.25 hours) is sufficient for reviewing the data elements annually on page one of the Tier II form. *Note: All states now require the federal Tier II form or the state developed form or electronic reporting format. Tier I is no longer accepted by any state.*

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 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 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(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

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 EHSs, 500 pounds or the threshold planning quantity (TPQ), whichever is less.
- For hazardous chemicals other than EHSs, the reporting threshold is 10,000 pounds.
- 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 hazardous chemicals present at the facility above the reporting thresholds 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. Some states require facilities to use Tier2 Submit, the electronic software developed by EPA.

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).

On July 13, 2012, EPA added some new data elements to Tier I and Tier II forms and revised some existing data elements in the chemical reporting section of the Tier II form. Although Tier I inventory form is no longer used by any state, the statute requires EPA to publish both forms so changes were also finalized on the Tier I inventory form. The following data elements were added in July 2012.

- Latitude and Longitude of the facility;
- Maximum Number of Occupants;
- An indication whether the location of the facility is manned or unmanned;

- Facility identification numbers assigned under the Toxic Chemical Release Inventory and the Risk Management Programs;
- Email address for the owner or operator of the 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 I and Tier II forms;
- Email address of the emergency contact(s);
- To indicate whether the facility is subject to EPCRA section 302; and
- To indicate whether the facility is subject to Clean Air Act (CAA) section 112 (r), also known as the Risk Management Program.

The following data elements were added to the forms as optional.

- Name, address, phone number, Dun & Bradstreet number and email address of the parent company; and
- Phone number of the facility.

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. Prior to the 2012 final rule, the range codes listed were 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 established new ranges in July 2012. The new ranges are currently listed on both Tier I and Tier II forms.

In the final rule published on July 13, 2012, EPA also revised some data elements under the chemical reporting section of the Tier II inventory form. Prior to that rule, the form only included one entry to report pure chemical and mixtures. The form now contains 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.

4(b)(ii) Respondent Activities

To determine if the facility 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 the chemicals are subject to a lower reporting threshold.

If the facility determines that it has hazardous 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 sections 311 and 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 in the Tier2 Submit requested by the State. Approximately 10 states request EPA to input new data fields annually.

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 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. However, for the new data elements added to the Tier II form, 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 the statute. The facilities subject to Section 312 is required to submit either Tier I or Tier II (upon request) by March 1 annually. As stated earlier in this document, all states now require facilities to submit Tier II or the state equivalent inventory form or format.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

6(a) Estimating Respondent Burden

EPA estimates that approximately 400,000 facilities may be subject to section 312 reporting requirements. For this ICR, these facilities are required to annually review the data elements on page one of the Tier II form and update them, if necessary. Out of the 400,000 facilities, there are 120,000 manufacturers and 280,000 non-manufacturers. EPA estimates the same unit burden for small, medium and large facilities since the time required to review the data elements would be the same for all facilities.

The ICR developed for July 2012 final rule accounted for rule familiarization and the initial reporting of the data elements added to the Tier II form. In that ICR, EPA also assumed that it would only take facilities 0.25 hours in subsequent years to review the new data elements and revise if necessary. So, for 400,000 facilities, EPA estimates a total of 100,000 hours for reviewing and updating the data elements on page one of the Tier II form.

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 reviewing and revising the data elements on page one of the Tier II form. 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 reviewing and revising the data elements on page one of the Tier II form.

EPA estimates an hourly respondent labor cost for a technical staff at a manufacturing facility is \$67.56, including wages and benefits. Hourly respondent labor cost for a technical staff at a non-manufacturing facility is estimated at \$54.01. (*Source: Bureau of Labor and Statistics, December 2015*)

Capital and O&M Costs

There are no capital or O&M costs associated with this ICR.

6(c) Estimating Agency Burden and Cost

EPA estimates no annual Agency recordkeeping 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

EPA believes that the new data elements added to the Tier II form in 2012 may not change

annually, but in order for state and local agencies to have updated information for planning and response, facilities must review and update the information annually. For this activity, EPA estimates that the total respondent burden for 400,000 facilities (120,000 manufacturers and 280,000 non-manufacturers) is 100,000 hours, at a cost of \$3,760,400. The burden for rule familiarization for facility respondents for the new data elements added in July 2012 final rule was accounted for in the ICR for the final rule, ICR 2436.02.

There is no burden incurred for state and local agencies during the renewal period of this ICR. The one-time burden for modifying their software with the new data elements added in 2012 was accounted for in the ICR of that final rule, ICR 2436.02.

6(e) Bottom Line Burden Hours and Cost

The Annual burden for reviewing and updating the data elements on page one of the Tier II form and making any necessary revisions in subsequent years is estimated to be 100,000 hours at a labor cost of \$3,760,400. There is no additional burden due to the revision of the chemical reporting section of the Tier II form.

6(f) Reasons for Change in Burden

There was a decrease of 62,500 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease was because the one-time burden for respondents to modify their software was completed in 2012.

6(g) Burden Statement

For this ICR, the average unit burden for reviewing and updating the data elements on page one of the Tier II form is estimated 0.25 hours for facilities.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average .25 hours per response. 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, Docket ID number EPA-HQ-SFUND-2010-0763, 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 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. 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.