

**Statement Supporting the Renewal of the  
Information Collection Procedure for Emergency Planning and Community Right-to-  
Know Act (EPCRA) Trade Secret Regulations**

**1. Identification of the Information Collection**

**1 (a)** Trade Secrets Claims under the Emergency Planning and Community Right-to-Know Information (EPCRA section 322) -- EPA ICR No. 1428.12, OMB No. 2050-0078.

**1 (b) Short Characterization**

This information collection request pertains to trade secret claims submitted under section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This ICR renews the collection activity previously approved under OMB Control No. 2050-0078, with an expiration date of April 30, 2022.

EPCRA contains provisions which require facilities to report to state and local authorities, and EPA, on the presence, use and release of extremely hazardous substances (EHS) (described in sections 302 and 304) and hazardous and toxic chemicals (described in sections 311, 312 and 313 respectively). Section 322 of EPCRA allows a facility to withhold the specific chemical identity from these EPCRA reports if the facility asserts a trade secret claim for that chemical identity with EPA. The provision establishes the requirements and procedures that facilities must follow to request trade secret treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the “sufficiency” of trade secret claims. EPA published the trade secret regulations on July 29, 1988 (58 FR 28772), codified in 40 CFR Part 350.

Trade secret protection is provided for specific chemical identities contained in reports submitted under EPCRA section 303(d)(2), 303(d)(3), 311, 312, and 313. See Appendix A for more information about each EPCRA section.

Section 322 requires that facilities requesting trade secret protection submit to EPA, in conjunction with their EPCRA report, an explanation showing that their claim for the chemical identity meets the four statutory criteria of trade secrets enumerated in subsection (b) of that provision. Claims consist of either one or two versions of the EPCRA report depending on the type of report, and two versions of an up-front substantiation of the trade secret claim. The substantiation is an EPA-developed form designed to gather sufficient factual support to indicate whether the claim will meet the four statutory criteria for trade secrets.

The Office of Emergency Management (OEM) in the Office of Land and Emergency Management (OLEM) and the Toxic Release Inventory (TRI) Program Division in the Office of Chemical Safety and Pollution Prevention (OCSPP) manage trade secret information submitted to EPA. Trade secret claims are stored in areas designed to assure the confidentiality of the

collected information.

## **2. Need/Authority for Collection; Use/Users of the Data**

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

This collection is authorized under section 322 of EPCRA. Congressional intent was to balance industry's concern with the protection of legitimate trade secrets with communities' right-to-know chemical identification information. Congress established procedures for companies to assert claims, for the public to review their validity, and for an Agency claim review process to eliminate legally invalid and frivolous claims. See Appendix A for more detailed information on what facilities are required to do and conditions they are required to meet in order to submit a trade secret claim under EPCRA section 322.

### **2 (b) Use/Users of the Data**

The data collected are used only by OEM and TRI offices in order to: (1) review trade secret claims as required by section 322(d) to determine whether the data submitted are sufficient to support a finding that the specific chemical identity withheld is a trade secret; (2) ensure that claims for all withheld chemical identities are complete in accordance with the requirements of sections 322 (a)(1) and (2), and; (3) evaluate claims for frivolousness and the attendant assessment of penalties stipulated in section 325 (d)(1).

## **3. Nonduplication, Consultations, and other Collection Criteria**

### **3 (a) Nonduplication**

The information that EPA requires from trade secret claim submitters is not duplicated by any other Agency collection because this collection is specific to EPCRA. In addition, unlike other statutes permitting confidential business information claims, EPCRA: (1) allows trade secret claims only for specific chemical identification information; (2) allows claims for a chemical identity only in very narrowly defined circumstances which are stipulated in the statute; and, (3) requires an up-front substantiation of the applicability of those narrowly defined circumstances by a claimant at the time the report for a chemical claimed as trade secret is filed.

### **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 September 1, 2021 (86 FR 49020). EPA received one comment during the 60-day comment period. The comment was supportive of the need for the trade secret exemption as a way for industry to retain the value of their intellectual property while balancing the public's need to be able to conduct emergency planning.

### **3 (c) Consultations**

EPA contacted by email and phone nine facilities which had submitted between one and 20 trade secret claims under section 312 or 313 during the previous ICR renewal period. The purpose was to compare the burden estimate the Agency used in the previous ICR renewal to actual burden incurred by facilities to prepare and submit the trade secret claim form. The facilities are in the chemical and petrochemical manufacturing, textile manufacturing, dyes and additives, and fuel production sectors. EPA received responses from five facilities. One of those five facilities explained that it had complications submitting its claims, and therefore was unable to provide accurate burden estimates for this renewal.

Generally, first-time trade secret submitters spend more time to gather the information and prepare and submit a claim than submitters who have previously submitted a claim. Overall, the facilities reported that they spent between nine minutes and four hours per chemical. Given the low number of responses EPA received from its consultation contacts on which it would base any adjustments to the previous estimates, EPA will maintain the assumption of an average burden of 9.5 hours per claim submission from the previous ICR.

EPA contacted the following facilities:

United Color Manufacturing  
Philadelphia, PA

Dow Chemical Co.  
LaPorte, TX

Duraflow LLC  
Tewksbury MA

Bayer Crop Science LLP  
Luling LA

LYCRA Co. LLC  
LaPorte Plant  
Laporte, TX

INVISTA  
Orange TX

Future Fuel Chemical Co.  
Batesville AR

Lubrizol  
Spartansburg SC

American Acryl, LLP  
Harris, TX

### **3 (d) Effects of Less Frequent Collection**

The decision to seek trade secret protection of a chemical identity is voluntary. The submission process involves one initial collection of information for sufficiency, with the possibility of a request for supplementary information [as provided in section 322 (d)(3)(A)] to establish veracity of the assertions in the substantiation if EPA determines that a claim is initially insufficient during a review initiated by public petition or the Agency.

### **3 (e) Confidentiality and Sensitive Questions**

All trade secret claims submitted to EPA under EPCRA section 322 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)*, February 2016. The procedures for handling reports submitted under section 313 and the trade secret claims submitted under section 313 are set out in the *Trade Secret Manual for TRIPS Data Processing Center*, September 2014.

These procedures were developed expressly for EPCRA trade secret claims. 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. 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 EPCRA confidential.

#### **4. Respondents' SIC/NAICS Codes; Information Requested;**

##### **4 (a) Respondents' SIC/NAICS Codes**

Sections 303, 311 and 312 claims can be submitted by manufacturing and non-manufacturing sectors. Section 313 claims are submitted by facilities in covered sectors that trigger TRI reporting thresholds. Sectors covered by Section 313 include: metal mining; coal mining; manufacturers; electric utilities (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce); commercial hazardous waste treatment (limited to facilities regulated under the RCRA Subtitle C, 42 U.S.C. section 6921 et seq.); chemical and allied products-wholesale; petroleum bulk terminals and plants (also known as stations)-wholesale; and, solvent recovery services (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis). To determine whether your sector is covered by section 313, you should carefully examine the applicability criteria in Part 372, Subpart B, of Title 40 of the Code of Federal Regulations.

EPA has required use of North American Industry Classification System (NAICS) codes since the TRI Reporting Year (RY) 2006. See Appendix B for a crosswalk table of TRI-covered SIC (Standard Industrial Classification) and NAICS codes.

##### **4 (b) Information Requested**

###### **(i) Data Items for Trade Secret Claims**

Based on the four substantiation requirements in section 322(b), the Agency developed six core questions for the standard substantiation form. The Trade Secret forms and instructions may be found at [www.epa.gov/epcra/epcra-trade-secret-forms-and-instructions](http://www.epa.gov/epcra/epcra-trade-secret-forms-and-instructions).

A complete package should be submitted to EPA at the same time the EPCRA report is submitted. Section 312 and 313 reports are due annually on March 1 and July 1, respectively. Facilities that wish to file a trade secret claim for a specific chemical identity must submit the trade secret claim package annually with section 312 and section 313 reports.

## **(ii) Data Items for Public Petition Process**

While specific petition format is required, the following information must be included in a petition:

- The name, address and telephone number of the petitioner;
- The name and address of the company claiming the chemical identity as trade secret;
- A copy of the relevant sanitized EPCRA report (e.g., MSDS, Tier II or toxic chemical release form); and,
- The specific chemical identity requested to be disclosed.

EPA requires a copy of the EPCRA report to prevent any confusion about the disclosure in question. By statute, copies of facility filings are available at the designated state or local entity offices. In writing the proposed and final regulations, the Agency considered these elements to be the minimum needed to successfully identify and begin the review of a trade secret claim.

## **5. The Information Collected -- Agency Activities; Collection Methodology; Small Entity Flexibility; Collection Schedule**

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

- EPA performs the following activities under EPCRA section 322: Process and store the trade secret data;
- Review trade secret claims for completeness, sufficiency and frivolousness;
- Respond to requests for confidential information from state governors and non-confidential information from the public;
- Respond to petitions from the public for disclosure of chemical identities claimed as trade secret; and,
- Prepare adverse health and environmental effects data for relevant chemical identities claimed as trade secret.

### **5 (b) Collection Methodology and Management**

The collection of trade secret claims occurs when respondents send their claim submissions to EPA. The sanitized, or non-trade secret, versions of the EPCRA report and the

substantiation are stored so they are easily accessible by the public. Data reported on the sanitized version of an EPCRA section 313 report are entered in the Toxics Release Inventory Processing System (TRIPS) database. The unsanitized versions of the EPCRA report and the substantiation are handled, labeled and stored in a manner protective of their confidentiality.

The unsanitized trade secret versions of these documents are reviewed to determine the sufficiency, validity and frivolousness of the claims. Both the sanitized and unsanitized documents are used to review the generic chemical class or category name in light of the specific chemical identity claimed as trade secret to ensure the appropriateness of the generic description. For section 313 claims, both chemical descriptions are reviewed and used to develop adverse health and environmental effects data that are representative of the characteristics of the specific chemical identity withheld, and protective of the trade secret chemical identity.

While use of information technology is being encouraged in the relatively uniform EPCRA reporting sections, the unique nature and length of trade secret substantiation responses will not confer any special advantage to their being reported on alternative media. EPA does not expect or encourage standardized responses to questions about facility safeguards to protect confidentiality of a chemical; the extent of disclosure to local, state and federal government entities; discussions of the use of the chemical and competitors' ability to discover it; and, statements on harm to competitive position.

There are two methods by which EPA may initiate a review of a trade secret claim, either self-initiated or due to public petitions. The public petition process applies only to a chemical identity that a facility claims as a trade secret, and not to other information a facility has claimed as a trade secret contained in a substantiation. EPA has 30 days after receiving a petition to determine whether the assertions on a facility's substantiation form, if true, would form a sufficient basis for a trade secret claim. If the substantiation form meets the sufficiency criteria, EPA will notify the submitter that it has 30 days to submit supplemental material supporting the truth of the assertions made in the substantiation. If the claim does not meet the sufficiency criteria, EPA will notify the submitter that the claim will be denied. The facility may appeal to the Office of General Counsel or submit a statement of good cause to amend the substantiation. EPA will then accept or reject the statement, allowing or disallowing the submission of additional information. Finally, based on all the information a facility has submitted, EPA will determine whether the claim warrants trade secret protection.

EPA-initiated reviews are conducted following the same steps involved in the public petition process and may result in an Agency decision regarding the sufficiency of the trade secret claims. However, EPA-initiated reviews may be less formal and culminate in the withdrawal of a claim by a facility prior to the issuance of a formal Agency decision on the merits of the claim. The less formal reviews usually involve claims that are determined incomplete upon EPA review or are complete claims that EPA finds demonstrate obvious problems or weaknesses. In the circumstance of an incomplete package (no substantiation form), the Agency issues an NDC (Notice of Data Change). In those instances when a complete but deficient package is submitted, the Agency issues a notice of insufficiency which the facility can appeal to EPA's Office of General Counsel.

### **5 (c) Small Entity Flexibility**

The regulatory provisions of sections 311 and 312 and the statutory provision of section 313 inherently minimize the burden for small entities. Sections 311 and 312 have reporting thresholds below which facilities are not required to report. Section 313 applies only to facilities with 10 or more full-time employees.

A facility's decision to submit a trade secret claim on an EPCRA report is voluntary and is made because the facility believes it is to their benefit to do so. In addition, trade secret protection for a chemical identity is just as important to small companies as it is to large companies. Therefore, the need to supply information to support a submission, as well as to review it, depends upon a firm's demonstration that it can adequately answer the four criteria found in the statute. Any firm, regardless of size, need provide only as much or as little detail as it feels necessary to support its claim under the statute.

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

Under EPCRA section 322, a specific chemical identity claimed as a trade secret is withheld from EPCRA reports. A facility must submit a trade secret claim concurrently with its annual EPCRA reports and must update the claim to establish the current applicability of the four trade secret statutory criteria. Under section 311, a trade secret claim must be resubmitted to EPA if an MSDS (now, SDS) or chemical list is updated. Under section 303(d)(2) and (d)(3), a claim need not be resubmitted to EPA after the initial communication to the relevant LEPC unless further communication follows between the facility and LEPC which discusses the specific chemical identity in question.

## **6. Estimating the Burden and Cost of the Collection**

### **(a) Estimated Number of Trade Secret Claims**

Costs to the government and to respondents are based on actual numbers of trade secret claims received during RYs 2018 through 2020 and on estimates of future activity for the upcoming three-year period. The reporting year corresponds to the calendar year. Trade secret claims must be submitted along with EPCRA reports; e.g., the deadline for submitting claims under section 312 for RY19 was March 1, 2020, which is the deadline for submitting the section 312 Tier II form, and the deadline for RY19 for section 313 TRI trade secret claims was July 1, 2020, which was the deadline for submitting TRI Reporting Form. Although the section 312 report is submitted to the SERC, LEPC and the local fire department, trade secret claims, with substantiation, must be submitted to EPA. The TRI report under section 313 (Form R) is submitted to EPA as well as the trade secret claims under section 313.

Table 1 presents the numbers of submissions indicating trade secret claims for EPCRA sections 312 and 313 for RYs18, 19 and 20. No claims were submitted under sections 303(d)(2) and (d)(3). Table 2 shows the estimated numbers of trade secret claims EPA expects facilities to

file during the three-year renewal ICR period of RY21 through RY23, which EPA assumes will be the average of the previous three years submissions.

**Table 1. Trade Secret Claims Received RY18 to RY20**

SARA Section	RY18	RY19	RY20	Total
303(d)(2) and (d)(3)	0	0	0	0
311	0	0	0	0
312	263	295	266	824
313	6	6	13	25
<b>Total</b>	<b>269</b>	<b>301</b>	<b>279</b>	<b>849</b>

**Table 2. Estimated Trade Secret Claims RY21 to RY23**

SARA Section	RY21	RY22	RY23	Total
303(d)(2) and (d)(3)	0	0	0	0
311	0	0	0	0
312	275	275	275	825
313	8	8	8	24
<b>Total</b>	<b>283</b>	<b>283</b>	<b>283</b>	<b>849</b>

**(b) Estimating Agency Burden and Cost**

Costs to the federal government for processing trade secret claims, the petition and review processes are explained below.

**(i) Processing and Storage of Trade Secret Claims**

EPA incurs expenses to process and store each trade secret claim submission. These activities include affixing document control number labels and trade secret cover sheets, processing basic information about the claims, checking for completeness, and storing the submissions. EPA must store all trade secret submissions and be prepared to respond to public petitions for disclosure of the subject chemical identities. Both fixed and variable costs are estimated.

EPA incurs fixed costs for maintenance and operation of the existing storage and filing system for trade secret claims. Fixed costs for sections 311 and 312 claims for the three-year period (RY18 through RY20) covered by the expiring ICR were estimated to be \$1,734 per year or \$5,202 for the three-year ICR period, unchanged for this renewal ICR. Fixed costs for storage space for section 313 claims were estimated to be \$36,616 per year or \$109,848 for the three-year ICR period. These costs include process management, security reviews and access controls. The large increase from the previous ICR estimate is attributed to a new requirement to outsource security, and a new requirement to conduct monthly security audits. These security



costs are not shared with any other EPA program, and therefore, are fully attributable to the EPCRA trade secret claims.

Variable costs are estimated by program. For sections 311 and 312, EPA estimated costs supporting inventory of new claims; and storage, retrieval, and logging the claims on a database, to be approximately \$11,000 annually, or \$33,000 for the three-year ICR renewal period. This is a reduction of \$4,000 per year from the previous ICR renewal based on consultation with the contractor who handles activities included in the variable costs. Variable costs associated with processing section 313 claims are estimated to be approximately \$1,347 annually, or \$4,041 for the three-year renewal period. The increase from the previous ICR estimate is attributed to normal increases in labor costs (1-2% annually) and increases in contracting costs (1-5% annually).

### **(ii) Petition/Claim Review**

In addition to the costs associated with processing and storing trade secret claim documents, EPA will incur costs by responding to petitions filed by the public requesting the Agency's review of specific claims and resulting from EPA-initiated review of claims.

Only two petitions have been filed over the history of the program: the first petition in 1989 pertained to one claim, and the second in 1990 pertained to 10 claims asserted by one facility. No new petitions have been received by the Agency since 1990 and EPA is assuming no petitions will be submitted during this three-year ICR renewal period.

In the previous ICR, the Agency based its estimates of future burden and costs for complex claim reviews on data pertaining to actual claim reviews conducted under section 313, which were estimated to be five per year. However, no high level, complex reviews were performed in the previous three-year ICR period. After completing several ICR renewals with estimates of three high-level Agency claim reviews per year, when in fact no complex reviews occurred, this ICR renewal is reducing the expected number to one complex review per year. The average burden per complex review is estimated at 37 hours, and the average cost per review is estimated to be \$3,334 (all costs are labor at fully-loaded GS-13, Step 5, for Washington, DC for 2021). The annual burden for one complex review is thus estimated to be 37 hours and the total annual cost is estimated to be \$3,334. For the three-year period, the total burden is estimated to be 111 hours, and the cost, \$10,002. The Agency has not initiated reviews of claims made under section 312.

Under section 322(g), EPA has the responsibility to provide trade secret information to states that request such information. However, EPA has not received any requests so this ICR does not estimate costs or burdens. The Agency does not have adequate experience on which to base an estimate.

Total EPA fixed and variable costs for processing trade secret submissions, including complex claim review-costs, are estimated to be \$54,031 per year or a total of \$162,093 for the three-year period covered by this ICR. EPA costs are summarized in Table 3.

**Table 3. Agency Costs**

	<b>EPCRA Section</b>	<b>Annual Costs</b>	<b>Three-Year Costs</b>
<b>Fixed Costs</b>	312	\$1,734	\$5,202
	313	\$36,616	\$109,848
<b>Variable Costs</b>	312	\$11,000	\$33,000
	313	\$1,347	\$4,041
<b>Complex Claim Reviews</b>		\$3,334	\$10,002
<b>Totals</b>		<b>\$54,031</b>	<b>\$162,093</b>

### **6(c) Estimating Respondent Burden and Costs**

#### **i) Prepare Trade Secret Substantiation**

The time required to complete the substantiation process for each chemical will vary with the complexity of the situation, the number of chemicals that a facility seeks to claim as trade secret, and the amount of detail that a facility includes in each answer.

For the expiring ICR, EPA contacted nine facilities to estimate the time it takes to complete the substantiation forms and prepare the package for each claim. The average number of hours per chemical reported by facilities is between nine minutes and four hours. Due to the low response rate for this ICR (described in Section 3(c) of this document), EPA is maintaining the estimate of 9.5 hours used in previous ICR renewals to avoid underestimating the burden.

For each claim, EPA assumes that the management personnel will spend 3.0 hours to prepare answers to each question in the substantiation form, technical personnel will spend 6.0 hours to review the claim and substantiation and the clerical staff will spend 0.5 hours to make copies and mail the package to EPA.

EPA estimates costs to respondents on an annual basis by multiplying the respondent burden estimates for each labor category by the corresponding labor rate for that category. EPA updated labor rates from the previous ICR using employer costs for employee compensation tables from the Bureau of Labor Statistics (BLS), December 2020. EPA then multiplied unit costs for each respondent or activity 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).

Updated hourly respondent labor costs for manufacturing facility respondents are \$73.50 for managerial staff, \$58.08 for technical staff, and \$27.28 for clerical staff, including wages and benefits.<sup>1</sup> The cost for submitting a package for one claim is estimated to be \$583.00.

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<sup>1</sup> Bureau of Labor Statistics. Economic News Release, Dec. 2020. Table 9. Employment Cost Index for wages and salaries, for private industry workers, by occupational group and industry [Not seasonally adjusted]. [https://www.bls.gov/news.release/archives/eci\\_01292021.htm](https://www.bls.gov/news.release/archives/eci_01292021.htm).

EPA estimates that approximately 283 trade secret claims (see Table 2) will be submitted annually under sections 311, 312 and 313 during the three-year period covered by this ICR. The estimated burden for the 283 claims is 2,689 hours at a cost of \$164,989 annually (8,067 hours at a cost of \$494,967 for three years).

ii) Petition and Review

As mentioned in the previous section of this document, EPA expects no petitions under any of the sections of EPCRA during the period covered by this ICR. EPA has received only two petitions as of 1990. Therefore, we do not expect any respondent burden associated with this activity.

(iii) Capital and O&M Costs

There are no capital costs associated with this information collection. O&M costs are \$54,031 per year or a total of \$162,093 for the three-year period covered by this ICR.

(iv) Explanation of Difference of Annual Reporting Burden

This ICR renewal estimates a total respondent burden of 2,689 hours annually, which is a small increase from the previous ICR. The actual number of claims submitted was slightly higher than what EPA estimated it would receive in the previous ICR. EPA consulted nine facilities about whether the time it takes to complete the substantiation forms and prepare the package for each claim has changed from the current estimates. Although the facilities estimated that they spend on average between nine minutes and four hours per claim, EPA is continuing to use the 9.5 hour estimate to avoid underestimating the respondent burden.

**6(d) Burden Statement**

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.5 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, and a person 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-2006-0316, which is available for online viewing 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. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. The telephone number for the Docket Center is 202-566-1744. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-SFUND-2006-0361 and OMB Control Number 2050-0078 in any correspondence.

## **APPENDIX A**

### **Trade Secret Information under EPCRA Section 322**

Following is information about trade secret requirements in each of the sections of EPCRA.

- 303(d)(2) - Facility notification of changes that have or are about to occur;
- 303(d)(3) - Local Emergency Planning Committee (LEPC) requests for facility information to develop or implement emergency plans;
- 311 - Material Safety Data Sheets (formerly known as MSDSs and now called SDSs), submitted by facilities, or a list of those chemicals submitted in place of the MSDSs;
- 312 - Emergency and Hazardous Chemical Inventory Forms; and,
- 313 - Toxic Chemical Release Forms.

EPCRA section 322(d) provides for a public petition process to request the disclosure of chemical identities claimed as trade secret. EPA regulations do not specify a petition format but do require that a petition contain certain elements set forth below in Part 3(b)(ii) of this supporting statement.

EPA is required by section 322(h) to identify the adverse health and environmental effects associated with the section 313 toxic chemicals claimed as trade secret and to include this information in the Toxic Chemical Release Inventory database required by section 313(j). This provision also instructs the governor or State Emergency Response Commission (SERC) to identify the adverse health effects of the chemicals claimed as trade secret under sections 303, 311 and 312 and provide this information to persons requesting the information.

Section 323 regulations contain provisions allowing health professionals to gain access to trade secret chemical identities under three different circumstances:

- Non-emergency treatment and diagnosis. The chemical identity of a hazardous chemical, extremely hazardous substance or toxic chemical must be given to a health professional if the information is needed in the diagnosis or treatment of an exposed individual.
- Medical emergencies. Expedited access to the identity of chemicals to which people have been exposed is provided for health professionals.
- Preventative measures. Health professionals studying chemical exposure and health effects for local governments are also given access to chemical identities upon written request.

Two preconditions must be met for health professionals to gain access to a trade secret

chemical identity in non-emergency and preventative measure situations: they must submit a written statement of need and a written confidentiality agreement to the facility owner or operator prior to obtaining the information. No such requirements exist for medical emergencies, but the owner or operator disclosing the information may require a written confidentiality agreement and statement of need as soon as circumstances permit.

### **What Facilities Must do When Submitting a Trade Secret Claim**

Section 322(a)(1)(B) requires a facility that requests trade secret protection for an EPCRA chemical to substitute a generic chemical class or category name in the place on the EPCRA submittal where the withheld specific chemical identity is normally reported. A copy of this EPCRA submittal, as well as the chemical identification information that is withheld, are to be submitted separately to the EPA pursuant to sections 322(a)(2)(A)(iii) and (a)(2)(B)(ii).

A facility is entitled to withhold chemical identification information according to section 322(a)(2)(A)(i), only if that facility claims that such information is a trade secret on the basis of the following four factors which are enumerated in the provisions of sections 322(b)(1)-(4):

- The facility has not disclosed the chemical identity to any other person, other than a member of a Local Emergency Planning Committee, an officer or employee of the United States or a state or local government, an employee of such person, or a person who is bound by a confidentiality agreement; and the facility has taken reasonable measures to protect the confidentiality of such information and will continue to take such measures;
- The information is not required to be disclosed or otherwise made available to the public under any other federal or state law.
- Disclosure of the information is likely to cause substantial harm to the competitive position of the facility.
- The chemical identity is not readily discoverable through reverse engineering.

A facility is required under section 322(a)(2)(A) to make its trade secret claim by submitting, in conjunction with its EPCRA report, an explanation containing the reasons, including specific descriptions, why the subject information satisfies the four statutory criteria. Within 30 days after receipt of a public petition, EPA is required under section 322(d) to review the information contained in a claimant's explanation to determine whether a claim is "sufficient." If the Agency determines a claim is sufficient, section 322(d)(3)(A) provides for the claimant's submission of supplemental information to establish the veracity of the assertions contained in the substantiation. If the Agency determines that a claim is insufficient, or that the chemical identity is not a trade secret, and further determines that the claim is frivolous, section 325(d) requires that the Agency assess a civil or administrative penalty for the claim.

Section 322(f) permits a facility to designate, apart from the specific chemical identity, information which is contained in their claim explanation to be entitled to protection under the

Trade Secrets Act, 18 U.S.C., section 1905. Except for information entitled to such protection, the provision requires that the Agency make all claim explanations publicly available. Further, EPCRA section 324(a) mandates that EPA, the states, and local authorities, make each EPCRA report publicly available during normal working hours at locations designated by the above entities, as appropriate, in a manner consistent with the provisions of section 322, (i.e., with the generic chemical name substituted for the specific chemical identity where a trade secret claim is made for the latter).

The regulations contained in 40 CFR Part 350 provide for the submission of two versions of the report and the substantiation, enabling EPA, SERCs and LEPCs to fulfill the statutory mandate that public access be readily available to documents containing only the generic chemical descriptions, and that the specific chemical identity and other designated trade secret information be accorded confidential treatment.

The regulations also provide for submission to EPA of a sanitized and an unsanitized version of the substantiation form and a sanitized and where indicated, an unsanitized version of the EPCRA report by a facility requesting trade secret protection for a EPCRA reported chemical. The sanitized and unsanitized versions of these documents are identical in all respects except that the trade secret chemical identification information reported in the unsanitized version is deleted from the sanitized version and a generic class or category name is substituted in its place. Also, other information provided in the unsanitized substantiation that is designated as a trade secret by a facility is deleted from the sanitized substantiation. Claimants submit only a sanitized version of section 303(d)(2) and (d)(3) reports, section 311 MSDSs, section 312 and 313 reports to the appropriate state and local authorities.

Responses to the substantiation questions described below provide the “specific description” stipulated in section 322(a)(2)(ii) on why a facility believes the chemical identity should be a trade secret. Without this information, the Agency would not be able to evaluate whether a claim to withhold the chemical identity is sufficient, nor would it have the time (statutorily set at 30 days) required to request and review the data in response to a petition for identity disclosure. Further, the Agency needs this information to evaluate claims for frivolousness and seek related penalties under section 325. On a broader scale, the information collection request is also necessary for EPA to evaluate whether the claim is complete under sections 322(a)(1) and (a)(2).

The Agency developed a standardized claim substantiation form to help it assess the sufficiency, validity and frivolousness of claims, and anticipated that the form would reduce confusion about the information needed meet the four statutory criteria. The Agency also anticipated that the form would help submitters more easily determine whether they have a sufficient basis to make a trade secret claim; ensure that all submissions are evaluated on the basis of comparable information’ and “flag” the documents for procedural safeguards to quickly identify, review and protect the confidentiality of the claim.

Based on reviews of the substantiations submitted in past RYs, EPA has found that use of a standardized substantiation form has: (1) enabled submitters to adequately understand and

develop information necessary to submit a sufficient claim; (2) enabled EPA to ensure that all submissions are evaluated on the basis of comparable information, and; (3) served as an efficient identifier of the trade secret status of the document and associated report, and hence, has ensured the use of appropriate Agency handling and routing procedures protective of their confidentiality.



**APPENDIX B**  
**TRI SIC-NAICS Crosswalk**

The following table provides a crosswalk from TRI-covered Standard Industrial Classification (SIC) codes to TRI-covered NAICS codes. For a complete list of TRI-covered NAICS codes that includes certain industry exceptions and limitations, please refer to the EPA TRI website at <http://www.epa.gov/tri/lawsandregs/naic/ncodes.htm>.

**TRI SIC-NAICS Crosswalk**

<b>INDUSTRY</b>	<b>SIC</b>	<b>NAICS</b>
Coal Mining	1221, 1222, 1231	212111, 212112, 212113
Metal Mining	10 <sup>a</sup>	212221, 212222, 212230, 212299
Electric Utilities	4911, 4931, 4939	221111, 221112, 221113, 221118, 221121, 221122, 221330*
Food	20	311 <sup>b</sup> , 111998*
Beverage and Tobacco Products	20, 21	312 <sup>c</sup>
Textiles	22	313 <sup>d</sup>
Textiles Products	22	314 <sup>e</sup>
Apparel and Accessories	23	315 <sup>f</sup>
Leather and Allied Products	31	316
Wood Products	24	321, 113310
Paper	26	322
Printing and Publishing	27	323 <sup>g</sup> , 511110, 511120, 511130, 511140*, 511191, 511199, 512230*, 512250*, 519130*
Petroleum and Coal Products	29	324
Chemicals	28	325 <sup>h</sup> , 211130*
Plastics and Rubber	30	326 <sup>i</sup>
Stone, Clay, Glass and Cement	32	327 <sup>j</sup> , 212324*, 212325*, 212393*, 212399*
Primary Metals	33	331
Fabricated Metal Products	34	332
Machinery	35	333
Computers	35	334 <sup>k</sup>
Electronic Products	36, 38	335 <sup>l</sup>
Transportation Equipment	37	336, 488390*, 541713*, 811490
Furniture	25	337 <sup>m</sup>
Miscellaneous	39	339 <sup>n</sup>

Manufacturing		
Chemical Wholesalers	5169	424690, 425110*, 425120*
Petroleum Bulk Terminals	5171	424710
Hazardous Waste	4953	562211*, 562212*, 562213*, 562219*, 562920*
Solvent Recovery	7389	562112*

\* --> With limitations

a --> Does not include SIC 1011, 1081, 1094

b --> Does not include NAICS 311811; Exemptions exist for NAICS 311119, 311330, 311340, 311611, 311612

c --> Exemptions exist for NAICS 312112, 312229

d --> Exemptions exist for NAICS 313311, 313312

e --> Exemptions exist for NAICS 314121, 314129, 314999

f --> Exemptions exist for NAICS 315222, 315223, 315233.

g --> Exemptions exist for NAICS 323114.

h --> Exemptions exist for NAICS 325998.

i --> Does not include NAICS 326212.

j --> Exemptions exist for NAICS 327112.

k --> Does not include NAICS 334611; Exemptions exist for NAICS 334612

l --> Exemptions exist for NAICS 335312

m --> Exemptions exist for NAICS 337110, 337121, 337122.

n --> Does not include NAICS 339111, 339116; Exemptions exist for NAICS 339113, 339115