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Part III

Environmental Protection Agency

40 CFR Parts 350, 355, 370 and 372
Community Right-to-Know Reporting Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 350, 355, 370, and 372

[FRL-3716-5]

RIN 2050-AB88

Community Right-to-Know Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to establish reporting thresholds (i.e., quantities) for hazardous chemicals present at a facility below which facilities would not routinely have to comply with the reporting requirements specified in sections 311 and 312 of title III of SARA. EPA previously established reporting thresholds for the first two years of reporting at 10,000 pounds for hazardous chemicals and at 500 pounds or the threshold planning quantity (TPQ), whichever is lower, for extremely hazardous substances (EHSs) (52 FR 38344; October 15, 1987). EPA also promulgated zero thresholds in that rulemaking to become effective in the third year of reporting, but stated in the preamble that it would conduct further studies of all reporting threshold alternatives and would propose final reporting thresholds before the beginning of the third year of reporting.

After completing its study of alternative thresholds, EPA published a Notice of Proposed Rulemaking (NPRM) proposing final reporting thresholds (54 FR 12992; March 29, 1989). Subsequently, because of the time required to address the comments received on the NPRM and to promulgate a final rule, EPA published an Interim Final Rule extending, for manufacturing facilities, the reporting thresholds established for the first two years of reporting under the October 15, 1987 rule (54 FR 41904; October 12, 1989). Also on October 12, 1989, EPA published a Supplemental Notice explaining its intention to establish uniform deadlines in the final rule on thresholds (54 FR 41907).

In today's final rule, EPA is promulgating final reporting thresholds under sections 311 and 312 at the current levels, 10,000 pounds for non-EHS hazardous chemicals that must be reported and 500 pounds or the TPQ, whichever is lower, for EHSs. In accordance with the October 12, 1989 Supplemental Notice, today's final rule also establishes uniform effective dates for all facilities subject to reporting requirements under sections 311 and 312. Thus, all facilities from all industry sectors will be subject to the final thresholds on the same dates.

Today, EPA is also finalizing several other provisions proposed in the March 29, 1989 NPRM, including the revision of the definition of the term "facility" to include subsurface operations, the treatment of mixtures in threshold calculations, and the implementation of all sections of title III by Indian Tribes on Indian lands (including section 313 of title III). EPA previously published a final rule correcting the discrepancy in the reportable quantities for hydrogen chloride and methacrylonitrile (54 FR 43164; October 20, 1989).

EFFECTIVE DATE: August 27, 1990.

ADDRESSES: Copies of materials relevant to this rulemaking are contained in the Superfund Docket—Docket Number 300RR-IF, room 2427, 401 M Street SW., Washington, DC 20460. The docket may be inspected by appointment between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Jones, Project Officer, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response, OS-120, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Information Hotline at (800) 535-0202, or in the Washington, DC metro area and Alaska at (202) 479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline.

I. Introduction

A. Statutory Authority

These regulations are issued under sections 302, 304, 311, 312, 313, and 328 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499; 42 U.S.C. 11001 *et seq.*). Title III is the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

B. Statutory Background

1. SARA

SARA revises and extends the authorities established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Commonly known as "Superfund," CERCLA provides authority for Federal response action at certain sites where there is a release or a threat of release of a hazardous substance.

2. Title III of SARA

Title III of SARA establishes authorities for emergency planning and preparedness, emergency notification reporting, Community Right-to-Know reporting, and toxic chemical release reporting. Title III is intended to encourage and support State and local planning for emergencies caused by the release of hazardous chemicals and to provide citizens and governments with information concerning potential chemical hazards present in their communities. Title III is organized into three subtitles. Subtitle A establishes a framework for State and local emergency planning. Under section 301 of subtitle A, States have established State emergency response commissions (SERCs), which have, in turn, appointed local emergency planning committees (LEPCs). Section 302 requires EPA to designate Extremely Hazardous Substances (EHSs) and to establish threshold planning quantities (TPQs) for each EHS; at present, there are 360 designated EHSs listed at 40 CFR part 355. Every facility where an EHS is present at or above the TPQ is required to notify the SERC and to cooperate with the LEPC in the planning process specified under section 303 of title III of SARA.

Section 304 of title III requires the owners or operators of facilities to notify the local emergency coordinator(s) and State(s) likely to be affected as soon as the owner or operator has knowledge of a release of an EHS or a CERCLA hazardous substance affecting persons beyond the

facility boundaries, if the release equals or exceeds a reportable quantity (RQ) or one pound if an RQ has not been established by regulation.

Subtitle B of title III provides a mechanism for public awareness of hazardous chemicals present in the community. Sections 311 and 312 of title III are discussed in detail in the next section of the preamble. Section 313 requires facilities in SIC codes 20 through 39 (i.e., manufacturing facilities) to report total annual emissions of designated toxic chemicals that are manufactured, processed, or otherwise used at the facilities in quantities at or above certain thresholds. Subtitle C of title III contains general provisions concerning citizen suits and public availability of information.

C. Background of This Rulemaking

Section 311 of title III of SARA applies to the owner or operator of a facility where there are hazardous chemicals present for which the owner or operator must prepare or have available a Material Safety Data Sheet (MSDS) under Hazard Communication Standards (HCS) (29 CFR part 1910) promulgated under the Occupational Safety and Health Act of 1970. Under section 311 of title III, the owner or operator of a facility must submit individual MSDSs, or a list of chemicals for which the facility is required to have MSDSs, to the appropriate SERC, LEPC, and local fire department. The HCS does not list specific chemicals; a "hazardous chemical," as defined in the HCS, is one that poses either a physical or health hazard.[1] The tens of thousands of products covered by the HCS include petroleum products, explosives, and carcinogens.

The HCS regulations were restricted initially to facilities in Standard Industrial Classification (SIC) codes 20 through 39, that is, the manufacturing sector. On August 24, 1987, however, the Occupational Safety and Health Administration (OSHA) revised the HCS to cover facilities in the non-manufacturing sector as well as facilities in the manufacturing sector (52 FR 51852). A challenge to the revised standards by several industrial groups resulted in a temporary stay for non-manufacturing facilities. On July 22, 1988, OSHA clarified that the HCS was in effect for non-manufacturing facilities as of June 24, 1988, except for the construction industry (53 FR 27679). On February 15, 1989, OSHA notified EPA that all provisions of the HCS were in effect for all segments of industry, including the construction industry, as of January 30, 1989 (54 FR 6886).

For facilities in SIC codes 20 through 39, the initial MSDSs or lists were required to be submitted to the appropriate SERC, LEPC, and fire department of October 17, 1987. Non-manufacturers were required to submit their MSDSs or lists by September 24, 1988 (i.e., three months after they became subject to the HCS, as specified in 40 CFR 370.20(b)). Facilities in the construction industry were required to submit their MSDSs or lists by April 30, 1989. Thereafter, if a facility begins to use a chemical subject to the HCS in a quantity at or above the reporting threshold, or if a facility learns that its previously submitted MSDS is inaccurate for any reason, the facility must submit the new or correct information within three months to the appropriate SERC, LEPC, and local fire department (40 CFR 370.21(c)).

Under section 312 of title III, owners or operators covered by section 311 of title III are required to submit additional information on the presence and location of hazardous chemicals at their facilities. Beginning March 1, 1991, under the uniform deadlines in today's rule, and annually thereafter, all facilities affected by the HCS that have hazardous chemicals at or above the reporting thresholds must submit a "Tier I" inventory form and may be required to submit a "Tier II" inventory form to SERCs, LEPCs, and fire departments.

Tier I forms require general information on the amount and location of hazardous chemicals by hazard category; Tier I forms must be submitted annually. Tier II forms require more detailed information on individual chemicals and must be submitted on request. Facilities may submit Tier II forms in lieu of Tier I forms.

Title III of SARA (section 311(b)) states that the EPA Administrator may establish reporting thresholds (i.e., quantities of hazardous chemicals) such that if the Hazardous chemical subject to the HCS is present at a facility in a quantity that is below the reporting threshold, the facility is not required to automatically report the presence of that chemical under the provisions of sections 311 and 312 of title III. On October 15, 1987, EPA promulgated regulations (52 FR 38334) establishing reporting thresholds under section 311(b) of title III for facilities subject to the OSHA HCS. The reporting threshold established for the first two years was 10,000 pounds, except for EHSs, which must be reported at the lower of 500 pounds or the TPQ. Access to information below these thresholds was preserved in that facilities must provide any such information when requested in accordance with 40 CFR 370.20(b)(3).

The October 15, 1987 rule also established a threshold of zero pounds for the third year of reporting; that is, no threshold as of the third year. For manufacturers, the third year begins on September 24, 1990; and for the construction industry, the third year begins on April 30, 1991.

EPA stated in the October 15, 1987 final rule that because of the substantial number and variety of comments received on the final threshold issue and uncertainty over the impact of the requirements on the recipients of the reports and ultimately on the effectiveness of the program, it would conduct further studies of alternative thresholds and propose final reporting thresholds before the beginning of the third year of reporting. On March 29, 1989 (54 FR 12992), EPA published an NPRM proposing final reporting thresholds based on analyses conducted since the promulgation of the October 15, 1987 final rule. In that NPRM, EPA proposed to maintain the current reporting thresholds (i.e., 10,000 pounds for non-EHS hazardous chemicals and 500 pounds or the TPQ, whichever is lower, for EHSs). Many commenters supported selection of the current thresholds, and some suggested alternative thresholds. Because it was not feasible to consider properly and respond thoroughly to all the comments, and to finalize and promulgate final reporting thresholds before the zero pound threshold for manufacturers automatically went into effect on October 17, 1989, and because EPA believed that it was not in the public interest to allow the zero threshold to go into effect for the short time required to promulgate final reporting thresholds that may differ from the zero threshold, EPA promulgated an Interim Final Rule extending the current thresholds under sections 311 and 312 for one additional year for manufacturing facilities (54 FR 41904; October 12, 1989). At the same time, EPA published a Supplemental Notice explaining its intention to establish uniform deadlines in the final rule on thresholds.

EPA received seventeen letters on the Supplemental Notice and the Interim Final Rule. All commenters supported the one-year extension of the current reporting thresholds, as well as the proposal to establish uniform effective dates for the final thresholds in today's rule. Accordingly, today's final rule on thresholds eliminates the different effective dates for various industry

[1] The procedures for determining whether a particular chemical is a hazardous chemical are set forth in 29 CFR 1910.1200 and appendices.

sectors and establishes uniform effective dates for all facilities subject to reporting requirements under sections 311 and 312. Under today's rule for all facilities subject to reporting under sections 311 and 312, including facilities in the construction industry and facilities newly subject to the reporting requirements, October 17, 1990 will be the effective date for final reporting thresholds for reports submitted under section 311; March 1, 1991 will be the effective date for final reporting thresholds for reports submitted annually under section 312.

Today, EPA is promulgating the final thresholds at the current levels; that is, beginning October 17, 1990, the reporting threshold is 10,000 pounds for non-EHS hazardous chemicals and 500 pounds or the TPQ, whichever is lower, for EHSs.

In the March 29, 1989 NPRM, EPA proposed a clarification to the reporting requirements for multi-establishment facilities. EPA has decided not to promulgate a final rule on this issue at this time.

EPA is also finalizing a number of other provisions proposed in the March 29, 1989 NPRM, including the revision of the definition of the term "facility" to include subsurface operations, the treatment of mixtures in threshold calculations for §§ 311 and 312, the implementation of title III by Indian Tribes on Indian lands, and several miscellaneous issues.

Finally, in the March 29, 1989 NPRM, EPA proposed to correct a discrepancy in the listing of RQs for two EHSs, hydrogen chloride and methacrylonitrile, between appendices A and B to 40 CFR part 355 (EHS list) and 40 CFR 302.4 (list of hazardous substances under CERCLA). On October 20, 1989 (54 FR 43164), EPA published the corrected RQs for hydrogen chloride at 5,000 pounds and for methacrylonitrile at 1,000 pounds, thereby resolving the discrepancy.

EPA received 167 comments letters addressing issues raised in the NPRM. The comments received, together with EPA's responses, are contained in the document, Responses to Comments Received on the Notice of Proposed Rulemaking under §§ 311 and 312 of title III of the Superfund Amendments and Reauthorization Act of 1986—March 29, 1989 (Comment Response Document), which is available in the docket supporting this rulemaking. In preparing today's rule, EPA considered all of the public comments submitted on the March 29, 1989 NPRM, with the exception of comments on the RQ discrepancy which were addressed in the October 20, 1989 final rule on that issue. Comments are addressed in sections II and III of this preamble. Section IV provides a summary of the analyses supporting today's rule.

D. Organization of the Final Rule

Today's final rule amends 40 CFR part 350.1 by adding definitions of "chief executive officer of the Tribe," "commission," "Indian country," "Indian Tribe," "local emergency planning committee," and "State," thereby codifying the definitions implementing EPA's designation of Indian Tribes as the implementing authorities for title III on Indian lands. Also, the definition of facility, including man-made or natural subsurface structures into which hazardous chemicals are purposefully placed or from which they are removed by human means such that the structures function as containment structures, is added to § 350.1. Similarly, § 355.20 is amended by adding the definitions necessary to authorize Indian Tribe implementation of reporting requirements. In addition, the definition of "commission" in § 355.20 is revised to add Indian tribal emergency response commissions and the definition of "facility" is revised to include man-made or natural subsurface structures.

In today's final rule, 40 CFR part 370 is also amended by adding the definitions pertaining to Indian tribal implementation and by revising the definitions of "facility," "commission," and "State." Section 370.20 is revised to incorporate the final thresholds for reporting under title III, sections 311 and 312. Section 370.28 is amended by revising paragraph (b)(1) and adding new paragraph (c) to clarify the requirement to aggregate EHSs in mixtures. The Tier I and Tier II reporting forms in § 370.40 have been modified in response to commenter's suggestions. The certification block on the Tier II form has also been changed to allow the owner or operator to place an original signature only on the first page of the submission.

In today's final rule, 40 CFR part 372 is amended by adding the definitions pertaining to Indian Tribes. These definitions have been added to § 372.3. In addition, § 372.30 has been revised to indicate that if a facility is located in Indian country, EPA Form R must be submitted to the office designated by the Chief Executive Officer of the Tribe.

Finally, the Burden Box has been eliminated from the Tier I and Tier II instructions because of the recent Supreme Court decision regarding the inapplicability of the Paperwork Reduction Act to regulations that require submission of health, safety, and other consumer information only to non-Federal (i.e., State and local) entities.

II. Final Reporting Thresholds

EPA considered six options in analyzing potential reporting thresholds for the March 29, 1989 NPRM. The options represented the full range of possible thresholds and were chosen because they allowed EPA to isolate the effects of varying threshold levels on each of three factors: (1) The number and types of chemicals that would be reported; (2) the number of facilities that would be required to report; and (3) the volume of chemicals that would be covered. Because different thresholds could be set for different classes of chemicals or even for individual chemicals, a large number of combinations of these factors are possible. For reasons of practicality, EPA analyzed six threshold options because they set bounds on the reasonable possibilities.

Option 1 would set a 50,000 pound reporting threshold for hazardous chemicals except EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 2 would adopt the current reporting thresholds—10,000 pounds for hazardous chemicals except EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 3 would set a 10,000 pound reporting threshold for hazardous chemicals, except for hazardous substances defined under section 101(14) of CERCLA and toxic chemicals designated under section 313 of title III, which would have a reporting threshold of 500 pounds, and EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 4 would set a 2,000 pound reporting threshold for hazardous chemicals, except for hazardous substances designated under section 101(14) of CERCLA and toxic chemicals designated under section 313 of title III, which would have a reporting threshold of 500 pounds, and EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 5 would set the reporting threshold at 500 pounds for all covered chemicals.

Option 6 would set the reporting threshold at zero pounds for all covered chemicals.

In the March 29, 1989 NPRM, EPA proposed Option 2, that is, to retain the reporting thresholds that have been applied in the first two reporting years (a 10,000 pound reporting threshold for most hazardous chemicals; the reporting threshold for EHSs at 500 pounds or the TPQ, whichever is lower). In today's

final rule, EPA is promulgating final reporting thresholds at these same levels proposed under Option 2.

EPA received 138 letters containing comments on the selection of final threshold levels, some agreeing with the proposed thresholds, others endorsing options for higher or lower thresholds, and others suggesting that lower thresholds be imposed after an interim period at the proposed levels. EPA believes the final reporting threshold of 10,000 pounds for non-EHS hazardous chemicals and 500 pounds, or the TPQ, whichever is lower, for EHSs is appropriate.

In establishing today's final reporting threshold, EPA attempted to strike the best balance between the amount of information generated for the public and the value of that information, and the cost to SERCs, LEPCs, and facilities of managing and providing the information. In estimating the current value of the information that would be provided below the current threshold of 10,000 pounds, EPA considered several factors: (1) The small number of requests from the public for information on hazardous chemicals present at facilities below the current threshold levels; (2) the limited current use of Tier I and Tier II information during emergencies and planning exercises; and (3) the fact that only twelve States have established thresholds below the 10,000 pound level for all covered hazardous chemicals.

EPA understands that the amount of resources devoted to data management and the ability of SERCs, LEPCs, and fire departments to manage information vary considerably across the nation. The data management survey conducted by EPA prior to the NPRM showed that in some States and communities, however, resources are extremely limited, and LEPCs are having difficulties managing the information currently being submitted. EPA believes it is important for these LEPCs in particular to focus on hazardous chemicals of known concern (i.e., those hazardous chemicals stored in large quantities and EHSs). The Regulatory Impact Analysis supporting the NPRM estimated there would be a four-fold increase in the number of hazardous chemicals that would be reported at 500 pounds compared to the 10,000 pound threshold (from 976 thousand to 4.3 million), and almost a two-fold increase (from 291,000 to 488,000) in the number of facilities required to report. Such a large increase in reports could divert limited resources and prevent proper evaluation and planning around facilities with the most hazardous situations.

It is not EPA's intent to restrict public access to important information. Any SERC or LEPC capable of managing the additional information that would be submitted at lower thresholds has the authority to request such information either on a facility-specific basis or may obtain such information across the board by establishing lower thresholds in its State or jurisdiction under State law. EPA's primary concern is with the ability of many SERCs and LEPCs to manage the additional information that would be submitted at lower thresholds. By maintaining the 10,000 pound threshold for hazardous chemicals other than EHSs, and maintaining the 500 pound or TPQ threshold, whichever is lower, for EHSs, EPA is ensuring that the LEPCs that have limited resources will focus those resources on the most hazardous situations. That is not to say that facilities that store hazardous chemicals in smaller quantities do not pose a hazard to the community. Rather, it acknowledges that with limited resources, priorities must be established to ensure the maximum level of protection of human health and welfare and the environment. The final thresholds, identical to those currently in effect, will not place any additional burden on SERCs and LEPCs and will allow them to improve quality control and use of the information in the preparation of emergency plans.

A number of commenters stated that the threshold for all hazardous chemicals should be 500 pounds because higher thresholds would exempt many facilities from reporting, depriving communities of valuable information. EPA believes that although EHSs warrant special attention and lower reporting thresholds, all hazardous chemicals do not present an equal risk. A lower threshold for EHSs, along with the 10,000 pound threshold for other hazardous chemicals, will provide SERCs and LEPCs with information on facilities that are likely to present the greatest hazard to the community. Today's thresholds do not deprive communities of valuable information; rather, they provide communities with the most valuable information. If a SERC or LEPC wants information not automatically submitted under today's final rule, a State or locality may establish lower reporting thresholds under State law.

Although some States currently require reporting at lower thresholds, most do not, and many do not devote sufficient resources to managing the information that would be generated by such a requirement. The reporting thresholds that EPA is promulgating in today's final rule will provide a ceiling threshold throughout the nation, without placing a burden on SERCs, LEPCs, and fire departments that are not yet prepared to deal with the large volume of additional information that would be submitted at lower thresholds. In addition, facilities are required to provide information on chemicals present in quantities below the reporting threshold if the SERC, LEPC, or fire department requests such information. This provision applies to all facilities, even those not subject to routine reporting under §§ 311 and 312. Thus, facilities that use significant amounts of hazardous chemicals will not be excluded from reporting if the State and local agencies have the resources to process additional information and want to receive the information.

The cost to SERCs and LEPCs and their ability to carry out requirements were carefully studied. EPA surveyed representatives from 12 SERCs, 32 LEPCs, and 15 fire departments thought to have implemented effective information management systems or procedures under §§ 311 and 312. The results of this survey are documented in "Information Management by State and Local Governments under §§ 311 and 312 of the Emergency Planning and Community Right-to-Know Act", December 1988. A copy of this document is in the docket supporting this rulemaking. Further, costs that would be incurred by SERCs, LEPCs, and fire departments under each threshold option were estimated in the "Regulatory Impact Analysis in Support of a Permanent Reporting Threshold under §§ 311 and 312 of the Emergency Planning and Community Right-to-Know Act of 1986", also found in the rulemaking docket.

Option 5 (a 500-pound threshold applied to all hazardous chemicals), for example, would result in almost twice the annual costs to SERCs, LEPCs, and fire departments as compared to the costs imposed by the 10,000 pound threshold. Based on current levels of resources available to LEPCs for all their planning and community right-to-know activities, EPA concluded that for many LEPCs, such a low threshold would create a substantial burden, and would tie up many of the necessary resources used for gathering, evaluating, and utilizing information received under current reporting thresholds. Given these increases in the information management burden and in costs, EPA decided that a lower threshold was not feasible on a nationwide basis.

Some commenters suggested that EPA reconsider a threshold of 50,000 pounds because this threshold would represent a cost-effective storage quantity, and it is large quantity chemical storage that is

of most concern to emergency planners. EPA does not agree that 50,000 pounds is the quantity of hazardous chemicals of most concern to emergency planners. LEPCs, under title III, in fact, are focusing their planning efforts on EHSs and other hazardous chemicals stored in quantities ranging from one to 10,000 pounds. Several LEPCs are currently using the Tier II information in their planning process. Furthermore, facilities are familiar with the 10,000 pound threshold; only three of the 138 commenters on the threshold issue favored raising the threshold above current levels.

Several commenters stated that it is inappropriate to consider costs to industry in establishing threshold levels, and that EPA's primary concern should be maximizing the information available to State and local authorities. In support of their statement, these commenters cited a passage in the legislative history of §§ 311 and 312 in which Representative Edgar addressed the House floor. (Statement of Representative Robert Edgar, *Congressional record,* October 8, 1986.)

EPA does not agree that costs to industry cannot be considered as one factor in setting reporting thresholds. There is no evidence that Representative Edgar was speaking for the entire Congress. The remarks of a single representative in a House debate which is nowhere repeated or endorsed by other legislators in other floor debates or in the Conference Report cannot be interpreted to prevent EPA from considering the factor of costs in setting a final threshold. See, e.g. *Consumer Product Safety Commission* v. *GTE Sylvania Inc.,* 447 U.S. 102, 118–19 (1980); *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 311 (1979); In re *Kelly,* 841 F.2d 908, 912 n.3 (9th Cir. 1988). Neither the text of the statute nor the Conference Report preclude the Administrator from considering costs to industry in determining thresholds. Consideration of costs to facilities is relevant to Congress' goal of developing a manageable program for the collection and dissemination by localities of information on hazardous chemicals. The Conference Report specifically indicates that the two-tier reporting was adopted in section 312 "[t]o minimize the burden of this reporting." It would be inconsistent with the purpose of the two-tier reporting format for EPA to be prohibited from considering costs to industry in setting thresholds.

EPA does not believe that it placed an undue amount of emphasis on costs to industry or on cost effectiveness. EPA does believe that some consideration of costs to the SERCs, LEPCs, fire departments, and industry is important when evaluating the pros and cons of different final thresholds, because cost estimates give EPA some measurement of the impacts of the different thresholds upon government entities that must run a variety of public programs [2] and on facilities that face many requests for information and demands for environmental control.

Nonetheless, EPA agrees that the primary purpose of the reporting requirements under sections 311 and 312 is to provide information to the community. EPA's selection of the final reporting thresholds was not based primarily on cost considerations, but on the extent of which a more stringent standard could subvert the intent of sections 311 and 312 by overwhelming the capability of SERCs, LEPCs, and fire departments or manage and analyze submitted information. EPA believes that a manageable quantity of data that can be supplemented by requests for additional information and the imposition of lower State or local thresholds when appropriate, better serves the community's right-to-know.

Several commenters suggested that EPA use the proposed levels for an interim period and then impose a lower reporting threshold determined after further study. EPA considered establishing reporting thresholds in today's final rule for another interim period, similar to the approach taken in October 1987. EPA concluded, however, that it was best to minimize the uncertainty surrounding future reporting obligations. Uncertainty tends to encourage indecision and EPA is anxious for SERCs, LEPCs, and fire departments to have full information regarding the parameters of their data management obligations so that they may optimally plan for equipment purchases and labor needs. It is also important to minimize uncertainties for facilities so that they may develop optimal inventory tracking systems. To establish reporting thresholds under sections 311 and 312 for another interim period would not minimize uncertainty and, therefore, would slow compliance and data management decisions and investments.

An interim approach would only be useful if EPA were to again study the appropriate final threshold after that interim period. At the present time, EPA is not able to predict what the best threshold will be several years in the future. Although EPA recognizes that data management capabilities may improve over time as States and localities devote greater resources to this program and data management experience improves. EPA cannot predict that this will happen, nor what thresholds would be appropriate if it does happen. Thus, EPA believes it is in the public interest to choose a final threshold at this time, based upon all relevant information about the capabilities of SERCs and LEPCs to data and the usefulness of the information. EPA will continue to analyze data available from observations, reviews, reports, and comments received from SERCs, LEPcsd, fire departments, the community, and others responsible for carrying out portions of this program. As these data indicate that change is waranted, EPA will revise this rule including the threshold provision.

In the NPRM, EPA requested comment on whether the final threshold for EHSs should be 500 pounds or the TPQ, or simply the TPQ. EPA received comments supporting both options. In today's final rule, EPA is establishing the final reporting threshold for EHSs at 500 pounds or the TPQ, whichever is lower. That is, in today's final rule, EPA is maintaining the 500 pound cap as a reporting threshold for EHSs. Although EPA understands that there are some advantages to maintaining the TPQ as the sole reporting trigger for EHSs (i.e., consistency with the emergency planning provisions of title III), EPA believes that the different purposes of TPQs under sections 302 and 303 and reporting threshold under sections 311 and 312 support having different relevant quantities. Under sections 302 and 303, the presence at a facility of an EHS above its TPQ leads to certain required emergency planning steps for facilities and LEPCs. Thus, the TPQ is set at a level that is appropriate for mandatory emergency planning in all cases across the nation. On the other hand, the purpose of sections 311 and 312 is more directly related to community right-to-know. In establishing final reporting thresholds under sections 311 and 312, EPA endeavored to provide as much information as possible to the community without overwhelming the information management systems used by SERCs, LEPCs, and fire departments. Because EHSs generally represent

[2] A frequently repeated concern during the Congressional debate was the necessity to take account of the burden of a particular threshold upon State and local government so that useful and important information would not be "buried in an avalanche" of paperwork. See statements of Representatives Norman Lent (H9564), Gene Snyder (H9564), *Congressional Record,* October 8, 1986; see also statements of Representatives Al Swift (H9607), John Hammerschmidt (H9568), *Congressional Record,* October 8, 1986.

chemicals of highest concern to the community, EPA wanted to ensure that communities receive a substantial amount of information on EHSs, even when planning is not statutorily mandated. SERCs and LEPCs can use section 311 and 312 data to determine whether, due to site-specific factors, emergency planning under section 302(b)(2) would be appropriate. EPA believes it is most prudent to maintain the 500 pound cap on the reporting threshold for EHSs under sections 311 and 312, to ensure that information on these hazardous chemicals is readily available to communities and emergency planners.

EPA also considered establishing lower thresholds for hazardous chemicals on the title III section 313 list or on the CERCLA hazardous substances list. EPA decided not to impose these lower thresholds because the additional information that would be provided is generally available through other provisions of title III and, therefore, the additional burden that would be imposed on both industry and government was not warranted. For example, the section 311 and 312 reporting requirements focus upon the presence of hazardous chemicals at the facility, requiring the owner or operator to submit lists of chemicals or MSDSs and, on an annual basis, an inventory of those chemicals. Under section 313, title III already imposes inventory requirements upon owners and operators of facilities that manufacture, process, or use designated quantities of the toxic chemicals on the section 313 list.

Similarly, title III already has reporting requirements that directly employ the CERCLA hazardous substances list. Under section 304, facilities that release an RQ of any CERCLA hazardous substance or EHS must report the release to any SERC or LEPC affected by the release. Detailed follow-up reports must be submitted to the affected SERC(s) and LEPC(s) by any owner or operator required to report section 304. The nature of the information required in the initial and follow-up reports bears some similarity to the information required on an MSDS. For example, the report must include the chemical name or identity of any substance involved in a release, any known or anticipated acute or chronic health risks associated with the emergency, and where appropriate, advice regarding medical attention necessary for exposed individuals. Therefore, establishing lower thresholds for the section 313 chemicals or the list of CERCLA hazardous substances did not appear to provide communities with enough new, necessary, or useful information to justify the additional burden and the potential for confusion.

III. Analytical Approach

To determine the potential effects of the six options, EPA estimated the number of facilities in the U.S. that would be affected by each threshold, the average number of chemicals that would be reported per facility, the total number of reports that would be filed, the average pounds of chemicals reported per facility, and the total pounds of chemicals that would be reported in the U.S. The national estimates were developed by extrapolating from data on the amounts of hazardous chemicals that are present in specific localities. A Los Angeles, California database and the data from reports filed under the State and Federal Right-to-Know programs in New Jersey best satisified the criteria EPA identified for the study. The Los Angeles and New Jersey databases were well-suited to the threshold analysis because they include information submitted by both manufacturing and non-manufacturing facilities, represent all sizes of facilities, and contain information on the quantity of hazardous chemicals at facilities covered by the HCS regulations. (For a full discussion of the selection of databases, see chapter 2 of the Regulatory Impact Analysis in Support of a Reporting Threshold under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (RIA) in the docket supporting this rulemaking).

Some commenters stated that the selected databases do not represent the national and do not accurately capture all necessary information. EPA acknowledges that the data from several States cannot capture all relevant national information. Nonetheless, EPA believes that the New Jersey and Los Angeles databases are the best readily available information, and that the methodology used in the analysis adequately adjusts the data for the national population. EPA extrapolated from the selected databases to the U.S. population on the basis of SIC codes. Also, EPA assessed the effects of the selection of the New Jersey and Los Angeles databases by comparing the extrapolated results with national statistics on chemical and petroleum production and use. Estimates of the number of pounds that would be reported as extrapolated from the two databases are reasonably close to national statistics. Moreover, the estimated number of affected facilities and estimated costs of the rule generated through independent analyses of the two databases are similar, notwithstanding the differences in the industrial facilities represented and in the area covered (a State versus a metropolitan area) by each database. EPA believes, therefore, that the two databases used to estimate the potential effects of different threshold options provided adequate information and generated accurate results.

Several commenters stated that EPA should establish different threshold levels for different hazard categories. EPA considered establishing risk-based reporting thresholds for all the hazardous chemicals subject to sections 311 and 312, taking into consideration the hazards posed by each chemical or group of chemicals, the potential for a significant release, and the potential exposure of surrounding populations. As EPA stated in its October 15, 1987 final rule and again in the March 29, 1989 proposed rule, such as hazard-based approach was not feasible, given the tens of thousands of hazardous chemicals covered under sections 311 and 312 and the variety of locations and situations in which hazardous chemicals may be stored. Existing methodologies that can be used to evaluate risk associated with specific hazards are not appropriate approaches for this rulemaking because they are site or chemical specific. For example, use of the CERCLA Hazard Ranking System (HRS) was recommended by one commenter. The HRS is innappropriate for determining reporting threshold levels under sections 311 and 312 because it is site-specific, and site-specific exposure pathways must be known to estimate risk levels. Although chemical-specific or site-specific information cannot be considered across all the chemicals covered under sections 311 and 312, it can be considered by local authorities on a site-specific basis. EPA believes, therefore, that exposure potential and site characteristics are more appropriately considered by LEPCs in their planning processes than by EPA in establishing reporting thresholds.

One commenter suggested that the analytical approach should consider the synergistic and cumulative effects of hazardous chemicals. EPA agrees that ideally such effects, as well as chemical-specific hazards, should be considered in establishing reporting thresholds. There is, however, no existing analytical model that can be used to evaluate these effects over the number of hazardous chemicals for which MSDSs must be prepared. EPA believes that the analytical approach used to evaluate the reporting threshold options in today's

final rule resulted in final reporting thresholds that will provide information to local communities about hazardous chemicals most likely to pose the greatest hazard, without overwhelming their ability to manage and use the information.

One commenter questioned EPA's use of the Acute Hazardous Events (AHE) database because it does not include incidents that result in chronic effects or environmental damage. EPA would like to clarify that the AHE data were used primarily to estimate how data that would be received at alternative threshold levels relate to facilities involved in accidental releases that led to serious acute effects. The data show that most events sufficiently severe to cause human casualties would be at sites subject to reporting under the threshold levels being promulgated today. The accident data in the AHE database provide information primarily on acute effects, but relatively little information on chronic effects or environmental damage associated with the different reporting thresholds. EPA, however, recognizes the importance of chronic effects and environmental damage and, therefore, requires notification of a release of a hazardous substance or EHS that equals or exceeds an RQ. When the National Response Center, SERC, and LEPC are notified of a hazardous substance release, the responsible government authority evaluates the risks associated with the release, considering acute as well as chronic and environmental effects.

A number of commenters challenged EPA's comparison of the costs and benefits of the alternative reporting thresholds. Because EPA could not quantify the benefits attributable to each threshold option, the commenters claimed that EPA's conclusions were unsupported. EPA does not agree. Based on its survey of SERCs, LEPCs, and fire departments with relatively advanced data management systems, EPA believes that many of these State and local authorities do not have the present capability to use the additional information that would be generated at thresholds lower than those established by today's final rule. For each given community, however, the cost benefit comparison will vary. EPA believes it is most prudent, therefore, to establish Federal thresholds at a level that will maximize the net benefits for most communities, while preserving the rights of States and local governments to develop more stringent reporting requirements if they believe that the benefits of receiving more information than that submitted under the thresholds in today's rule are greater than the incremental costs.

Several commenters stated that EPA did not consider or properly value certain benefits, such as accident prevention. EPA is aware that accident prevention can be a direct outgrowth of reporting, due to a consequent increased awareness on the part of industry and the local community of the presence of reported hazardous chemicals. Such benefits, however, are difficult to quantify and could be considered only in a qualitative sense.

Two commenters stated that costs were not accurately considered because the projections of the number of affected non-manufacturers are underestimated. Although the number of affected facilities and chemical reports in specific industry categories or sectors (such as non-manufacturing) may be under or overstated in the Regulatory Impact Analysis, the sensitivity analysis supporting today's rulemaking indicates that the aggregate quantity of chemicals covered under the zero threshold, including petroleum, is reasonably close to national projections of chemical and petroleum use derived from Census data. In addition, the Los Angeles and New Jersey databases yield comparable total cost estimates despite significant differences in the underlying numbers of manufacturing and non-manufacturing facilities. Consequently, EPA believes that the potential inaccuracies in the analysis caused by extrapolation are not significant enough to affect the decision to select today's final reporting thresholds.

IV. Other Issues

A. Multi-establishment Facility Reporting

In the March 29, 1989 NPRM, EPA proposed a clarification to the reporting requirements for multi-establishment facilities. In particular, in response to a concern that owners of certain multi-establishment facilities, such as industrial parks, do not have sufficient knowledge about specific hazardous chemicals located at their facility to comply with the title III reporting requirements, EPA proposed a regulatory provision that would have clarified how establishments at such facilities may report as facilities. The Agency has decided not to promulgate a final rule on multi-establishment reporting at this time. After receiving substantial public comment on this provision, EPA needs additional time to consider and develop the appropriate regulatory approach to various issues connected with multi-establishment reporting. EPA does not, however, believe it is appropriate to delay the promulgation of final thresholds while the Agency considers multi-establishment issues. For this reason, today's final rule does not include a provision addressing multi-establishment facilities.

B. Tier I and Tier II Forms

EPA has made several small modifications to the Tier I and Tier II forms and instructions in response to commenters' suggestions and concerns. Some suggestions were not accepted for reasons stated in the Response to Comments Document. The modifications in today's final rule include adding check boxes to indicate that the information is identical to that submitted in the previous year; lines on the Tier II form for listing the EHS chemical name(s) present in a mixture; optional check boxes for each hazardous chemical reported to facilitate data management at the State and local level; and several other small changes.

Another change made in today's final rule involves the certification statements on the Tier I and Tier II forms. EPA has received several requests that the Tier II form be modified to allow owners and operators of facilities to place an original signature only on the first page of a multi-page submission. EPA agrees that an original signature need not be placed on every page of the Tier II submission so long as the owner or operator certifies that he or she has reviewed every page of the submission. Therefore, the instructions for the certification on the Tier II form have been modified to allow the owner or operator to place an original signature only on the first page of the submission, provided that (1) submissions to the SERC, LEPC, and fire department each contain an original signature on at least the first page, (2) the total number of pages in the submission is inserted in the space provided in the certification statement, including all confidential and non-confidential sheets and all attachments, and (3) subsequent pages in the submission contain a photocopy of the original signature or a signature stamp, as well as the date that the original signature was affixed to the first page and the total number of pages in the submission. Similarly, the Tier I certification instructions have been modified to state that the owner or operator certifies that all information in the submission, including all attachments, is true, accurate, and complete; the total number of pages in the submission must be indicated in the

space provided in the certification statement.

Three commenters stated the EPA should retain OSHA's Hazard Communication Standard (HCS) list of exemptions from coverage in the instructions, along with the comparison of EPA's hazard categories with OSHA's HCS hazard categories to reduce the time necessary to comply with sections 311 and 312. EPA does not agree that including the list of OSHA's HCS exemptions shortens the time required for compliance. By including HCS exemptions on previous Tier I and Tier II forms, EPA believes that it might have appeared to the regulated community that EPA, SERCs, and LEPCs were the appropriate authority for interpreting the scope of the HCS. The most appropriate authority for interpreting the HCS is OSHA. Reporting time for both title III and the HCS can best be shortened by the method set forth in the instructions to the title III reporting forms, which refers parties to the OSHA HCS. EPA, however, does agree that it is necessary to retain the OSHA—EPA hazard category comparison because MSDSs are prepared based on OSHA's HCS hazard categories.

Two commenters suggested that EPA reconsider the use of the Tier I forms because they are too general an they place an undue burden on industry and local government authorities. Although EPA agrees that the information submitted on the Tier II form is more useful, the statute allows owners and operators of facilities the option of submitting Tier I or Tier II forms, unless the Tier II form is specifically requested by a SERC or LEPC. See section 312(e)(1) of title III; H.R. Conf. Rep. No. 962, 99th Congress, 2d Sess., 290 ("Conference Report"). States, however, may develop legislation requiring submission of Tier II forms, and some have already done so. Also, EPA continues to encourage submissions of Tier II forms unless SERCs, LEPCs, or fire departments have indicated a preference for Tier I forms.

Another commenter stated that EPA should discourage States from creating their own special report forms which add to the costs of industry compliance, especially if changes to the form make the computer software used to prepare the form obsolete. EPA does not agree that it should discourage States from developing their own forms or tailoring Tier I and/or Tier II to meet particular needs or to avoid overlapping Federal requirements. EPA, however, does encourage States to consider industry concerns in modifying the inventory forms. When EPA makes format changes, it generally considers the burdens such revisions impose. The changes made to the Tier I and Tier II forms in today's final rule have been determined to be necessary, notwithstanding potential costs to industry.

C. Subsurface Operations

In response to many questions about the applicability of title III regulations to subsurface operations, EPA proposed in the March 29, 1989 NPRM to revise the regulatory definition of facility to clarify that subsurface structures that are part of man-made operations, including open surface mines, are included within the statutory definition of facility and, therefore, are subject to title III reporting requirements.

Twenty commenters opposed and three commenters supported the proposed revision to the definition of facility to include subsurface structures. A number of the commenters stated that the revision would improperly expand the definition to include facilities and substances exempt from the requirements of some sections of title III. EPA does not agree that the revised regulatory definition of "facility" changes reporting requirements or negates exemptions contained in title III statutory provisions. The regulatory definition is revised today to include only those subsurface structures that are man-made or natural structures into which hazardous chemicals are purposefully placed or removed through human means such that the structures function as a containment structure. If an activity or facility is exempt from certain title III requirements, today's regulatory definition does not alter that exemption. For example, the revised regulatory definition of "facility" does not alter the applicability of the transportation exemption. If natural gas is stored at a production facility, the product is subject to title III requirements; if natural gas is being stored incident to transportation, then it comes within the title III exemption and is not subject to title III reporting requirements.

As a second example, one commenter noted that because subsurface mining operations are not subject to OSHA's HCS, they are also not subject to sections 311 and 312 of title III. EPA agrees that, although a mining operation may come within the definition of the term "facility," it is not necessarily within the scope of the OSHA HCS. If the operation is not subject to the OSHA HCS, it is not subject to the requirements of sections 311 and 312. The fact that a facility does not come within the scope of the OSHA HCS is not relevant, however, to the emergency planning and release notification requirements of sections 302, 303, and 304. Thus, if there are EHSs at a mining facility in underground containment structures in quantities equal to or exceeding TPQs, the owner or operator is required to report them under section 302 and to participate in the community planning process as required under section 303. Also, if the facility produces, uses, or stores a CERCLA hazardous substance or an EHS, and releases the hazardous substance or EHS in a quantity that equals or exceeds the applicable RQ, the release must be reported to the SERC(s) and LEPC(s) likely to be affected by the release, and to the National Response Center in the case of a CERCLA hazardous substance. One commenter stated that the revised definition could result in daily reporting of releases from mining operations. If releases of hazardous substances or EHSs from mining operations at or above reporting levels occur daily, they must be reported daily. The commenter should note, however, that recurring releases may qualify for reduced reporting under CERCLA section 103(f)(2) if they are "continuous" and "stable in quantity and rate," or they may be exempt from reporting requirements if they are federally permitted under CERCLA section 101(10). (See the NPRM on reporting of continuous releases (53 FR 12868; April 19, 1988) and the NPRM on federally permitted releases (53 FR 27268; July 19, 1988)).

Three commenters opposed including naturally occurring materials such as natural gas in the calculation of a facility's inventory for comparison with the TPQ under section 302 because natural gas production is already governed by regulations under other authorities, storage and withdrawal operations do not impose a hazard to nearby populations, and it would be difficult to estimate quantities of natural gas "present" at a facility. EPA does not agree. Any substance placed in, or being removed from, a subsurface location by human intervention, such as mining, is subject to title III requirements and, therefore, must be included in a facility's inventory. EPA understands that many industries must comply with regulations and safety standards under other authorities. Nevertheless, compliance with such requirements does not fulfill the purpose of title III which is to provide the public with information on the chemicals present at facilities in order to prepare the community to respond when hazards are not controlled. Compliance with other

regulations, therefore, does not relieve the regulated community from the responsibility to comply with the requirements of title III. Further, each owner or operator must use the best information available, knowledge of the operating processes of the facility, and engineering judgment to estimate the quantities of hazardous chemicals present in subsurface containment structures. Reporting facilities should be aware that estimates need not be exact; facilities are only required to estimate which among many broad ranges indicated on the Tier I and Tier II forms match their inventories.

D. Treatment of EHS Mixtures in Reporting Threshold Calculations

In the March 29, 1989 NPRM, EPA proposed new regulatory language addressing when and how facilities must report EHSs that exceed their applicable reporting threshold under sections 311 and 312 when the EHSs are present in different mixtures.

Section 311(a)(3) of title III provides facilities with the option of reporting on a mixture as a whole or reporting on each hazardous component of the mixture. In some instances, reporting by component could result in the filing of fewer reports. Where components of a mixture are not present at a facility in threshold quantities, a facility would not be required to submit a report under sections 311 or 312 even though the quantity of the mixture itself is present in a threshold amount. Similarly, reporting by mixture could occasionally result in fewer reports when the mixtures are below threshold quantities. In the March 29, 1989 NPRM, EPA proposed a new provision, § 370.28(b)(3), related to reporting of EHSs in mixtures. This provision was designed to ensure that EHSs would be reported regardless of the option of reporting by mixture or by component. EPA believed that the importance of EHSs to emergency planning and community right-to-know warranted a requirement that these chemicals be reported, in some fashion, whenever they are present at facilities in above-threshold quantities. (See 54 FR 12999).

In proposing regulatory language to address the special question of reporting EHSs even when EHSs are present in mixtures, the Agency did not take away or in any way alter the option provided in the statute of reporting on mixtures as a whole or by hazardous component. Proposed § 370.28(b) required facilities to report the presence of EHSs at their facility if they were present in above-threshold quantities, but provided facilities with the option of reporting those EHSs either as components of mixtures or reporting the mixture as a whole. Proposed § 370.28(b) stated:

> (3) If extremely hazardous substances are hazardous components of a mixture, the quantity of the extremely hazardous substance in each mixture shall be aggregated to determine if the threshold value has been reached for the facility. Reporting may be accomplished by reporting on the component or the mixture even if the amount of the mixture(s) is below the reporting threshold.

To supplement this regulatory language, EPA proposed the addition of a box on the Tier II form whereby facilities that chose to report a mixture as a mixture (rather than by component) would be required to check whether the mixture contained an EHS.

Some commenters did not understand EPA's intent in proposing these amendments, others stated that the proposed regulatory language was confusing, and others questioned the utility of the information received. As a consequence, EPA is promulgating language in § 370.28(c) to clarify the reporting requirements in § 370.28. None of the comments received led the Agency to change the reporting requirements as proposed.

Stated as simply as possible, § 370.28 requires facilities to aggregate each EHS, whether it is present as a mixture component or in its pure form. Aggregation of non-EHS hazardous chemicals present in mixtures and in their pure form is not required, but may be done if a facility is reporting all hazardous chemicals in mixtures by component. If a facility has an EHS, and its quantities within mixtures and in its pure form equal or exceed its applicable threshold, the facility must report that EHS. Once the necessity of reporting that EHS is established, the facility has two primary choices in the manner in which it reports this EHS. The facility may either report the EHS separately as a component of one or several different mixtures, or may report the EHS by reporting the mixture of which the EHS is a part. For example, if five mixtures each contained 100 pounds of methyl mercaptan (an EHS), reporting could be accomplished by reporting 500 pounds of methyl mercaptan (reporting by component) or by reporting the five mixtures separately.

EPA is requiring that only EHSs be aggregated; aggregation of non-EHS hazardous chemicals in different mixtures at a facility is not required. Congress' intent that aggregation be permitted in setting thresholds is clear from the Conference Report. The requirement to aggregate EHSs under section 311 is consistent with the requirements under section 302 of title III. EPA views EHSs to be a special class of hazardous chemicals. EPA anticipates that LEPCs will request information on EHSs present at a facility, and routine reporting of that information under sections 311 and 312 should facilitate the planning process. EPA is not requiring the aggregation of non-EHS hazardous chemicals at facilities because of the potential burden that would impose on facilities, because EPA has determined that data on EHSs generally have greater emergency planning and right-to-know value to communities than do data on other chemicals, and because information on those hazardous chemicals is not required under section 302 of title III. The aggregation requirement of this rule maintains the option granted in the title III statute that owners or operators of facilities be able to report either by component or by mixture. The requirement that only EHSs be aggregated across mixtures in order to determine whether a threshold is met maximizes the information about one group of hazardous chemicals (i.e., EHSs), while maintaining a manageable program.

The following describes how to report above-threshold EHSs on a Tier II form where the facility is reporting some mixtures as a mixture and some mixtures by component. When filling out a Tier II form and reporting some mixtures as mixtures and some by component, the facility must do two things. First, for any mixture containing the above-threshold EHS that the facility is reporting by component, the facility must report the above-threshold EHS separately by chemical description, physical and health hazard, inventory and storage code and location. When reporting inventory information (maximum and average daily amount and number of days on-site), the facility should calculate or refer to those quantities of the EHS that are present only in the mixtures that the facility is reporting by component; the facility need not include within these calculations the amounts of the above-threshold EHS that are contained within mixtures that the facility is reporting as a mixture. Similarly, when reporting the storage code and location for the above-threshold EHS, the facility should list all storage codes and locations of any mixture containing the above-threshold EHS that the facility is reporting by component; the facility need not refer to the location or storage code of any mixture containing the EHS that the facility is reporting as a mixture.

Second, for any mixture containing an EHS that the facility is reporting as a

mixture, the facility must check the box labelled "EHS" to indicate that the mixture contains an above-threshold EHS, and must also write the name of the above-threshold EHS(s) contained within the mixture on the line provided. When filling out the inventory information, the facility should include in the calculation only those quantities of the same mixture and should follow a similar procedure when filling out the storage code and location information.

One commenter stated that EPA should establish a minimum percentage of a mixture below which EHS components would not have to be aggregated for reporting. EPA agrees and directs the commenter to the section on "calculation of quantity" at 40 CFR part 370.28, which states that only components greater than 1 percent, or 0.1 percent for carcinogenic components, are reportable. Nevertheless, if the owner or operator of a facility suspects that an EHS is present in a mixture, the entire mixture should be reported because the identity and quantity of the EHS is unknown and, therefore, cannot be aggregated with any accuracy with other quantities of EHSs present at the facility.

One commenter stated that the requirement to aggregate EHSs in mixtures should only be applied when the EHS retains some of its characteristics in the mixture. EPA does not agree with this comment because determining whether an EHS retains its characteristics in a mixture cannot be easily done. Also, EPA believes that only rarely would an EHS be a component of a mixture in a concentration greater than 1 percent or 0.1 percent if carcinogenic and not retain its characteristics. Thus, if a mixture requires an MSDS, the owner or operator should consider the component EHSs in making threshold calculations.

One commenter suggested that section 370.28 be redrafted to provide that only those hazardous chemicals or "extra-hazardous" substances in the same kind of mixture be aggregated to determine whether the reporting threshold is exceeded. EPA disagrees. The aggregation requirement applies to emergency planning notification under section 302 as well as to the inventory reporting requirements of sections 311 and 312. EPA does not believe that modifying the aggregation requirement as the commenter suggests would adequately support planning for emergencies involving EHSs. Also, hazardous chemicals found in different mixtures can have synergistic reactions. EPA believes that it is especially important, therefore, that EHSs present at a facility be aggregated across all mixtures.

Another commenter urged that, for purposes of determining reporting thresholds, the hazardous components of crude oil be excluded. EPA sees no reason to exclude components of crude oil from the requirement to aggregate EHSs for purposes of determining whether reporting thresholds have been reached. Any EHS component of crude oil must be aggregated unless the crude oil is reported as a mixture. Non-EHS components of a mixture, including crude oil, need not be aggregated.

E. Implementation of Title III by Indian Tribes on Indian Lands

In today's rule EPA is promulgating its proposal in the March 29, 1989 NPRM, to designate Indian Tribes as the implementing authority for title III on all lands within "Indian Country." Accordingly, the chief executive officer of the Tribe is responsible for the functions of the State governor under SARA section 301, including the appointment of an emergency response commission for the Tribe. This tribal commission would then be responsible for carrying out the duties of the SERC, including the designation of local emergency planning districts and the appointment of an emergency planning committee for each district. The district emergency planning committee will carry out the same functions as a LEPC in the local emergency planning districts designated by a SERC. Also, for facilities located within Indian country, the fire department run by the Tribe will be the fire department designated to receive section 311 and 312 reports. Finally, section 313 of title III requires that the State governor designate an entity to be responsible for managing toxic release inventory data. In Indian country, this entity would be designated by the chief executive officer of the Indian Tribe.

Several commenters endorsed EPA's proposal to recognize tribal sovereignty over environmental protection on Indian lands and to provide for tribal implementation of title III in a manner equivalent to implementation by State and local governments within their respective jurisdictions.

One commenter stated that Congress did not intend title III to be implemented separately on Indian lands by Indian Tribes because title III lacks any reference to Indian Tribes or lands and the title III definition of the term "State" does not include Indian Tribes. Two commenters asserted that the Indian Tribes activities in implementing title III should be similar to the activities of the LEPCs and come under the authority of a SERC.

EPA does not agree that implementation of title III on Indian lands should be under the authority of a State or SERC. Although title III lacks an explicit reference to Indian Tribes or to the implementation of the Act on Indian lands, EPA believes, based on the legislative history of SARA, that Congress clearly intended that the protection of title III apply to all persons inhabiting Indian lands. Title III emphasizes emergency response planning and chemical awareness at the local level. When applied to Indian lands, this supports implementation of the Act by tribal authorities. EPA believes that in the absence of clear legislative intent on who should implement the statute on Indian lands, EPA has the discretion to designate the Indian Tribes as the implementing authority. Also, under applicable law on Indian jurisdiction, States are generally precluded from exercising jurisdiction over Indians in Indian country absent a clear expression of congressional intent to the contrary. Nothing in the language or legislative history of title III suggests that Congress intended to subject Indian Tribes to State regulation on Indian lands, especially in an area of such importance to the health, safety, and welfare of the Indian community as chemical emergency response planning.

One commenter stated that owners or operators of facilities on Indian lands should report to State and local officials to avoid hindering effective emergency planning and response. EPA does not believe that Indian tribal jurisdiction over Indian lands will hinder effective implementation of title III. Effective emergency response planning requires that no more than one entity be responsible for implementing the program in a given area. While States may be unable to exercise jurisdiction over Indian-owned facilities in Indian country, Indian Tribes generally can exercise civil regulatory authority over Indians and non-Indians on Indian lands with regard to matters affecting the health and welfare of the Tribe. (See *Montana* v. *United States*, 450 U.S. 544, 566 (1981).) This authority is sufficient to fully implement the requirements of title III.

One commenter expressed concern that releases from facilities located on Indian lands may affect areas outside Indian jurisdiction, thereby requiring a State or local response. EPA believes this problem is endemic to any emergency response scheme that relies on reporting to local officials. By definition, any release has the potential

to affect areas outside the boundaries of the local jurisdiction and, therefore, to affect more than one local jurisdiction or more than one State. This concern was recognized in the legislation under section 304(b)(1) which requires that notice be provided to all SERC(s) and LEPC(s) likely to be affected by the release. Response to such releases can be handled in the same way that cross-jurisdictional releases from facilities outside Indian lands are handled, by cooperation between the authorities of the affected jurisdictions. EPA encourages Indian Tribes, SERCs, and LEPCs to participate in joint planning and cooperative efforts to prepare for such potential emergencies.

Four commenters urged EPA to promulgate regulations to protect Indian Tribes that choose not to develop title III program capabilities and to ensure that there are no gaps in the health and environmental protection program established by title III. Under title III, the Federal government is not responsible for implementation prior to delegating responsibility to respective State, local, or Tribal authorities. The statute requires State and local authorities to carry out the recordkeeping and emergency planning functions of title III. EPA's responsibility is to establish the program by promulgating necessary regulations, and by providing guidance, training, and technical assistance. EPA believes that Indian Tribes are the appropriate government authority for implementing title III in Indian country and, therefore, Tribes have the same obligations as States and local authorities under the law. EPA, however, does recognize its obligation, consistent with EPA policy, to help Tribes carry out their responsibilities, and intends to provide guidance, training, and technical assistance tailored to the needs and capabilities of Indian Tribes.

Although endorsing EPA's approach, several commenters questioned whether Tribes have sufficient resources to carry out the implementation of title III. EPA recognizes that resources are limited on Indian lands, but believes that basic emergency planning can be accomplished with minimal resources. To satisfy basic requirements, tribal authorities must develop emergency plans and establish a mechanism to disseminate to the public information submitted by facilities under the reporting requirements of the plan. The Tribe is not required to develop the capability to respond to all releases of hazardous material. In many cases, Tribes, like rural or small communities, will not be able to equip, train, and maintain a hazardous material response capability for significant releases. Nonetheless, Tribes can determine how they will deal with releases until assistance can be obtained.

One commenter asked whether EPA would phase in title III implementation on Indian lands and establish new deadlines for submitting MSDSs and emergency inventory forms and for preparing emergency plans. EPA is not establishing new regulatory deadlines in today's final rule. EPA does not believe that there is an apparent programmatic benefit to establishing new deadlines. It is imperative that facilities on Indian lands that have not complied with reporting provisions begin as soon as possible so that Tribes can assess their readiness to respond to chemical mishaps and to work with owners and operators of facilities to reduce the potential of their occurrence. Communities, including Indian Tribes, therefore, should not delay in identifying and addressing these risks.

In the March 29, 1989 NPRM, EPA noted that any Tribe may enter into a cooperative agreement with another Tribe, or with the State(s) within which its lands are located to achieve a workable title III program. EPA also solicited comment on whether it should institute a formal procedural mechanism for such cooperative agreements. Nine commenters supported instituting a mechanism for cooperative agreements and recommended that public notice of such agreements be published. EPA agrees that a formal procedural mechanism for cooperative agreements would be useful to facilitate the exchange of information. The final rule, therefore, requires any Tribe that has entered into a cooperative agreement with a State, to submit a copy of the signed agreement to the EPA Regional office in the EPA Region where the Tribe and State are located, within 60 days of signing the agreement. EPA will annually publish a list of any new agreements and copies of the agreements will be available from EPA Regional offices.

Another commenter requested that EPA define "cooperative agreement" and provide specific guidance for the development of such agreements. For purposes of title III, cooperative agreement is any formal arrangement reached by States and Tribes that meets the needs of the parties to the agreement and is entered into with full knowledge and consent. Each agreement is expected to be unique and to address the specific needs of the parties. Tribes may tailor cooperative agreements to authorize a State to implement provisions of the title III program that the Tribe is not prepared to undertake. EPA will endeavor to provide technical assistance on developing cooperative agreements to Tribes and States, but neither this assistance nor the publication of lists of parties to cooperative agreements should be considered an approval process. Tribes, like States, may enter into cooperative agreements without Federal oversight.

F. Miscellaneous Issues

Two commenters urged EPA to evaluate ways to minimize the paperwork burden. One commenter suggested that the timeframe for reporting status changes at facilities be changed from 90 to 180 days. Another commenter suggested that the option under section 311 to submit MSDSs instead of a list of chemicals should be eliminated. Section 311(d)(2) of SARA title III specifies the timeframe for reporting updates under section 311. The option to submit MSDSs or chemical lists is also specified in the statute. States and localities, however, are not prohibited from acting under authority of local law and developing requirements stipulating the submission of lists.

Several commenters requested exemptions from reporting requirements. One commenter requested an exemption from a hazardous chemical that remains on-site less than 90 days. Another commenter stated that a remote facility served solely by a volunteer fire department should be exempt from reporting requirements. EPA is not granting any additional reporting exemptions in today's final rule. EPA does not agree that a hazardous chemical on site for less than 90 days should be exempt from section 311 and 312 reporting requirements. It was the intent of Congress to provide the public with access to information on all hazardous chemicals present at facilities, without regard to the length of time they are on site. Similarly, EPA believes that facilities should be subject to reporting requirements regardless of location. Information about such facilities could be very useful in emergency response situations.

One commenter stated that the exemption from reporting for "articles" in sections 311 and 312 should also apply to section 302 reporting. EPA does not believe that Congress intended that there be such an exemption from the planning notification requirements under section 302.

Another commenter stated that small laboratories used for process analysis should be exempt from the reporting

requirements under sections 311 and 312. EPA agrees that such laboratories are exempt from section 311 and 312 reporting so long as they are exempt from the OSHA Hazard Communication Standards (see 52 FR 38347; October 15, 1987).

One commenter asserted that the rule should state that transporters should report releases to the National Response Center (NRC), which would notify the appropriate SERC, which would, in turn, notify the appropriate LEPC. Thus, transporters would not be required to notify SERCs and LEPCs directly. EPA does not agree that the NRC should make such notifications for transporters. The statute requires transporters to notify SERCs and LEPCs directly. The NRC is developing a computer link, however, that would facilitate direct notification of SERCs as well as EPA Regional offices of a release notification. When a link is fully operational, EPA will consider modifying today's regulation to allow the NRC's notification of the SERC to partially satisfy the reporting requirements under title III, section 304. Until such time, however, facilities and transporters must notify SERCs and LEPCs directly of a reportable release.

Several commenters requested that EPA consider using the metric designations required in the Omnibus Trade Act of 1988 because all government agencies will be required to use the metric system in 1992. EPA agrees with the commenters that metric designations are important and has included metric units in today's final rule.

Five commenters asked EPA to require that States adopt uniform reporting thresholds. EPA cannot require States to adopt uniform reporting thresholds because title III does not preempt State and local laws. EPA considered State laws in making its decision on final thresholds and encourages States to consider the burden imposed on industry when developing their laws. Nonetheless, States are free to tailor their reporting requirements to their unique concerns.

One commenter requested that, for purposes of section 304 reporting, the term facility should include vessels. EPA cannot agree because to the extent that vessels are not "stationary items" or "motor vehicles, rolling stock [or] aircraft," vessels are outside the statutory scope of the title III definition of facility. Releases of hazardous substances from vessels, however, may require notification under CERCLA section 103 and/or the Clean Water Act.

V. Regulatory Analyses

A. Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the order and to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Under E.O. 12291, a "major" rule is one that is likely to result in (1) an annual cost to the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprise to compete in domestic or export markets.

The RIA in support of this rulemaking shows that today's regulation is non-major because it results in an annual cost to the economy of between $58 and $72 million and does not cause any of the other adverse effects listed above. The RIA, formally entitled "Regulatory Impact Analysis in Support of a Final Reporting Threshold under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act," is available for inspection in the docket supporting this rulemaking. The RIA describes the steps used to estimate the total number of facilities affected by the regulation, the cost of the regulation on a per-facility and national basis, the estimated benefits of the regulation, and any potential economic impacts of the regulation. This section briefly discusses the findings of the RIA.

1. Number of Affected Facilities and Covered Chemicals

As discussed above, EPA reviewed data on chemical usage and storage available from several States and cities. The databases developed by the Los Angeles City Fire Department and by New Jersey's Right-to-Know program were used in the RIA to estimate the number of facilities, the number of chemicals, and the number of pounds of chemicals that would be reported under the different reporting threshold options. The data include information on a cross-section of facilities representing a large number of industries in both the manufacturing and non-manufacturing sectors, contain the largest number of individual observations relative to other available data, and are representative of a broad list of chemicals similar to those subject ot the OSHA HCS regulations.

EPA acknowledges that there is a certain degree of imprecision associated with extrapolations from regional data. For example, facilities in the City of Los Angeles may not be representative of facilities in other parts of the nation. To help compensate for this limitation, two separate regional databases were evaluated. The Agency extrapolated both data sets on an SIC code basis. That is, facilities in each SIC code were examined separately to estimate the number of facilities that would be likely to report at each threshold level and the number of chemicals likely to be reported. When the analysis was performed on an individual SIC code basis, the national estimates were derived separately for each database by aggregating the individual SIC code estimates. The extrapolation methodology, however, does assume that facilities in the City of Los Angeles and New Jersey in a particular SIC code are similar to facilities in other parts of the nation in that SIC code.

2. Estimated National Cost of the Alternative Thresholds

EPA has estimated the potential cost of each of the alternative reporting thresholds. The methodology follows the same general procedures that were used in support of the October 15, 1987 final rule, and uses the same unit cost estimates developed under that rulemaking. Only two adaptations have been made in the analysis. First, SERCs, LEPCs, and fire departments are assumed to have taken the steps to familiarize themselves with the reporting requirements, to have established recordkeeping systems, and to have developed any required public notices about the availability of data. Second, facilities currently subject to the rule are assumed to have developed the necessary recordkeeping and reporting systems.

The unit costs for manufacturers are assumed to vary by facility size, reflecting the greater number of hazardous chemicals present at larger facilities and the potential for more elaborate decision-making processes. Unit costs for non-manufacturers are assumed to be the same as those for small manufacturers (employment of less than 20). This assumption is based on the preponderance of small facilities in the non-manufacturing sector (about 80 percent of all non-manufacturing facilities employ fewer than 20 employees), as well as the small average number of hazardous chemicals located at such facilities.

Total costs are estimated in each year, using cost estimates expressed in 1987 dollars (that is, the analysis does not include inflation). The table below shows the total estimated expenditure in each year (in 1987 dollars), as well as

the present value costs and the equivalent annual cost for each of the six options.

SUMMARY OF ESTIMATED TOTAL COSTS, FISCAL YEARS 1990-2000

[Million dollars]

Option	Fiscal year		Present value costs	Equivalent annual costs
	1990 costs	1991 costs		
1: 50,000 lbs.	16-23	67-87	419-505	49-80
2: 10,000/500 or TPQ	3-14	55-74	457-606	54-72
3: 10,000/500/500 or TPQ	61-62	144-184	706-891	83-107
4: 2,000/500/500 or TPQ	81-97	188-247	800-1,066	102-126
5: 500 for all chemicals	113-136	294-336	905-1,326	116-158
6: zero for all chemicals	149	303	1,295	153

The final reporting threshold will be in effect beginning on October 17, 1990 for all sectors of industry. Because initial compliance with the requirements of section 311 was completed by April 1, 1989, only ongoing activities under section 311, such as submittal of revised or new MSDSs, are included in the cost calculations. Most of the costs presented in the table, therefore, are attributable to filing and processing the section 312 Tier I and Tier II forms.

B. Regulatory Flexibility Act

1. Purpose

Under the Regulatory Flexibility Act, whenever an agency issues a proposed or final rule, it must prepare and make available a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), unless the agency's administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Chapters 5 of the RIA supporting this rule addresses the impact of this rule on small businesses.

2. Certification

On the basis of the analysis contained in the RIA with respect to the impact of this rule on small entities, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis.

List of Subjects

40 CFR Part 350

Chemicals, Confidential business information, Hazardous substances, Superfund, Intergovernmental relations.

40 CFR Part 355

Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 370

Chemicals, Hazardous substances, Superfund, Reporting and recordkeeping requirements.

40 CFR Part 372

Chemicals, Reporting, and recordkeeping requirements.

Dated: July 9, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the Preamble, parts 350, 355, 370, and 372 of subtitle J of title 40 of the Code of Federal Regulations are amended as follows:

PART 350—TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION AND TRADE SECRET DISCLOSURE TO HEALTH PROFESSIONALS

1. The authority citation for part 350 continues to read as follows:

Authority: 42 U.S.C. 11042, 11043, and 11048.

2. Section 350.1 is amended by adding the following definitions:

§ 350.1 Definitions.

* * * * *

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

* * * * *

Commission means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *commission* means the emergency response commission for the tribe under whose jurisdiction the facility is located. In the absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

* * * * *

Facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). *Facility* shall include man-made structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

* * * * *

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

* * * * *

Local emergency planning committee or *committee* means the local emergency

planning committee appointed by the emergency response commission.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11003, 11004, 11045, 11048, 11049.

4. Section 355.20 is amended by revising the definitions of *commission* and *facility* and by adding the definitions, *Chief Executive Officer of the tribe, committee, Indian Country, Indian tribe,* and *state* to read as follows:

§ 355.20 Definitions.

* * * * *

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

Commission means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *commission* means the emergency response commission for the tribe under whose jurisdiction the facility is located. In absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

Committee or Local emergency planning committee means the local emergency planning committee appointed by the emergency response commission.

* * * * *

Facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). *Facility* shall include manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdictions and Indian Country.

* * * * *

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

5. The authority citation for part 370 continues to read as follows:

Authority: 42 U.S.C. 11011, 11012, 11024, 11025, 11028, 11029.

6. Section 370.2 is amended by revising the definitions of *facility, commission, Committee,* and *State* and by adding the definitions, *chief Executive Officer of the tribe, Indian Country,* and *Indian tribe* to read as follows:

§ 370.2 Definitions.

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

Commission means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *commission* means the emergency response commission for the Tribe under whose jurisdiction the facility is located. In absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

Committee or *local emergency planning committee* means the local emergency planning committee appointed by the emergency response commission.

* * * * *

Facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). *Facility* shall include manmade structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the border of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

* * * * *

State means any State of United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

* * * * *

7. Section 370.20 is revised to read as follows:

§ 370.20 Applicability.

(a) *General.* The requirements of this subpart apply to 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 regulations promulgated under that Act.

(b) *Minimum threshold levels.* Except as provided in paragraph (b)(3) of this section, the minimum threshold level for reporting under this subpart shall be as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of a facility subject to this subpart shall submit an MSDS on or before October 17, 1990 (or within three months after the facility first becomes subject to this subpart), for all hazardous chemicals present at the facility at any one time in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.) and for all extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs.—approximately 55 gallons) or the TPQ, whichever is lower.

(2) The owner or operator of a facility subject to this subpart shall submit the Tier I form (or Tier II form) on or before March 1, 1991 (or March 1 of the first year after the facility first becomes a subject to this subpart), and annually thereafter, covering all hazardous chemicals present at a facility at any one time during the preceding calendar year in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.) and extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs.—approximately 55 gallons) or the TPQ, whichever is lower.

(3) The minimum threshold for reporting in response to requests for submission of an MSDS or a Tier II form under §§ 370.21(d) and 370.25(c) of this part shall be zero.

8. Section 370.28 is revised to read as follows:

§ 370.28 Mixtures.

(a) *Basic reporting.* The owner or operator of a facility may meet the reporting requirements of §§ 370.21 (MSDS reporting) and 370.25 (inventory form reporting) of this subpart for a hazardous chemical that is a mixture of hazardous chemicals by:

(1) Providing the required information on each component in the mixture which is a hazardous chemical; or

(2) Providing the required information on the mixture itself, so long as the reporting of mixtures by a facility under § 370.25 is in the same manner as under § 370.21, where practicable.

(b) *Calculation of the quantity.* (1) If the reporting is on each component of the mixture which is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) shall be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture.

(2) If the reporting is on the mixture itself, the total quantity of the mixture shall be reported.

(c) *Aggregation of extremely hazardous substances.* (1) To determine whether the reporting threshold for an extremely hazardous substance has been equaled or exceeded, the owner or operator of a facility shall aggregate the following:

(i) The quantity of the extremely hazardous substance present as a component in all mixtures at the facility, and

(ii) All other quantities of the extremely hazardous substance present at the facility.

If the aggregate quantity of an extremely hazardous substance equals or exceeds the reporting threshold, the substance shall be reported.

(2) If extremely hazardous substances are being reported and are components of a mixture at a facility, the owner or operator of a facility may report either:

(i) The mixture, as a whole, even if the total quantity of the mixture is below its reporting threshold; or

(ii) The extremely hazardous substance component(s) of the mixture.

9. Section 370.40 is revised to read as follows:

§ 370.40 Tier I emergency and hazardous chemical inventory form.

(a) The form set out in paragraph (b) of this section shall be completed and submitted as required in § 370.25(a) of this part. In lieu of the form set out in paragraph (b) of this section, the facility owner or operator may submit a State or local form that contains identical content.

(b) Tier I Emergency and Hazardous Chemical Inventory Form.

BILLING CODE 6560-50-M

Revised June 1990

Page ____ of ____ pages
Form Approved OMB No. 2050-0072

Tier One

EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY

Aggregate Information by Hazard Type

FOR OFFICIAL USE ONLY: ID # | Date Received

Important: Read instructions before completing form

Reporting Period From January 1 to December 31, 19____

Facility Identification

Name _____
Street _____
City _____ County _____ State _____ Zip _____

SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

Emergency Contacts

Name _____
Title _____
Phone ( ) _____
24 Hour Phone ( ) _____

Name _____
Title _____
Phone ( ) _____
24 Hour Phone ( ) _____

Owner/Operator

Name _____
Mail Address _____
Phone ( ) _____

☐ Check if information below is identical to the information submitted last year.

☐ Check if site plan is attached

Physical Hazards

Hazard Type	Max Amount*	Average Daily Amount*	Number of Days On-Site	General Location
Fire	☐☐	☐☐	☐☐☐	
Sudden Release of Pressure	☐☐	☐☐	☐☐☐	
Reactivity	☐☐	☐☐	☐☐☐	

Health Hazards

Immediate (acute)	☐☐	☐☐	☐☐☐	
Delayed (Chronic)	☐☐	☐☐	☐☐☐	

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through _____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete.

Name and official title of owner/operator OR owner/operator's authorized representative

Signature _____ Date signed _____

* **Reporting Ranges**

Range Code	Weight Range in Pounds From...	To...
01	0	99
02	100	999
03	1000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

BILLING CODE 6560-50-C

Tier One Instructions

General Information

Submission of this form is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Title III, Section 312, Public Law 99-499, codified at 42 U.S.C. § 11022.

Certification

The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier I submission is true, accurate, and complete. On the Tier I form, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages in the submission, including all attachments.

The purpose of this form is to provide State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the past year.

You must provide all information requested on this form.

You may substitute the Tier Two form for this Tier One form. (The Tier Two form provides detailed information and must be submitted in response to a specific request from State or local officials.)

Who Must Submit This Form

Section 312 of Title III requires that the owner or operator of a facility submit this form if, under regulations implementing the Occupational Safety and Health Act of 1970, the owner or operator is required to prepare or have available Material Safety Data Sheets (MSDS) for hazardous chemicals present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at § 1910.1200.

This form does not have to be submitted if all of the chemicals located at your facility are excluded under Section 311(e) of Title III or if the weight of each covered hazardous chemical never equals or exceeds the minimum threshold listed in Title III Section 312 during the reporting year.

What Chemicals Are Included

You must report the information required on this form for every hazardous chemical for which you are required to prepare or have available an MSDS under the Hazard Communication Standard, unless the chemicals are excluded under Section 311(e) of Title III or they are below the minimum reporting thresholds.

What Chemicals Are Excluded

Section 311(e) of Title III excludes the following substances:

(i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(ii) 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;

(iii) Any substance to the exent 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.

(iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(v) 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.

OSHA regulations, Section 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

Reporting Thresholds

Minimum thresholds have been established for Tier One/Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower;

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 3 of these instructions.

When To Submit This Form

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit either Tier One or Tier Two Forms by March 1.

Where to Submit This Form

Send one completed inventory form to each of the following organizations:

1. Your State emergency response commission.
2. Your local emergency planning committee.
3. The fire department with jurisdiction over your facility.

Penalties

Any owner or operator of a facility who fails to submit or supplies false Tier One information shall be liable to the United States for a civil penalty of up to $25,000 for each such violation. Each day a violation continues shall constitute a separate violation. In addition, any citizen may commence a civil action on his or her own behalf against any owner or operator who fails to submit Tier One information.

Instructions

Please Read These Instructions Carefully. Print or Type all Responses

You may use the Tier Two form as a worksheet for completing Tier One. Filling in the Tier Two chemical information section should help you assemble your Tier One responses.

If your responses require more than one page, fill in the page number at the top of the form.

Reporting Period

Enter the appropriate calendar year, beginning January 1 and ending December 31.

Facility Identification

Enter the complete name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that described the physical location of your facility (e.g., longitude and latitude). Include city, county, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number of your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

Owner/Operator

Enter the owner's or operator's full name, mailing address, and phone number.

Emergency Contact

Enter the name, title, and work phone number of at least one local person or office that can act as a referral if emergency responders need assistance

in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. This requirement is mandatory. The facility must make some arrangement to ensure that a 24 hour contact is available.

Identical Information

Check the box indicating identical information, located below the emergency contacts on the Tier One form, if the current information being reported is identical to that submitted last year. Chemical descriptions, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

Physical and Health Hazards

Descriptions, Amounts, and Locations This section requires aggregate information on chemicals by hazard categories as defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200. For each hazard type, indicate the total amounts and general locations of all applicable chemicals present at your facility during the past year.

HAZARD CATEGORY COMPARISON FOR REPORTING UNDER SECTIONS 311 and 312

EPA's hazard categories	OSHA's hazard categories
Fire Hazard	Flammable
	Combustion Liquid
	Pyrophoric
	Oxidizer
Sudden Release of Pressure.	Explosive
	Compressed Gas
Reactive	Unstable Reactive
	Organic Peroxide
	Water Reactive
Immediate (Acute) Health Hazards.	Highly Toxic
	Toxic
	Irritant
	Sensitizer
	Corrosive
	Other hazardous chemicals with an adverse effect with short term exposure.
Delayed (Chronic) Health Hazard.	Carcinogens
	Other hazardous chemicals with an adverse effect with long term exposure.

• What units should I use?

Calculate all amounts as *weight in pounds*. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

Instructions

Please Read These Instructions Carefully. Print or Type all Responses

•What about mixtures?

If a chemical is part of a mixture, *you have the option* of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous solution weighs 100 lbs. but is composed of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture of 5 lbs. of the hazardous chemical).

The option used for each mixture must be consistent with the option used in your Section 311 reporting.

Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated for purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold has been reached for an EHS, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHs.

•Where do I count a chemical that is a fire and reactive physical hazard and an immediate (acute) health hazard?

Add the chemical's weight to your totals for all three hazard categories and include its location in all three categories. Many chemicals fall into more than one hazard category.

Maximum Amount

The amounts of chemicals you have on hand may vary throughout the year. The peak weights—greatest single-day weights during the year—are added together in this column to determine the maximum weight for each hazard type. Since the peaks for different chemicals often occur on different days, this maximum amount will seem artificially high.

To complete this and the following sections, you may choose to use the Tier Two form as a worksheet.

To determine the Maximum Amount:

1. List all of your reportable hazardous chemicals individually.

2. For each chemical . . .

a. Indicate all physical and health hazards that the chemical presents. Include all chemicals, even if they are present for only a short period of time during the year.

b. Estimate the maximum weight in pounds that was present at your facility on any single day of the reporting period.

3. For each hazard type—beginning with Fire and repeating for all physical and health hazard types . . .

a. Add the maximum weights of all chemicals you indicated as the particular hazard type.

b. Look at the Reporting Ranges at the bottom of the Tier One form. Find the appropriate range value code.

c. Enter this range value as the Maximum Amount.

Example: You are using the Tier Two form as a worksheet and have listed raw weights in pounds for each of your hazardous chemicals. You have marked an X in the immediate (acute) hazard column for phenol and sulfuric acid. The maximum amount raw weight you listed were 10,000 lbs. and 500 lbs. respectively. You add these together to reach a total of 10,500 lbs. Then you look at the Reporting Range at the bottom of your Tier One form and find that the value of 04 corresponds to 10,500 lbs. Enter 04 as your Maximum Amount for Immediate (acure) hazards materials.

You also marked an X in the Fire hazard box for phenol. When you calculate your Maximum Amount totals for fire hazards, add the 10,000 lb. weight again.

Average Daily Amount

This column should represent the average daily amount of chemicals *of each hazard type* that were present at or above applicable thresholds at your facility at any point during the year.

To determine this amount:

1. List all of your reportable hazardous chemicals individually (same as for Maximum Amount).

2. For each chemical . . .

a. Indicate all physical and health hazards that the chemical presents (same as for Maximum Amount).

b. Estimate the average weight in pounds that was present at your facility throughout the year. To do this, total all daily weights and divide by the number of days the chemical was present on the site.

3. For each hazard type—beginning with Fire and repeating for all physical and health hazards . . .

a. Add the average weights of all chemicals you indicated for the particular hazard type.

b. Look at the Reporting Ranges at the bottom of the Tier One form. Find the appropriate range value code.

c. Enter this range value as the Average Daily Amount.

Instructions

Please Read These Instructions Carefully. Print or Type all Responses

Example: You are using the Tier Two form, and have marked an X in the immediate (acute) hazard column for nicotine and phenol. Nicotine is present at your facility 100 days during the year, and the sum of the daily weights is 100,000 lbs. By dividing 100,000 lbs. by 100 days on-site, you calculate an Average Daily Amount of 1,000 lbs. for nicotine. Phenol is present at your facility 50 days during the year, and the sum of the daily weights is 10,000 lbs. By dividing 10,000 lbs. by 50 days on-site, you calculate an Average Daily Amount of 200 lbs. for phenol. You then add the two average daily amounts together to reach a total of 1,200 lbs. Then you look at the Reporting Range on your Tier One form and find that the value 03 corresponds to 1,200 lbs. Enter 03 as your Average Daily Amount for Immediate (acute) Hazard.

You also marked an X in the Fire hazard column for phenol. When you calculate your Average Daily Amount for fire hazards, use the 200 lb. weight again.

Number of Days On-Site

Enter the greatest number of days that a single chemical within that hazard category was present on-site.

Example: At your facility, nicotine is present for 100 days and phosgene is present for 150 days. Enter 150 in the space provided.

General Location

Enter the general location within your facility where each hazard may be found. General locations should include the names or identifications of buildings, tank fields, lots, sheds, or other such areas.

For each hazard type, list the locations of all applicable chemicals. As an alternative you may also attach a site plan and list the site coordinates related to the appropriate locations. If you do so, check the Site Plan box.

Example: On your worksheet you have marked an X in the Fire hazard column for acetone and butane. You noted that these are kept in steel drums in Room C of the Main Building, and in pressurized cylinders in Storage Shed 13, respectively. You could enter Main Building and Storage Shed 13 as the General Locations of your fire hazards. However, you choose to attach a site plan and list coordinates. Check the Site Plan box at the top of the column and enter site coordinates for the Main Building and Storage Shed 13 under General Locations.

If you need more space to list locations, attach an additional Tier One form and continue your list on the proper line. Number all pages.

Certification

Instructions for this section are included on page one of these instructions.

10. Section 370.41 is revised to read as follows:

§ 370.41 Tier II emergency and hazardous chemical inventory form.

(a) The form set out in paragraph (b) of this section shall be completed and submitted as required in § 370.25 of this part. In lieu of the form set out in paragraph (b) of this section, the facility owner or operator may submit a State or local form that contains identical content.

(b) Tier II Emergency and Hazardous Chemical Inventory Form.

BILLING CODE 6560-50-M

Revised June 1990

Page ____ of ____ pages
Form Approved OMB No. 2050-0072

Tier Two
EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY

Specific Information by Chemical

Facility Identification

Name ____
Street ____
City ____ County ____ State ____ Zip ____
SIC Code ____ Dun & Brad Number ____

FOR OFFICIAL USE ONLY — ID # ____ Date Received ____

Owner/Operator Name

Name ____ Phone ( )
Mail Address ____

Emergency Contact

Name ____ Title ____
Phone ( ) 24 Hr. Phone ( )
Name ____ Title ____
Phone ( ) 24 Hr. Phone ( )

Important: Read all instructions before completing form

Reporting Period From January 1 to December 31, 19____

☐ Check if information below is identical to the information submitted last year.

Chemical Description

CAS ____ Trade Secret ☐
Chem. Name ____
Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS
EHS Name ____

Physical and Health Hazards
(check all that apply)

☐ Fire
☐ Sudden Release of Pressure
☐ Reactivity
☐ Immediate (acute)
☐ Delayed (chronic)

Inventory

☐☐ Max. Daily Amount (code)
☐☐ Avg. Daily Amount (code)
☐☐☐ No. of Days On-site (days)

Storage Codes and Locations (Non-Confidential)

Container Type | Temperature | Pressure | *Storage Locations*

Optional ☐

CAS ____ Trade Secret ☐
Chem. Name ____
Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS
EHS Name ____

☐ Fire
☐ Sudden Release of Pressure
☐ Reactivity
☐ Immediate (acute)
☐ Delayed (chronic)

☐☐ Max. Daily Amount (code)
☐☐ Avg. Daily Amount (code)
☐☐☐ No. of Days On-site (days)

Container Type | Temperature | Pressure | *Storage Locations*

Optional ☐

CAS ____ Trade Secret ☐
Chem. Name ____
Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS
EHS Name ____

☐ Fire
☐ Sudden Release of Pressure
☐ Reactivity
☐ Immediate (acute)
☐ Delayed (chronic)

☐☐ Max. Daily Amount (code)
☐☐ Avg. Daily Amount (code)
☐☐☐ No. of Days On-site (days)

Container Type | Temperature | Pressure | *Storage Locations*

Optional ☐

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through ____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner/operator OR owner/operator's authorized representative ____ Signature ____ Date signed ____

Optional Attachments

☐ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations
☐ I have attached a description of dikes and other safeguard measures

BILLING CODE 6560-50-C

Page _____ of _____ pages
Form Approved OMB No. 2050-0072

Tier Two
EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY
Specific Information by Chemical

Facility Identification

Name _____
Street _____
City _____ County _____ State _____ Zip _____
SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

FOR OFFICIAL USE ONLY
ID #
Date Received

Owner/Operator Name

Name _____ Phone ( )
Mail Address _____

Emergency Contact

Name _____ Title _____
Phone ( ) 24 Hr. Phone ( )
Name _____ Title _____
Phone ( ) 24 Hr. Phone ( )

Important: Read all instructions before completing form

Reporting Period From January 1 to December 31, 19____

☐ Check if information below is identical to the information submitted last year.

Confidential Location Information Sheet

CAS # / Chem. Name	Container Type	Pressure	Temperature	Storage Codes and Locations (Confidential) Storage Locations	Daily Max
CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name					☐
CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name					☐
CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name					☐

Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through _____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner/operator OR owner/operator's authorized representative _____ Signature _____ Date signed _____

Optional Attachments

☐ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations
☐ I have attached a description of dikes and other safeguard measures

Tier Two Instructions

General Information

Submission of this Tier Two form (when requested) is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312, Public Law 99-499, codified at 42 U.S.C. Section 11022. The purpose of this Tier Two form is to provide State and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

Certification

The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier Two submission is true, accurate, and complete. On the first page of the Tier Two report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Non-Confidential Information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain an original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first page of the submission and the total number of pages in the submission.

You Must Provide All Information Requested on This Form to Fulfill Tier Two Reporting Requirements

This form may also be used as a worksheet for completing the Tier One form or may be submitted in place of the Tier One form.

Who Must Submit This Form

Section 312 of Title III requires that the owner or operator of a facility submit this Tier Two form if so requested by a State emergency response commission, a local emergency planning committee, or a fire department with jurisdiction over the facility.

This request may apply to the owner or operator of any facility that is required, under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at § 1910.1200.

This form does not have to be submitted if all of the chemicals located at your facility are excluded under Section 311(e) of Title III.

What Chemicals are Included

If you are submitting Tier Two forms in lieu of Tier One, you must report the required information on this Tier Two form for each hazardous chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below), unless the chemicals are excluded under Section 311(e) of Title III. Hazardous chemicals are any substance for which your facility must maintain an MSDS under OSHA's Hazard Communication Standard.

If you elect to submit Tier One rather than Tier Two, you may still be required to submit Tier Two information upon request.

What Chemicals are Excluded

Section 311(e) of Title III excludes the following substances:

(i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(ii) 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;

(iii) 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;

(iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(v) 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.

OSHA regulations, § 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

Reporting Thresholds

Minimum thresholds have been established for Tier One/Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower;

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 2 of these instructions.

A requesting official may limit the responses required under Tier Two by specifying particular chemicals or groups of chemicals. Such requests apply to hazardous chemicals regardless of established thresholds.

Instructions

Please read these instructions carefully. Print or Type all Responses

When to Submit This Form

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit either Tier One or Tier Two forms by March 1.

If you choose to submit Tier One, rather than Tier Two, be aware that you may have to submit Tier Two information later, upon request of an authorized official. You must submit the Tier Two form within 30 days of receipt of a written request.

Where to Submit This Form

Send either a completed Tier One form or Tier Two form(s) to each of the following organizations:

1. Your State Emergency Response Commission.

2. Your Local Emergency Planning Committee.

3. The fire department with jurisdiction over your facility.

If a Tier Two form is submitted in response to a request, send the completed form to the requesting agency.

Penalties

Any owner or operator who violates any Tier Two reporting requirements shall be liable to the United States for a civil penalty of up to $25,000 for each such violation. Each day a violation continues shall constitute a separate violation.

If your Tier Two responses require more than one page use additional forms and fill in the page number at the top of the form.

Reporting Period

Enter the appropriate calendar year, beginning January 1 and ending December 31.

Facility Identification

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, county, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

Owner/Operator

Enter the owner's or operator's full name, mailing address, and phone number.

Emergency Contact

Enter the name, title, and work phone number at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. The requirement is mandatory. The facility must make some arrangement to ensure a 24 hour contact is available.

Identical Information

Check the box indicating indentical information, located below the emergency contacts on the Tier Two form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

Chemical Information: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

If you choose to indicate that all of the information on a specific hazardous chemical is identical to that submitted last year, check the appropriate optional box provided at the right side of the storage codes and locations on the Tier Two form. Chemical descriptions, hazards, amounts, and locations must be provided even if the information is identical to that submitted last year.

- What units should I use?

Calculated all amounts as *weight in pounds*. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

If a chemical is part of a mixture, *you have the option* of reporting either the weight of the entire mixture or only the portion of the mixuture that is a particular hazardous chemcial (e.g., if a hazardous solution weights 100 lbs. but is composed of only 5% of a particular hazardous chemcial, you can indicate either 100 lbs. of the mixture *or* 5 lbs. of the chemical).

The option used for each mixture must be consistent with the option used in your Section 311 reporting.

Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated and purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold for an EHS has been reached, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHS.

Chemical Description

1. Enter the Chemical Abstract Service registry number (CAS). For mixtures, enter the CAS number of the mixture as a whole if it has been assigned a number distinct from its constituents. For a mixture that has no CAS number, leave this item blank or report the CAS numbers of as many constituent chemicals as possible.

If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic class or category that is structurally descriptive of the chemical (e.g., list toulene diisocyanate as organic isocyanate) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.

2. Enter the chemical name or common name of each hazardous chemical.

3. Check box for ALL applicable descriptors: pure or mixture; and solid, liquid, or gas; and whether the chemical is or contains an EHS.

4. If the chemical is a mixture containing an EHS, enter the chemical name of each EHS in the mixture.

Example: You have pure chlorine as on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS number. Then you check "pure" and "mix"—as well as "liquid" and "gas".

Physical and Health Hazards

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

HAZARD CATEGORY COMPENSATION FOR REPORTING UNDER SECTIONS 311 AND 312

EPA's hazard categories	OSHA's hazard categories
Fire Hazard	Flammable
	Combustion Liquid
	Pyrophoric
	Oxidizer
Sudden Release of Pressure.	Explosive
	Compressed Gas
Reactive	Unstable Reactive
	Organic Peroxide
	Water Reactive
Immediate (Acute) Health Hazards.	Highly Toxic
	Toxic
	Irritant
	Sensitizer
	Corrosive
	Other hazardous chemicals with an adverse effect with short term exposure
Delayed (Chronic) Health Hazard.	Carcinogens
	Other hazardous chemicals with an adverse effect with long term exposure

Maximum Amount

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.

2. Find the appropriate range value code in Table I.

3. Enter this range value as the Maximum Amount.

TABLE I—REPORTING RANGES

Range value	Weight range in pounds	
	From	To
01	0	99
02	100	999

TABLE I—REPORTING RANGES—Continued

Range value	Weight range in pounds	
	From	To
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

If you are using this form as a worksheet for completing Tier One, enter the actual weight in pounds in the shaded space below the response blocks. Do this for both Maximum Amount and Average Daily Amount.

Example: You received one large shipment of a solvent mixture last year. The shipment filled five 5,000-gallon storage tanks. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 gallons by 7.29 pounds per gallon to get a weight of 18,225 pounds.

Then you look at Table I and find that the range value 04 corresponds to 18,225. You enter 04 as the Maximum Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 18,255 in the shaded area.)

Average Daily Amount

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

To do this, total all daily weights and divide by the number of days the chemical was present on the site.

2. Find the appropriate range value in Table I.

3. Enter this range value as the Average Daily Amount.

Example: The 25,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on-site, you calculate an average daily amount of 14,400 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.

Then you look at Table I and find that the range value 04 corresponds to 10,500. You enter 04 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 in the shaded area.)

Number of Days On-Site

Enter the number of days that the hazardous chemical was found on-site.

Example: The solvent composed of 10% benzene was present for 315 days at your facility. Enter 315 in the space provided.

Storage Codes and Storage Locations

List all non-confidential chemical locations in this column, along with storage types/conditions associated with each location. Please note that a particular chemical may be located in several places around the facility. Each row of boxes followed by a line represents a unique location for the same chemical.

Storage Codes: Indicate the types and conditions of storage present.

a. *Look at Table II.* For each location, find the appropriate storage type and enter the corresponding code in the first box.

b. *Look at Table III.* For each location, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.

TABLE II—STORAGE TYPES

Codes	Types of storage
A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or non-metallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

TABLE III—TEMPERATURE AND PRESSURE CONDITIONS

Codes	Storage conditions
	(Pressure)
1	Ambient pressure
2	Greater than ambient pressure
3	Less than ambient pressure
	(Temperature)
4	Ambient temperature
5	Greater than ambient temperature
6	Less than ambient temperature but not cryogenic
7	Cryogenic conditions

Example: The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that the code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C 1 6

Storage Locations: Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

a. *A site plan* with site coordinates indicated for buildings, lots, areas, etc. throughout your facility.

b. *A list of site coordinate abbreviations* that correspond to buildings, lots, areas, etc. throughout your facility.

c. *A description of dikes and other safeguard measures* for storage locations throughout your facility.

Example: You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G–2, tank field 10 = B–6. Fill in the Storage Location as follows:

B–6 [Tank 2] G–2 [Main room]

Confidential Information

Under Title III. Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public. If you choose to do so:

- Enter the word "confidential" in the Non-Confidential Location section of the Tier Two form on the first line of the storage locations.
- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.
- Enter the appropriate location and storage information, as described above for non-confidential locations.
- Attach the Tier Two Confidential Location Information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

Certification

Instructions for this section are included on page one of these instructions.

9. Section 370.40 is revised to read as follows:

§ 370.40 Tier I emergency and hazardous chemical inventory form.

PART 372—TOXIC CHEMICAL RELEASE REPORTING; COMMUNITY RIGHT-TO-KNOW

11. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013, 11028.

12. Section 372.3 is amended by adding definitions to read as follows:

§ 372.3 Definitions.

* * * * *

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

* * * * *

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and includng rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

* * * * *

Indian tribe means those tribes federally recognized by the Secretary of the Interior.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

* * * * *

13. Section 372.30 is amended by revising paragraph (a) to read as follows:

§ 372.30 Reporting requirements and schedule for reporting.

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350–1) in accordance with subpart E. If the covered facility is located in Indian Country, the facility shall submit a completed EPA Form R as described above to EPA and the official designated by the Chief Executive Officer of the applicable Indian tribe, unless the tribe has entered into a cooperative agreement with a State, in which case, the facility shall submit the completed EPA Form R to the receiving entity designated in the cooperative agreement.

* * * * *

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