

Chapter 31—Incinerators, Sections 3101 through 3121;

Chapter 32—Miscellaneous Units, Sections 3201, 3203, 3205, 3207 (except 3207.C.2);

Chapter 33—Groundwater Protection, Sections 3301 through 3321, 3322 (except 3322.D), 3323, 3325;

Chapter 35—Closure and Post-Closure, Sections 3501 through 3505, 3507 (except 3507.B), 3509 through 3519, 3521 (except 3521.A.3), 3523 through 3527;

Chapter 37—Financial Requirements 3701, 3703, 3705 (except the last sentence in 3705.D), 3707 through 3719;

Chapter 38—Universal Wastes, Sections 3801 through 3811, 3813, (except “Mercury-containing Lamp”), 3815 through 3833, 3835 (except the phrase “other than to those OECD countries * * * requirements of LAC 33:V.Chapter 11.Subchapter B.”), 3837 through 3855, 3857 (except the phrase “other than to those OECD countries * * * requirements of LAC 33:V.Chapter 11.Subchapter B.”), 3859 through 3869, 3871.A introductory paragraph (except the phrase “other than to those OECD countries * * * requirements of LAC 33:V.Chapter 11.Subchapter B”), 3871.A.1–2, 3873 through 3877, 3879 (except 3879.B), 3881, 3883;

Chapter 40—Used Oil, Sections 4001 through 4093;

Chapter 41—Recyclable Materials, Sections 4101, 4105 (except 4105.A.1.a.i and ii, 4105.A.4), 4139, 4141, 4143 (except the word “and” at end of 4143.B.4, 4143.B.5), 4145;

Chapter 42—Conditional Exemption for Low-Level Mixed Waste Storage and Disposal, Sections 4201 through 4243;

Chapter 43—Interim Status, Sections 4301.A, 4301.B (June 1995), 4301.B, 4301.C (June 1995), 4301.C –I, 4302 through 4371, 4373 (except the last two sentences “The administrative authority * * * as demonstrated in accordance with LAC 33:I.Chapter 13.” in 4373.K.1), 4375, 4377, 4379 (except 4379.B), 4381 through 4387, 4389 (except 4389.C), 4391 through 4397, 4399 (except 4399.A.6.i), 4401 through 4413, 4417 through 4456, 4457.A (except 4457.A.2), 4457.B (except the phrase: “If the owner or operator * * * he must” in the introductory paragraph), 4457.C, 4459 through 4474, 4475 (except the word “either” at the end of 4475.B introductory paragraph, the word “or” at the end of 4475.B.1, and 4475.B.2); 4476 through 4499, 4501 (except 4501.D.3), 4502 through 4703, 4705 (except the word “either” at the end of 4705.B introductory paragraph, the word “or” at the end of 4705.B.1, and 4705.B.2); 4707 through 4739;

Chapter 49—Lists of Hazardous Wastes, Sections 4901, 4903, 4907, 4909, 4911 through 4915, 4999 Appendices C through E;

Chapter 53—Military Munitions 5301 through 5311;

Louisiana Administrative Code, Title 33, Part VII, Solid Waste, as amended through June 20, 2000; Sections 301.B.1, 315.N, 521.H.

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70804–9095; Phone: (225) 342–5015; Web site: <http://doa.louisiana.gov/osr/lac/lac.htm>.

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[FR Doc. 2012–16825 Filed 7–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 370

[EPA–HQ–SFUND–2010–0763; FRL–9674–1]

RIN 2050–AG64

Hazardous Chemical Reporting: Revisions to the Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is adding some new data elements and revising some existing data elements on the Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II) under Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). State and local implementing agencies requested that EPA add the new data elements since the additional information would be useful to develop or modify their community emergency response plans. EPA is also revising some existing data elements in the chemical reporting section of the Tier II inventory form to make reporting easier for facilities and make the form more user-friendly for state and local officials.

DATES: This rule becomes effective on January 1, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2010–0763. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically <http://www.regulations.gov> or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is

(202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, Mail Code 5104A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002; telephone number: (202) 564–8019; fax number: (202) 564–2625; email address: jacob.sicy@epa.gov. You may also contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or (703) 412–9810 (in the Washington, DC metropolitan area). The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672 or (703) 412–3323 (in the Washington, DC metropolitan area). You may wish to visit the Office of Emergency Management (OEM) Internet Web site at www.epa.gov/emergencies/content/epcra.

SUPPLEMENTARY INFORMATION: Here are the contents of today’s preamble.

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I. General Information

A. Who is affected by this final rule?

Entities that would be affected by this final rule are those organizations and facilities subject to section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and its implementing regulations found in 40 CFR part 370. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 370. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What is the statutory authority for this final rule?

This final rule is being issued under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), (SARA). The Agency also relies on EPCRA section 328 for general rulemaking authority, as well as CAA section 112(r).

C. What is the background of this final rule?

Title III of SARA (EPCRA) establishes authorities for emergency planning and preparedness, emergency release notification reporting, community right-to-know reporting, and toxic chemical release reporting. It is intended to encourage State and local planning and preparedness for releases of extremely hazardous substances (EHSs) and to provide the public, local governments, fire departments, and other emergency response officials with information concerning potential chemical hazards and risks present in their communities. The implementing regulations for emergency planning, emergency release

notification, and the chemicals subject to these regulations are codified in 40 CFR part 355. The implementing regulations for community right-to-know reporting (or hazardous chemical reporting) are codified in 40 CFR part 370.

Under the emergency planning provisions of EPCRA section 302, codified in 40 CFR part 355, a facility is required to provide a one-time notification to the State Emergency Response Commission (SERC) and the local emergency planning committee (LEPC) if the facility has any EHSs present at the site in excess of its threshold planning quantity (TPQ). EHSs and their TPQs are listed in 40 CFR part 355, Appendix A and B. The emergency planning notification occurred approximately seven months after the law was passed for facilities that existed at that time. Any new facilities that became subject to the notification requirement after that date are required to comply as provided in 40 CFR part 355. Facilities that are currently covered by these regulations are required to report only changes occurring at the facility that may be relevant to emergency planning. LEPCs use this information obtained from facilities to develop emergency response plans, as required under EPCRA section 303. Section 303 also requires LEPCs to review these plans annually and to adjust them accordingly for changes that have occurred in their community.

On the other hand, the reporting requirements under the community right-to-know provisions of EPCRA sections 311 and 312 are on-going obligations. These requirements apply to owners and operators of facilities that are required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical defined under the Occupational Safety and Health Act (OSHA) Hazard Communication Standard (HCS). If the hazardous chemical is present at or above the reporting thresholds specified in 40 CFR part 370, the facility owner or operator is required to submit a MSDS or a list that contains the hazardous chemical under EPCRA section 311. Under EPCRA section 312, if a hazardous chemical is present at or above the reporting threshold specified in 40 CFR part 370, the facility owner or operator is required to submit an emergency and hazardous chemical inventory form (Tier I or Tier II) to the SERC, LEPC and the local fire department by March 1 annually.

As required by EPCRA section 312(g), EPA published two emergency and hazardous chemical inventory reporting forms, Tier I and Tier II. The Tier I

inventory form requires facilities to report minimum information on the general types and locations of hazardous chemicals present at the facility. The Tier II inventory form requires facilities to report specific information on the amounts and locations of hazardous chemicals present at the facility. The information required under Tier I and Tier II inventory forms can be found in 40 CFR 370.41 and 370.42. Although the forms and their instructions were removed from the code of federal regulations on November 3, 2008 (73 FR 65452), these inventory forms have been and will continue to be available on the EPA Web site at www.epa.gov/emergencies.

EPCRA section 312(a)(2) states that the owner or operator of a facility shall submit the Tier I inventory form annually by March 1 to the SERC, LEPC and the local fire department with jurisdiction over the facility. However, section 312(e) states that, upon request by their SERC, LEPC or the fire department with jurisdiction over the facility, the owner or operator of a facility shall submit the Tier II inventory form. Currently, all states require facilities to submit the federal Tier II inventory form or the state equivalent to the Tier II inventory reporting form. The Tier I inventory form is no longer accepted by any State.

In addition to the information obtained under EPCRA section 302, LEPCs use the information provided on the facility's annual Tier II inventory form to update the emergency response plan for their community. States were always given the flexibility to implement EPCRA, as appropriate, for their community to meet the goals of EPCRA, which is to prepare for and respond to releases of EHSs and to provide the public with information on potential chemical risks in their communities. This flexibility includes adding more chemicals, setting lower reporting thresholds and creating a reporting form or format that includes more information than the federal reporting requirements. Some States developed their own inventory reporting form, including electronic reporting and certification. Other States use the federal Tier II form or Tier 2 Submit, the electronic reporting software developed by EPA.

Although EPCRA lacks an explicit reference to Indian tribes or to the implementation of EPCRA on Indian lands, EPA published a final rule on July 26, 1990 (55 FR 30632) 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 EPCRA section 301, including the appointment of an emergency response commission for the Tribe. This tribal commission is responsible for carrying out the duties of the SERC, including 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. Any tribe may enter into a cooperative agreement with the state(s) within which its lands are located to allow the State to carry out EPCRA statutory requirements. Indian tribes may also enter into cooperative agreements with each other to achieve a workable EPCRA program.

D. Summary of Proposed Rule

As required under EPCRA section 312(g), EPA published the Tier I and Tier II inventory forms, which were revised in July 1990. EPA then published a proposed rule on June 8, 1998 (63 FR 31268) to streamline the EPCRA reporting requirements for facilities and to provide flexibility to state and local agencies to implement EPCRA as needed for their community. During the comment period of the 1998 rule, several state and local agencies suggested that EPA add some additional data elements to the Tier I and Tier II inventory forms which would improve emergency planning and response.

EPA also received suggestions from members of the National Association of SARA Title III Program Officials (NASTTPO) on improving the Tier II inventory form. NASTTPO members include SERCs, Tribal Emergency Response Commissions (TERCs), LEPCs and other emergency management and response officials. NASTTPO holds meetings twice a year at which EPA participates and provides regulatory and policy updates on EPCRA and other preparedness and prevention activities. During these meetings, these officials raised concern about the lack of certain information on the Tier II inventory form which hinders effective emergency planning and response. Some of the states already require some of this information on their state equivalent Tier II inventory form, but other states that use the federal Tier II inventory form requested that EPA include these data elements.

Based on these comments and requests, EPA proposed on August 8, 2011 (76 FR 48093) to add some new data elements to the facility identification and contact information sections of the Tier I and Tier II inventory forms, as well as to revise some existing data elements to the chemical reporting section of the Tier II inventory form. The comment period closed on October 7, 2011. EPA received 28 comments.¹

II. Summary of This Action

This final rule revises the Tier I and Tier II inventory forms by adding some mandatory data elements and some optional data elements in the facility identification and contact information sections of both forms.² This final rule is also revising some existing data elements in the chemical reporting section of the Tier II inventory form. Specifically:

- EPA proposed to add the facility phone number, latitude and longitude, number of full-time employees, and the facility identification numbers assigned under the toxic release inventory (TRI) program and the risk management program. This final rule is requiring facilities to report the latitude and longitude and the identification numbers assigned under TRI and the risk management program. Also, the Tier I and II inventory forms will require facilities to indicate if the location where the hazardous chemicals are stored is manned or unmanned. In addition, instead of requiring facilities to report the number of full-time employees, EPA is requiring facilities to report the maximum number of occupants that may be present at the facility at any one time. Finally, EPA decided not to require the facility phone number on the Tier I and Tier II inventory forms, but will include it as an optional data element on the revised inventory forms.

- EPA proposed to add contact information for the facility's parent company, facility emergency coordinator and contact information for the contents of the Tier I and Tier II inventory forms. In addition, EPA proposed to add the email addresses for the owner or operator of the facility and the emergency contact(s). This final rule is requiring facilities to provide contact

¹ Although EPA proposed to add some new data elements to the Tier I inventory form, all comments submitted addressed the Tier II inventory form since none of the states currently accept the Tier I inventory form.

² Even though none of the states currently accept the Tier I inventory form, EPA is still making changes to this form since EPCRA section 312 requires EPA to publish both Tier I and Tier II inventory forms.

information for the facility emergency coordinator, Tier I and Tier II contact information, as well as the email addresses of the owner or operator and emergency contact(s). In addition, facilities are required to provide facility emergency coordinator contact information for facilities subject to EPCRA section 302. However, after reviewing the comments, EPA decided not to require the parent company contact information on the Tier I and Tier II forms, but will include it as an optional data element on the revised inventory forms.

- This final rule is adding data elements to indicate if the facility is subject to EPCRA section 302 and if the facility is subject to Clean Air Act (CAA) section 112(r), also known as the Risk Management Program. Page one of the revised Tier II inventory form would also include the table of range codes and amounts for reporting maximum amount and average daily amount.³

- This final rule is adding separate data fields for reporting pure chemical and mixtures in the chemical reporting section of the Tier II inventory form, as proposed. In addition, this final rule requires facilities to provide a description for the storage types and conditions rather than reporting codes, as proposed.

- Finally, as suggested by some commenters, this final rule revises the Tier II inventory form for facilities to report any additional State or local reporting requirements or to voluntarily report hazardous chemicals below the reporting thresholds.

III. Response to Comments on the Proposed Rule

EPA received comments from various organizations, including industry, NASTTPO, as well as other state and local agencies. This section provides a summary of major comments received and EPA's responses, as well as EPA's final decision on the data elements proposed. A detailed summary of the comments and EPA's responses are in the Response to Comments document, a copy of which is in the docket for this rulemaking.

A. General Comments Supporting the Proposed Rule

State and local agencies, members of NASTTPO, and a number of industry representatives supported most of the changes proposed to the Tier I and Tier II inventory forms. One commenter from industry stated that the proposed

³ Prior to the proposed rule, only the Tier I inventory form included this table for range codes and amounts.

changes are valuable to emergency responders, but not overly burdensome to the regulated community. This commenter also applauded EPA's effort to simplify and align the Tier I and Tier II inventory forms to stakeholder input. Some commenters from industry also provided suggestions for finalizing some of the data elements. Members of NASTTPO stated that they are in favor of the proposed changes since the new data elements will provide valuable information to communities, emergency planners, emergency responders and LEPCs. These officials also stated that the burden associated with these changes appears to be trivial, and, in fact, making these changes will reduce the burden on facilities and LEPCs in collecting information.

EPA's Response: EPA agrees with these comments.

B. Suggestions for Finalizing Changes to the Tier I and Tier II Inventory Forms

As stated earlier in this preamble, the comments and suggestions received were for the Tier II inventory form since the Tier I inventory form is no longer accepted by any State. EPA received a few suggestions for finalizing some of the data elements on the Tier II inventory form.

One commenter stated that the current form contains a check box for optional reporting. However, the proposed revision does not include this check box. The optional reporting check box allows a facility to inform emergency response agencies of chemicals which are on site, yet are below the applicable reporting threshold. The commenter further stated that their facility has utilized this check box on multiple submissions and that is their company's policy—that is, to mitigate exposing a first responder to an uninformed chemical risk. The commenter, therefore, requested that EPA keep the optional reporting check box to the Tier II inventory form.

Another commenter stated that if the Agency concludes to add new data elements to the Tier II inventory form, the Agency should allow a minimum of one full reporting cycle before requiring the new information to allow sufficient time for entities to make necessary changes to any internal databases and to gather the information required.

EPA's Response: The optional box located on the right hand side of the storage codes and locations column on the Tier II inventory form is for facilities to indicate if the information on a specific hazardous chemical is identical to that submitted last year. The form did not include an optional box to indicate if chemicals reported on-site are below

the applicable reporting threshold as stated by the commenter. For facilities that wish to provide information voluntarily on hazardous chemicals below the reporting thresholds or to provide additional state or local requirements, the Agency is adding data fields in the chemical reporting section of the revised Tier II inventory form. However, facilities will not be required to fill in these data fields, but it is being provided if facilities voluntarily want to include this information. The revised Tier II inventory form also will continue to provide the optional box for facilities to indicate if the information is identical to the information submitted last year.

The Agency also agrees with the commenter that regulated facilities need sufficient time to comply with any new requirements to the Tier II inventory form. State and local agencies also requested sufficient time to modify the State reporting format. Therefore, the Agency has decided to require facilities to comply with the new requirements on the Tier II inventory form starting reporting year 2013, which is due by or on March 1, 2014 to the SERC, LEPC and the fire department with jurisdiction over the facility. Your State may have more stringent requirements for reporting and for submission of the Tier II inventory form or the State reporting form or format. EPA suggests facilities contact their State for reporting requirements for that State.

C. General Comments Opposing the Proposed Rule

One commenter stated that some aspects of the proposed rule would exceed EPA's statutory authority under EPCRA sections 311 and 312 and create unnecessary burden. Another commenter stated that the Agency's proposed rule impermissibly blurs the legal distinctions between EPCRA section 302, EPCRA sections 311 and 312, and CAA section 112(r).

EPA's Response: The Agency disagrees with these comments. That is, adding the two check boxes for a facility to indicate whether it is subject to EPCRA section 302 or CAA section 112(r) is reasonable, authorized under EPCRA sections 302 and 328, as well as CAA section 112(r), and consistent with the purpose of EPCRA. As mentioned earlier in this preamble, LEPCs use the information reported on the Tier II inventory form to develop or update their emergency plan. If LEPCs could obtain this information annually, they would be able to include these facilities in their emergency plan. A basic tenet of EPCRA is to provide emergency response officials with sufficient information to carry out their duties,

and the Agency believes that these two additional data elements will help such officials maintain the most effective and up-to-date emergency plans. Congress clearly remarked on the need for reporting when it adopted EPCRA:

“First, Congress recognizes a compelling need for more information about the Nation's exposure to toxic chemicals. * * * The reporting requirements, and the toxic release forms in particular, are intended to provide this national information. As a result, the reporting provisions in this legislation should be construed expansively to require the collection of the most information permitted under the statutory language. Any discretion to limit the amount of information reported should be exercised only for compelling reasons. A second major principle of this program is to make information regarding toxic release exposure available to the public, particularly to communities most affected.”⁴

In addition, as explained further below, we do not believe that adding these data elements to the Tier II inventory form would create an unnecessary burden since facilities would already know if they are subject to reporting under EPCRA section 302 or CAA section 112(r).

The emergency planning notification requirement under EPCRA section 302 for EHSs present on-site is a one-time notification which was required for facilities in existence in 1987. Any facilities that became subject to this requirement after that date have been required to provide notification to the SERC and LEPC within 60 days (section 302(c)). Some facilities may not have been aware of this requirement, and therefore, providing continued awareness of this requirement would help emergency response planners.

Because of the one-time notification under EPCRA section 302, LEPCs currently depend on the information reported on the Tier II inventory form to develop or update emergency response plans or better coordinate the response plans between the facility and the community. Although section 303(d)(3) gives LEPCs the authority to request any information necessary to develop or implement their emergency response plans, these entities may not have enough resources to contact every facility in their community annually to update their plan. The new data element requesting if a facility is subject to the emergency planning notification under section 302 would alert LEPCs of the need to include facilities that are not

⁴ A Legislative History of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), Committee Print, 132 Cong. Rec. H 9561 (1986) (statement of House Representative Edgar), at Vol. 6, page 5313 (1990).

included in their existing emergency response plan. Otherwise, LEPCs would need to contact each facility in their community annually, to update their plan as stated in EPCRA section 303(a).

Since LEPCs have limited resources (and the burden on the regulated community in providing this information on the Tier II inventory form is minimal), EPA believes that the LEPCs resources would be better spent in developing or updating the emergency response plans, rather than to contact each facility to determine if these facilities should be included in the community emergency response plan. Therefore, EPA believes that this data element should be included on the Tier II inventory form.

EPA also believes that the data element requesting if a facility is subject to the chemical accident prevention provisions under CAA section 112(r), also known as the Risk Management Program, is necessary. Some of the facilities regulated under EPCRA sections 311 and 312 are also subject to the provisions under CAA section 112(r), codified in 40 CFR part 68. All facilities regulated under CAA section 112(r) are required to coordinate their emergency response actions with the local emergency planning and response organizations (40 CFR 68.12). Some of these facilities are required to develop and implement an emergency response program for their facilities, which includes developing a plan for their employees to respond to any emergency at their facilities. These facilities are also required to coordinate their emergency response plan with the community emergency response plan developed under EPCRA section 303. This requirement would assist in ensuring that the facility and community planning efforts are coordinated, which will improve both plans, thereby facilitating effective response actions when releases occur. It is important for LEPCs, who are responsible for developing and implementing the emergency response plan for their community, to know which facilities have their own response program to respond to their emergencies or if LEPCs have to take additional measures to respond to any accidental releases.

These two data elements would provide LEPCs with the information they need to effectively plan or respond to emergencies without using any additional resources to survey each facility in their community as to whether they are subject to CAA section 112(r) or EPCRA section 302. Rather, they would use the information reported on the Tier II inventory form to contact

these facilities for any additional information necessary to develop or update their emergency response plan required under EPCRA section 303(d)(3).

D. Comments on Specific Data Elements Proposed for the Tier I and Tier II Inventory Forms

As already noted, EPA had proposed to add new data elements to the Tier I and Tier II inventory forms. That is, in addition to the information currently required on the Tier I and Tier II inventory forms under the facility identification section, EPA proposed to add a few additional data elements that would provide more complete information on the facilities to the public and to the State and local agencies responsible for emergency planning and response. Specifically, EPA proposed to add the following data elements to the facility identification section of the Tier I and Tier II inventory forms: Facility phone number, latitude and longitude, number of full-time employees, and facility ID numbers provided under the TRI and the Risk Management Program, as well as to indicate if the facility is subject to EPCRA section 302 or CAA section 112(r). In addition to proposing the number of full-time employees, EPA requested comments on whether the form should require the number of occupants instead of the number of full-time employees.

In the facility contact information section of the Tier I and Tier II inventory forms, EPA proposed to add contact information for the facility's parent company, facility emergency coordinator, and for the person responsible for completing the information on the Tier I and Tier II inventory forms. In addition, although the forms already require owner or operator and emergency contact information, EPA proposed to add email addresses of these individuals.

For the chemical reporting section of the Tier I and Tier II inventory forms, EPA proposed to revise the range codes and the ranges (in pounds) for reporting maximum amount and average daily amount.

EPA also proposed to revise some existing data elements on the Tier II inventory form to include separate data fields for reporting pure chemicals and mixtures. Instead of reporting a code for storage types and conditions, EPA also proposed to delete the codes from the instructions to the Tier II inventory form and instead require facilities to provide a description for various types of storage and conditions.

EPA received comments from industry, NASTTPO and State and local agencies. EPA received support for most of the data elements from various organizations. While some commenters from industry opposed some of the data elements, at the same time, they offered suggestions for finalizing them. With respect to comments from members of NASTTPO, they strongly supported the addition of these data elements since these agencies are responsible for emergency planning and response and they will be using the information reported on the Tier II inventory forms. These state and local officials stated that since the Tier II inventory forms have become the default emergency planning information collection device used by most communities and LEPCs, the additional changes proposed are excellent and will be very useful in emergency planning. Some commenters stated that the Tier2 Submit software is already collecting most of the information that EPA has proposed.⁵

The following is a discussion of comments on the specific data elements and EPA's responses and final decision.

1. Latitude and Longitude

Comment: EPA received one comment opposing the addition of latitude and longitude, but the same commenter made suggestions for finalizing these data elements. In particular, the commenter argued that EPA proposed to add these data elements to the Tier I and Tier II inventory forms without articulating a rationale for doing so. The commenter also stated that the Tier II inventory form has long been used without this information, so it is unclear why EPA is requiring such information in addition to a street address of the facility. However, the same commenter stated that it is reasonable to require this information from facilities that do not have a proper street address, for which latitude and longitude are necessary to locate the facility.

EPA's Response: Since promulgation of the final rule published on October 15, 1987 (52 FR 38344), the instructions to the Tier I and Tier II inventory forms suggested that facilities that do not have a street address to report other identifiers, such as the latitude and longitude to describe the physical location of the facility. State and local

⁵ Many states use Tier2 Submit software as their electronic reporting tool. Every year, some of these states request EPA to add some State required data elements to the software. Therefore, it is possible that many states already require some or all of the data elements that EPA has proposed. However, there are other states that adopt the federal reporting requirements and these states also requested that EPA include these additional data elements.

agencies have informed EPA that they often get some Tier II inventory forms with P.O. Box address or the address of the corporate office instead of the actual location of the facility. These agencies also informed EPA that some of the locations where hazardous chemicals are stored are unmanned or in rural areas. During an emergency, accurate information about the location of the facility is important to emergency responders so that these officials can respond in a timely manner and exercise evacuation and/or shelter-in-place procedures. Latitude and longitude are also important for developing emergency response plans.

As stated by the members of NASTTPO, Tier II inventory forms have become the default emergency planning information collection device used by most communities. Therefore, EPA believes that this information is important for emergency planning and response and is being added to the Tier I and Tier II inventory forms.

2. Number of Full-Time Employees

In the proposed rule, EPA proposed to require that facilities report the number of full-time employees, but also requested comment on whether to require the number of occupants (as opposed to the number of full-time employees) on the Tier I and Tier II inventory forms. EPA received several comments opposing the addition of number of full-time employees, but offered some suggestions for number of occupants.

Comment: Commenters from the retail industry stated that they have part-time and full-time employees, as well as employees that work on weekends, holidays etc. Commenters from the utility and telecommunication industry stated that their substations or cell towers may be unmanned. Thus, these commenters stated that the number of full-time employees does not accurately represent the number of people that may be occupied at a facility at any given time since some facilities may be manned or unmanned, and may include full-time and part-time employees. Many of the facilities may also have contractors or vendors present on-site. Other commenters argued that requiring the number of full-time employees on the Tier II inventory form is not authorized by EPCRA sections 311 and 312 and that EPA has not explained its basis for collecting this information on the Tier II inventory form.

EPA's Response: EPA recognizes the commenters concerns on the Agency's proposal to require the number of full-time employees to be reported on the Tier I and Tier II inventory forms. The

Agency proposed this data element so that LEPCs and other emergency response officials would get an idea of how many persons may be present at a facility at any one time for planning and response. EPA now realizes that the number of full-time employees at a facility may not benefit local emergency response or planning officials since it does not represent the number of people on-site at any time during an emergency. Nevertheless, it is important for emergency responders to know how many people may be present at a facility at any one time in order to respond during an emergency situation.

Therefore, the Agency is requiring facilities to estimate the maximum number of people that may be present at the facility at any one time rather than reporting number of full-time employees. LEPCs would be able to use this information to plan for evacuation or shelter-in place as they develop or update their emergency plan. (See next section for further discussion of this issue.)

3. Number of Occupants

Comment: One commenter stated that requiring facilities to list the number of occupants at a facility would be extremely problematic as the number of occupants may change on a daily basis. This requirement would be overly burdensome and may actually hinder emergency response efforts since this information would provide an inaccurate picture of the number of occupants in the facility on any given day.

EPA's Response: The Agency disagrees that requiring facilities to list the number of occupants would be problematic or burdensome. To plan for proper evacuation or shelter-in place, it is important for LEPCs and other emergency responders to have this information. Facilities, such as convention centers, theaters, stadium or other large gathering places would already know the maximum number of occupants that may be present at any one time. If such facilities are required to comply with section 312, they would be able to provide this information on their Tier II inventory form without any added burden.

Other facilities subject to EPCRA section 312 would need to estimate the maximum number of people that may be present at any one time, including employees, contractors, vendors etc. Facilities should also include persons that may be present for training or other events that facilities may host so that LEPCs and emergency response officials may be better prepared. In addition, if facilities submit a site plan with their

inventory form, it would be helpful for state and local agencies (but not required) if facilities identify the buildings or locations where large numbers of people may gather for training or other events.

Therefore, EPA is adding the data element requiring facilities to estimate the maximum number of occupants that may be present at a facility at any given time rather than requiring facilities to report the number of full-time employees at a facility.

Comment: Another commenter requested that EPA clarify that if a building or complex is occupied by more than one entity, the Agency should only require reporting with regard to that portion of the building or complex that the reporting party controls, since there are many instances where a business occupies only a portion of a building and does not have access to or control over other portions of a building to provide the total number of employees or occupants. The Tier II submitter would be able to respond only regarding its own employees or occupants not all those that might be working in the building.

EPA's Response: The requirements of EPCRA sections 311 and 312 and its implementing regulations (40 CFR part 370) apply to the owner or operator of a facility that must prepare or have available a MSDS for each "hazardous chemical" as required by the Occupational Safety and Health Act (OSHA) of 1970.

The term "facility" is defined in EPCRA section 329 as "*all buildings, equipment, structures, and other stationary items which 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).*"

Although a building may be occupied by more than one tenant, each tenant may only be required to have an MSDS for the hazardous chemicals that are in its site. Therefore, the tenant is only required to report information related to its site, including the number of occupants and other information required on the Tier II inventory form.

4. Facility Phone Number

In addition to the mailing address of the facility currently required on the Tier I and Tier II inventory forms, EPA proposed to require that the facility's phone number be provided on the Tier I and Tier II inventory forms. A number of commenters opposed adding this data element.

Comment: One commenter argued that facilities only subject to EPCRA sections 311 and 312 should not be required to provide a telephone number of the facility or the data field should be marked “optional” since certain locations, such as a cell tower with a hut at its base with back-up power equipment may not be staffed at all times or may not be equipped with a telephone. Another commenter stated that the Agency should clarify what is meant by the data element “facility phone number” since manned facilities may have many phone numbers.

EPA’s Response: EPA recognizes that some locations, such as a cell tower where hazardous chemicals may be stored could be unstaffed and therefore may not have a telephone number for that site. In addition, the Tier I and Tier II inventory forms already require the phone numbers of the owner or operator of the facility and emergency contacts, which should be sufficient to LEPCs and other officials to get in touch with the appropriate person(s) at a facility. For these reasons, EPA agrees with the commenter and is adding this data element as an “optional” element. For facilities that may want to provide the facility phone number, EPA suggests facilities provide the phone number for the main switchboard operator or any other number that State and local agencies or the public may want to use to obtain general information about the facility.

5. Applicability of EPCRA Section 302 and Clean Air Act Section 112(r)

To assist LEPCs to better coordinate their emergency plan and response procedures, EPA proposed data elements to indicate if the facility is subject to emergency planning notification under EPCRA section 302 or the provisions under CAA section 112(r), also known as the Risk Management Program.

Comment: One commenter stated that EPCRA sections 311 and 312 do not authorize requiring a facility to report whether it is subject to EPCRA section 302 or CAA section 112(r). The same commenter argued that if the Agency has such legal authority, we would not object to this proposed new data element, so long as the form makes unavoidably clear on its face which data elements are required only from a facility subject to one of those provisions.

EPA’s Response: The Agency understands that not all facilities subject to EPCRA section 312 would also be subject to EPCRA section 302 and CAA section 112(r). As stated by members of NASTTPO, Tier II inventory forms have

become the default for information used by LEPCs for emergency planning. Since facilities subject to EPCRA section 302 and CAA section 112(r) are required to participate or coordinate emergency planning and response, as explained in section III.C of this action, it is important for LEPCs to know which facilities are subject to the requirements under these two programs so LEPCs can obtain the additional information necessary for developing or updating their emergency plan annually. Thus, consistent with the Agency’s response in section III.C of this Final Rule above, the Agency is adding these data elements to the Tier I and Tier II inventory forms. Facilities may check the “yes” box to indicate the facility is subject to these provisions or “no” if the facility is not.

(a) Subject to Emergency Planning Notification Under EPCRA Section 302

Comment: Members of NASTTPO supported this data element stating that of all the proposed changes, this one addresses the most critical concern. Continued awareness of facilities’ EPCRA section 302 reporting obligation is necessary to ensure better coordination and planning.

Two commenters opposed this proposed data element. One commenter stated that it is not necessary to expand the Tier II inventory form to include the two proposed additional questions regarding whether the facility is subject to EPCRA section 302 and CAA section 112(r). The other commenter stated that the regulated community is already aware of the requirements under EPCRA section 302.

EPA’s Response: We disagree with those commenters who opposed including these data elements on the Tier II inventory form. EPCRA section 302 is a one-time notification requirement that occurred in 1987 for facilities that were in existence at that time. Any facilities that became subject to this requirement since that time should have provided notification to the SERC and LEPC within 60 days. While EPA understands the regulated community may be aware of this reporting requirement and that most facilities may have provided this notification, nevertheless, it was a one-time notification, and facilities may have overlooked their reporting obligation under EPCRA section 303(d)(2), which is to notify LEPCs of any changes that may have occurred after the initial notification, which may include, but not be limited to, changes in facility personnel designated as emergency coordinator, emergency contacts, as well as other changes at the

facility. Some facilities may not even be aware of this requirement. Requesting this information on the Tier II inventory form annually would alert facilities of this reporting obligation. If LEPCs obtain this information annually from all facilities required to comply under sections 302 and 303, it would ensure that all facilities are included in the emergency plan, which LEPCs are required to update annually.

(b) Subject to Chemical Accident Prevention Provisions Under Section 112(r) of the Clean Air Act (40 CFR part 68, Risk Management Program)

Comment: Members of NASTTPO supported this requirement, but suggested that EPA inform facilities that submitting a Tier II inventory form does not itself constitute compliance with the requirement under CAA section 112(r) to coordinate emergency response with LEPCs and local response agencies.

EPA’s Response: The Agency agrees that submitting a Tier II inventory form indicating that the facility is subject to the provisions under CAA section 112(r) does not itself replace the requirement for facilities to coordinate emergency response actions with LEPCs. Facilities covered by CAA section 112(r) requirements must coordinate their emergency response program with their LEPCs, as discussed below, and as required by 40 CFR 68.12. Just submitting a Tier II inventory form would not substitute the requirement under 40 CFR 68.12.

As stated in section III.C of this action, some of the facilities regulated under EPCRA sections 311 and 312 are also subject to the chemical accident prevention provisions under CAA section 112(r), also known as the Risk Management Program codified in 40 CFR part 68. All facilities regulated under CAA section 112(r) are required to coordinate their emergency response actions with the local emergency planning and response organizations (40 CFR 68.12). Some of these facilities are required to develop and implement an emergency response program for their facilities, which includes developing a plan for their employees to respond to any emergency at their facility. These facilities are also required to coordinate their emergency response plan with the community emergency response plan developed under EPCRA section 303. This requirement would ensure that the facility and community planning efforts are coordinated, which will improve both plans, thereby facilitating effective response actions when releases occur.

For the reasons stated, EPA is adding these two data elements to the Tier I and Tier II inventory forms.

6. Identification Numbers Under the Toxic Release Inventory and Risk Management Program

EPA requested comments as to whether facilities should provide the identification numbers assigned under the TRI and Risk Management Program.

Comment: One commenter stated that the addition of these data elements provide very little information to emergency responders, although it is not too much burden on facilities. The commenter also stated that the TRI report is a release inventory, not information on specific chemicals present on-site, so it would be difficult for an emergency responder to match specific chemicals reported under the TRI program with those reported on the Tier II inventory form. Another commenter stated that if EPA determines that it is necessary to add this data element, the regulated community would prefer to report the identification number assigned under the Risk Management Program.

Three commenters opposed adding these identification numbers to the Tier II inventory form stating that these data elements are already available to the public since they are already collected under these two programs.

EPA's Response: EPA receives reports submitted under CAA section 112(r) (also known as the Risk Management Program) and information submitted under the TRI program. However, the Agency does not receive the Tier II inventory form filed under EPCRA section 312. Therefore, the Agency would not be able to provide access to all three reports to State and local agencies so that these agencies can make them available to the public. State and local agencies that receive the Tier II inventory form requested that EPA require these two data elements so they can obtain additional information about these facilities or cross-reference information reported under these programs. These agencies informed us that some facilities are not consistent in their reports year-after-year. For example, a facility may report its name as "Smith Inc." one year and then the following year, it may report "Smith and Sons," or "Smith Company." Providing the identification numbers assigned by EPA under these two programs on the Tier II inventory form would help these agencies better respond to public inquiries.

EPA also believes that State and local officials may find it helpful to compare information reported for chemicals that are listed under all three programs. For example, TRI and the Tier II inventory form require facilities to report the

maximum amount of a chemical present on-site at any one time during a reporting year and the Risk Management Program requires the quantity of chemical in a process. There are some chemicals common to all three programs. Therefore, EPA is requiring facilities to provide their TRI facility identification number if the facility is subject to reporting under that program. With respect to the Risk Management Program under CAA section 112(r), some facilities regulated under EPCRA sections 311 and 312 are also subject to the provisions under CAA section 112(r), codified in 40 CFR part 68. All facilities regulated under CAA section 112(r) are required to coordinate their emergency response actions with local emergency planning and response organizations (40 CFR 68.12). Some of these facilities are required to develop and implement an emergency response program for their facilities, which includes developing a plan for their employees to respond to any emergency at their facility. These facilities are also required to coordinate their emergency response plan with the community emergency response plan developed under EPCRA section 303. This would ensure that the facility and community planning efforts are coordinated, which will improve both plans, thereby facilitating effective response actions when releases occur.

It is important for LEPCs who are responsible for developing and implementing emergency response plans for their community to know which facilities have their own response program to respond to their emergencies or if LEPCs have to take additional measures to respond to any accidental releases. The Risk Management Program identification number is vital to emergency planning and response since facilities covered under this program should be coordinating their response plan with the LEPCs. This number would better identify the facility and these agencies can then cross-reference the information reported on the Tier II inventory form and Risk Management Program. Thus, EPA is finalizing this data element as proposed.

7. Facility's Parent Company Contact Information

EPA proposed to add the facility's parent company contact information to the Tier I and Tier II inventory forms.⁶

⁶ EPA also proposed to add the owner or operator contact information to the Tier I and Tier II inventory forms. However, EPA agrees with commenters that this information is already included on the Tier I and Tier II inventory forms, as well as the Tier2 Submit software. The owner or

Comment: Members of NASTTPO supported EPA's proposal to include parent company contact information to the Tier II inventory form. However, nine commenters opposed EPA's proposal to require parent company contact information on the Tier I and Tier II inventory forms. Two commenters stated that the parent company corporate headquarters or subsidiary company contact is often distant both geographically and organizationally from the facility's operations and as such will likely have no knowledge about the specifics of hazardous chemical usage at a unique company location. Other commenters who also disagreed with including this data element on the Tier I and Tier II inventory forms argued that providing information on other facility personnel, such as emergency contacts and the owner or operator will be sufficient for state and local officials to obtain the information needed about hazardous chemicals at the facility.

EPA's Response: EPA recognizes the concerns raised by commenters that the parent company of some facilities may not be aware of the day-to-day operations at a particular location. EPA also realizes that some parent companies may be located outside the U.S. and therefore, the parent company contact information would not be useful for emergency planning or response. Therefore, EPA is not requiring this information to be included on the Tier I or Tier II inventory forms. However, if facilities wish to provide this information, EPA is adding parent company contact information as an "optional" data element to both forms.

8. Parent Company Email Address

EPA proposed to add the facility's parent company email address to the Tier I and Tier II inventory forms.

Comment: One commenter stated that in a large corporation, the email address of company executives or upper level management is of little value in the event of an emergency as these individuals are not able to provide the level of detail needed to assist emergency responders. The commenter suggested that the addition of the email address of the facility emergency coordinator and the addition of the name, title, email address and phone number of the person knowledgeable of the information reported on the Tier II inventory form provides the best contact information in the event of an emergency.

operator contact information will continue to be required on the Tier I and Tier II inventory forms.

EPA's Response: The Agency proposed this data element assuming that corporate headquarters or parent company executives should be informed of any activities involving planning or public meetings with the community via email since it is one of the modern ways of communication. However, based on the comments received regarding parent company contact information in section III. D. 7 of this final rule, EPA is not requiring this information be included, but is adding it as an "optional" data element on both forms.

9. Facility Emergency Coordinator

EPCRA section 303(d)(1) requires facilities subject to EPCRA section 302 emergency planning notification requirements to designate an individual to participate in the emergency planning process as the facility emergency coordinator. State and local agencies informed EPA that facilities often forget to notify them of personnel changes that occur at the facility. Therefore, EPA proposed this data element so LEPCs would obtain this information annually.

Comment: Members of NASTTPO supported this proposal stating that EPA has identified a critical gap and that the proposal is excellent. One commenter from industry stated that the facility emergency coordinator is already included on the Tier2 Submit software used in various states.

EPA's Response: EPA agrees with the commenter that the Tier2 Submit software used in various states may already include this data element since states are given the flexibility to implement the EPCRA program as needed for their community. This means that, many states have expanded their right-to-know regulations to include additional chemicals, lower reporting thresholds, and additional data elements beyond those required on the federal Tier II inventory form. Some of the states have their own electronic reporting format and others use Tier2 Submit. Every year, EPA receives requests from some states that use Tier2 Submit to add some state required data elements, which may include most or all of the data elements that were proposed. So it is possible that the states that use Tier2 Submit already require facilities to report facility emergency coordinator contact information. However, EPA proposed this data element for states that follow the federal reporting requirements. Because State and local agencies have identified the absence of this data on the Tier II inventory form as a critical gap, EPA is finalizing this provision and will require that emergency coordinator

contact information be required on the Tier II inventory form.

Comment: Four commenters opposed EPA's proposal to require the contact information for the facility emergency coordinator be included on the Tier II inventory form. These commenters argued that the Tier II inventory form already requires facilities to report an emergency contact and a 24-hour emergency phone number so it is not clear why this data element is being added as another new requirement. Another commenter stated that adding the facility's emergency coordinator contact information to the Tier I and Tier II inventory forms is unnecessary since emergency planning agencies may already get in touch with the designated emergency contact. Furthermore, it was argued that EPA provides no reason as to why facilities should report the contact information for both facility emergency coordinator and an emergency contact. Again, this adds a new burden for facilities. Another commenter objects to requiring this information on the Tier II inventory form unless the form clearly shows that the information is required only for facilities subject to EPCRA section 302.

EPA's Response: EPA disagrees with these commenters. The Agency believes that it is important for LEPCs and SERCs to obtain updated information on the facility emergency coordinator annually. Under EPCRA section 303(d)(1), facilities are required to provide the name of an individual who will participate in the emergency planning process as a facility emergency coordinator. It is possible that personnel changes may occur at facilities and since this is not an annual requirement, facilities may overlook informing their LEPC of this change. In addition, providing the contact information for the facility emergency coordinator and for the emergency contact is necessary since it is possible that some facilities may designate two individuals to carry out these two functions, as opposed to designating the same person for these two positions. Thus, providing this information annually or updating the Tier II inventory form annually would ensure better coordination for emergency planning, and would not impose a significant burden on the facility given such information is readily available to the facility. EPA encourages facilities to provide facility emergency coordinator information of an individual closest to the location where hazardous chemicals are stored.

Finally, EPA realizes that only some facilities subject to the sections 311 and 312 reporting requirements may be subject to the section 302 emergency

planning notification. Therefore, EPA is requiring facilities to provide the facility emergency coordinator contact information on the Tier II inventory form only if the facility is also subject to EPCRA section 302.

10. Tier I and Tier II Information Contacts

State and local agencies informed EPA that they often find it difficult to get in touch with the right individual for information contained on the Tier II inventory form. Therefore, EPA proposed that facilities provide contact information of the individual responsible for completing the Tier II inventory form.

Comment: One commenter stated that requiring this information would be reasonable and arguably within the implicit authority of EPCRA sections 311 and 312. Members of NASTTPO also supported this proposed data element stating that EPA has again identified a critical gap and addressed it with this proposal. However, one commenter opposed this proposed data element stating that the facility owner or operator is already required to sign the certification on the Tier II inventory form and would know how to handle LEPC inquiries.

EPA's Response: Although the owner or operator of the facility is responsible for signing the certification on the Tier II inventory form, the Agency believes the person responsible for completing the form is likely to have knowledge of the specific details on the hazardous chemicals reported on the Tier II inventory form. Tier II contact information is very important for emergency planning and response since the information reported on the Tier II inventory form is used by LEPCs for updating the emergency plan. Therefore, EPA is adding this data element, as proposed.

11. Email Addresses of Owner or Operator and of Emergency Contacts

In addition to the information already required for the owner or operator and the emergency contact(s), EPA proposed to require facilities to also provide email addresses for these two individuals.

Comment: One commenter agrees with EPA's proposal to require an email address of the Tier II information contact. However, this commenter disagreed with EPA that facilities should also provide the email addresses for emergency contacts. The commenter stated that email is not an appropriate form of communication during an emergency situation and that in non-emergency situations, the person selected as an emergency contact may

not be authorized to speak for the reporting entity.

EPA's Response: The Agency believes that any number of ways to communicate with facility personnel (i.e. phone, email, mailing address etc.) is necessary to ensure proper coordination of emergency planning and response procedures. Under EPCRA section 303, LEPCs are required to develop an emergency plan and update it annually. Among others, the plan is required to include methods and procedures to be followed by facility owners and operators, as well as local emergency and medical personnel to respond to any releases (section 303(c)(2)). Providing an email address for the owner or operator and of the emergency contact(s) would be beneficial to LEPCs to communicate via email on the methods and procedures to respond to releases. Also, LEPCs may want to inform via email the facility owners and operators in their community if the LEPCs are planning to conduct exercises or hold public meetings so facility owners and/or operators, emergency contacts and the facility emergency coordinator may participate in these activities. Sending this email to each person listed on the Tier II inventory form is appropriate since it is possible that one or two persons may not be available at the scheduled time. EPA also believes that these data elements do not pose significant regulatory burden since the burden to report may be incurred only the first year that the rule would be effective. In subsequent years, facilities may only need to update the information annually if any changes occur. Thus, EPA is adding these data elements to the Tier I and Tier II inventory forms.

12. Range Codes and Ranges for Reporting Maximum Amount and Average Daily Amount

The information requirements to the Tier I and Tier II inventory forms currently list range codes for reporting the maximum amount and average daily amount of hazardous chemicals present at the site in the preceding calendar year. Since sections 312 (d)(1) and (2) specifically state that an estimate in ranges for the maximum amount and average daily amount should be reported on the Tier I and II inventory forms, the regulations would still require facilities to report in ranges. However, the range codes currently listed in the regulations are very broad. Such information is not as useful as specific quantity information for effective emergency response planning. In order for the States, local agencies

and emergency response officials to have information on the maximum amount and average daily amount that are closer to the actual amounts present at the facility, EPA proposed to narrow the ranges.

Comment: One commenter from industry and the members of NASTTPO supported the proposed ranges for reporting maximum amount and average daily amount. Members of NASTTPO stated that this will bring much needed clarity and eliminate a source of confusion in the completion and use of the forms. The commenter from industry stated that they do not object to narrowing the ranges for reporting maximum amount and average daily amount of hazardous chemicals since narrowing the ranges may give state and local emergency agencies a more detailed picture of the chemicals at a facility. In addition, the commenter stated that the proposed changes accomplishes the goal of the proposed rule, which is to provide useful information to emergency planning agencies with little or no added burden.

Two commenters, however, suggested that instead of revising the ranges or the range codes, EPA should require facilities to report the actual number of pounds for both maximum amount and average daily amount.

EPA's Response: As stated in the proposed rule, EPCRA section 312(d)(1) and (2) specifically states that the maximum amount and average daily amount should be reported in ranges. Since the statute requires these amounts to be reported as ranges, the Agency proposed to narrow the ranges so the amount reported would be closer to the amount present on-site. State and local agencies expressed concerns that the intervals between the current maximum and minimum values are too wide.

Comment: Three commenters opposed the proposed ranges for reporting maximum amount and average daily amount. One of the commenters stated that the Agency's reasoning for the existing range codes remains valid today and should not be changed unless new information in the record supports that the Agency's initial reasoning is now invalid. Two of the commenters also argued that consistency of chemical weight ranges among regulatory programs, TRI and the section 312 Tier II inventory form provides the regulated community, emergency responders and the public with a uniform standard of measurement. One of the commenters also argued that the existing ranges adequately balances the trade-off between the protection of confidential information and the provision of useful data.

EPA's Response: The actual amount of a hazardous chemical present at a facility is the most useful information that LEPCs could have for effective planning and for response. However, the statute specifically states that only ranges should be required on the Tier I and Tier II inventory forms. The Agency believes that the ranges proposed for reporting maximum amount and average daily amount are more useful for LEPCs than the existing ranges, which are too broad. The reporting threshold for EHSs is 500 pounds or the TPQ whichever is less. Some of the EHSs have TPQs set as low as 1, 10, 100, 500 and 1,000 pounds. Emergency planning for these chemicals are more crucial than those with higher TPQs (i.e. 10,000 pounds). EPA believes it is necessary to narrow the ranges so that LEPCs would obtain information on the amount of EHSs that have low TPQs in a range most likely closer to the actual amount present at the facility.

With respect to maintaining consistency with the TRI program, reporting under EPCRA section 313 serves a different purpose than hazardous chemical inventory reporting under EPCRA section 312, which is used for emergency planning and response. Only some of the information required under both programs is common and these would be useful to state and local agencies. However, the amount required on the TRI report is mainly for releases of toxic chemicals, whereas the amount reported on Tier II is storage of hazardous chemicals. Thus, it is not necessary or appropriate to have the same range values under both of these programs.

IV. Revisions Specific to the Tier II Inventory Form

Facilities are required to report specific information about hazardous chemicals on the Tier II inventory form. State and local agencies informed EPA that they often get Tier II inventory forms for mixtures not consistent with their section 311 MSDS or list reporting. Thus, in response to concerns raised by stakeholders, EPA proposed to revise some existing data elements under the chemical reporting section of the Tier II inventory form.

In particular, EPA proposed separate data fields for reporting pure chemicals and mixtures to make reporting easier for facilities and for State and local agencies to obtain consistent information on chemicals reported under EPCRA sections 311 and 312. In addition, EPA proposed to delete the codes for reporting storage types and conditions from the Tier II inventory form instructions, but instead require

facilities to provide an accurate description of the storage types and conditions for each hazardous chemical reported. The reason EPA proposed this change was to provide emergency responders with information readily available rather than to search for instructions to determine what each code represents.

One commenter from industry supported the proposed clarification on the reporting of mixtures. The commenter also stated that the listing of actual container types, rather than the use of codes, are positive changes that will move the program toward the ease of use for emergency responders.

A. Chemical Information—Pure Chemical and Mixtures

EPA received requests from certain sectors of the regulated community to provide clear instructions for reporting mixtures on the Tier II inventory form. In addition, State and local agencies informed EPA that they often get Tier II inventory forms that are not consistent with the facility's MSDS or list reporting under section 311 for mixtures. On November 3, 2008 (73 FR 65452), EPA provided clarification on how to determine if a reporting threshold has been met for mixtures that contain EHSs and non-EHSs as their components. In that rule, EPA also reiterated the flexibility provided in EPCRA section 312 that facilities may either report the component or the total mixture.

EPA proposed separate data fields for reporting pure chemicals and mixtures so that the regulated community would be consistent in reporting mixtures with their section 311 reporting. The Tier II inventory form requires facilities to report the maximum amount and average daily amount, as well as the storage types and conditions. However, the Tier II inventory form prior to the proposed rule did not specify if the maximum amount or the average daily amount present on-site is referring to the component or the mixture since facilities have the option to report the component or the mixture. In order to make reporting easier for facilities and make the Tier II inventory form more user friendly, EPA proposed separate data fields for reporting pure chemicals and mixtures. If facilities are reporting a mixture by its components or the total mixture itself, separate data fields were proposed to specify the maximum amount and average daily amount for EHSs, non-EHSs, as well as the mixture itself. EPA is now finalizing these changes as proposed.

Comment: Three commenters raised questions concerning EPA's adding separate data fields for pure chemicals

and mixtures. One comment requested that EPA clarify if product name, trade or other chemical information should be provided for the mixture. Another comment was concerned that the proposed reporting section for mixtures shows a data field for reporting all non-EHSs in the mixtures, which facilities are not required to do, and could be confusing for those facilities that are reporting mixtures.

EPA's Response: EPA decided to propose separate data fields for mixtures and pure chemicals since certain sectors of the regulated community requested that EPA clarify the reporting of mixtures after publication of the final rule on November 3, 2008 (73 FR 65452) in which EPA sought to clarify the reporting of mixtures, as well as other reporting requirements. The instructions to the Tier II inventory form would specify facilities to report "mixture name," "product name" or "chemical name" as it appears on the MSDS, whether the hazardous chemical reported is pure or a mixture.

As stated in 40 CFR 370.14, facilities have the flexibility for reporting non-EHSs in mixtures, and the inclusion of the data field for non-EHSs is for the convenience of the owner or operator of the facility. However, EPA is only requiring facilities to aggregate the amount of EHSs in mixtures and in pure form and then report the EHSs in mixtures.

Comment: Two commenters suggested that EPA develop a standard reporting format to address lead-acid batteries. The commenters stated that the reporting of batteries would be consistent if the facilities report the total battery weight with a percentage EHS.

EPA's Response: EPA is not developing a standard reporting format to address lead-acid batteries at this time. However, EPA wants to suggest how facilities could report batteries on the Tier II inventory form. Although separate data fields are provided for reporting pure chemicals and mixtures, it is best for emergency responders to obtain information on hazardous chemicals consistent with a facility's MSDS reporting under section 311. Thus, if the facility has an MSDS for batteries that require reporting on the Tier II form, EPA suggests the facility report batteries in the data field marked "mixture or product name" and then report the name and the amount of the EHS present.

B. Storage Types and Conditions

Prior to the proposed rule, the instructions to the Tier II inventory form specified codes for reporting storage types and conditions. State and local

agencies requested that EPA remove the codes and require facilities to provide a description for the various types of storage and conditions so that in an emergency local agencies and responders won't have to search for instructions to the Tier II inventory form to find out what each code represents.

Comment: Four commenters supported, but also provided suggestions on this specific proposal. One of the commenters stated that this revised data element will ease the recordkeeping requirements for facilities, while still providing useful information for emergency planning agencies. Another commenter stated that instead of eliminating the use of storage codes, the option should be provided to use the codes and a description for the container types. The commenter stated that this would provide the reporting facility with the ability to use familiar storage codes with the option to provide more description if a code does not fully describe the container type. Another commenter requested that a pick list be provided for storage types and conditions.

EPA's Response: The Tier2 Submit software already includes a "pick list" for storage types and conditions and the option to provide a description not listed in the "pick list." The Agency agrees with State and local agencies that at a time when an emergency is occurring, it is more appropriate for an accurate description of the various types of storage and conditions for each hazardous chemical present at a facility be described on the Tier II inventory form. The instructions to the Tier II inventory form would include some examples of common types of storage and conditions.

Comment: One commenter opposed the elimination of reporting codes for storage type and conditions. The commenter stated that the proposed elimination of codes opens these data elements for personal and possibly incorrect interpretation, whereas currently the data is standardized via the code system. Otherwise, a user must craft language naming storage types, temperature and pressure conditions that they may understand, but nonetheless may likely be differently described by another entity. The commenter also stated that the facility files over 550 annual EPCRA Tier II inventory forms and uses Tier2 Submit software as allowed by state reporting requirements. The facility is concerned that the elimination of reporting codes for storage type and temperature and pressure conditions would necessitate physical data entry for these three fields on each annual filing. Such a laborious

effort is both time consuming and subject to human data entry error. The current use of reporting codes eliminates the possibility of key stroke data entry errors.

EPA's Response: The elimination of codes for storage types, as well as temperature and pressure, was requested by state and local agencies. In an emergency situation, it would be easier for these agencies and other emergency responders to have the information readily available rather than to search for instructions to the Tier II inventory form to determine what each code represents. It is not possible to list a code for every storage type or condition that maybe available. Therefore, the Agency believes it would be more accurate if the facility describes the storage type(s) and conditions for the hazardous chemicals present on-site.

The commenter mentioned that the facility files over 550 Tier II inventory reports. The federal electronic reporting format, Tier2 Submit software, includes a pick list for some of the common storage types and conditions. The instructions to the Tier II inventory form will be revised to include some examples of common storage types and conditions. Nevertheless, facilities are encouraged to report the chemical information section of the Tier II inventory form as accurately as possible for each location of the facility rather than filing one form making multiple copies of the form to represent each location. Since storage locations, amounts, as well as storage types may vary from location to location, reporting accurate information for each location is important for emergency planning and response.

V. Additional Concerns and Suggestions

EPA received several comments with suggestions on including additional data fields on the Tier II inventory form. One commenter stated that there needs to be a space on the Tier II inventory form for reporting additional LEPC or State requirements. Many LEPCs have established a lower threshold for specific chemicals presenting unique risks to those communities so there should be a convenient spot on the Tier II inventory form for this information. The commenter also stated that the right hand edge of the current form is a spot for facilities to note that they are voluntarily submitting information that would not be otherwise reported and that this portion should remain unchanged. Additionally, a commenter suggested that the Agency not adopt these changes prior to the next reporting cycle unless the Tier2 Submit software

will be revised to incorporate the changes made to the Tier II inventory form.

EPA's Response: For states that use Tier2 Submit, EPA currently modifies the system annually to incorporate state-specific fields that are required under the state regulations. The optional boxes provided on the bottom of the current federal Tier I and II inventory forms are for any optional attachments that facilities may be including with their inventory form, such as the facility site plan, list of site coordinate abbreviations, description of dikes, etc. These boxes appear on the first page of the proposed Tier II inventory form and remain unchanged on the Tier I and Tier II inventory forms.

Optional boxes provided on the right hand side of the storage code and location columns of the current Tier II inventory form are for facilities to indicate if all of the information on a specific hazardous chemical is identical to that submitted last year. Prior to the proposed rule, the federal Tier II inventory form did not have an optional box to indicate if chemicals reported on-site are below the applicable reporting threshold as stated by the commenter. However, as requested by the commenter, EPA is adding data fields for facilities that wish to provide information on a voluntary basis on hazardous chemicals not required, such as those below the reporting thresholds.

As stated in section III.B. of this action, the Agency has decided to require facilities to comply with the new requirements on the Tier II inventory form starting reporting year 2013, which is due by or on March 1, 2014. Tier2 Submit will be modified accordingly.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection

requirements are not enforceable until OMB approves them.

The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2436.02. This action may impose only minimal reporting burden on facilities since the data elements finalized on the Tier I and Tier II inventory forms are readily available to the facility. The data elements finalized in this action are general information regarding the location of the facility and contact information for certain personnel, such as emergency contact, person responsible for the information reported on the Tier I and Tier II inventory forms, etc. State and local agencies requested that EPA add the new data elements since the additional information would be useful to develop or modify their emergency response plans. New data elements, such as the facility emergency coordinator needs to be updated annually for LEPCs to coordinate emergency plans for the community. Although facilities are required to notify LEPCs of any changes under EPCRA section 303 (d)(2), such as personnel changes for facility emergency coordinator, emergency contacts, etc, LEPCs informed EPA that some facilities overlook this reporting requirement.

As suggested by few members of the regulated community, some of the data elements added to the Tier I and Tier II inventory forms are listed as optional data elements. The burden imposed for reporting the new data elements will only occur in the first year that the rule becomes effective. In subsequent years, only changes at the facility need to be updated.

EPA also revised some data elements in the chemical reporting section of the Tier II inventory form as requested by state and local officials, as well as a few small entities to make reporting easier for facilities and make the form more user-friendly for state and local officials.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in regulations at 40 CFR part 370, which includes information requirements for the Tier I and Tier II inventory forms, under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0072. EPA ICR number 1352.11. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Burden is defined at 5 CFR 1320.3(b).

EPA estimates that there are 390,000 facilities that may be subject to reporting the new data elements finalized in this action. EPA estimates the same unit burden for small, medium

and large facilities since the time required to report the new data elements that EPA is finalizing will be the same for all facilities.

All states require facilities to submit the federal Tier II inventory form or the state developed reporting form or format equivalent to the Tier II inventory form instead of the Tier I inventory form. The new data elements that the Agency is finalizing are readily available to facilities. Thus, EPA estimates that it will take approximately 15 minutes (0.25 hours) for technical staff at each facility to record the new data elements on the Tier II inventory form. Total burden for manufacturers to report the new data elements on the Tier II inventory form is estimated to be 30,000 hours, while the total burden for non-manufacturers to report the new data elements on the Tier II inventory form is estimated to be 67,500 hours. The new data elements that EPA is finalizing may not change yearly for any facilities. Approximately 40 states require facilities to submit their inventory form electronically. For these facilities, any changes that may occur for any of the new data elements can be revised with little or no burden. Therefore, the burden associated with this ICR is not expected to incur after the initial reporting year. However, since the new data elements required on the Tier II inventory form are crucial for effective emergency planning and response, EPA assumes that facilities would take 15 minutes (0.25 hours) to review and update the information annually, if necessary.

EPA also estimates that facilities would take approximately 45 minutes (0.75 hours) to get familiar with the new reporting requirements on the Tier II inventory form. The total one-time burden for manufacturers to get familiar with the changes on the Tier II inventory form is estimated to be 90,000 hours and for non-manufacturers, the total one-time burden is estimated to be 202,500 hours. The Agency does not expect this burden to extend beyond the first effective date of the rule.

As of reporting year 2010, approximately 20 states have their own electronic reporting tool for submitting the hazardous chemical inventory. Based on the federal cost and hours to make changes to the Tier2 Submit, EPA estimates that each state would spend approximately 200 hours to add new data elements and revise the existing data elements to their existing software at a cost of \$50,000. The costs include initial analysis, design, programming, alpha and beta testing, and field deployment. Data management burden for State and local agencies is not

estimated in this ICR since the new data elements will be part of the inventory form that these entities currently receive annually.

The total one-time burden for facilities for rule familiarization is 292,500 hours at a cost of \$15,456,375. The annual burden for facilities to report new data elements and for making revisions in subsequent years is estimated to be 97,500 hours at a cost of \$5,152,125. The total burden for the 20 states that need to modify their reporting software is 4,000 hours at a cost of \$1,000,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of

the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities" 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The additional data elements on the Tier I and Tier II inventory forms that we are finalizing in this action have been requested by State and local agencies in an effort to develop or modify their community emergency response plans. Although some small entities may be affected by this final action, the new data elements required will be reported only in the first year that the rule becomes effective. In subsequent years, only changes would need to be updated. The data elements we are revising in the chemical reporting section of the Tier II inventory form would make the forms more user-friendly, and thus, will make reporting easier for facilities, especially small businesses and will also make the forms more user-friendly for state and local officials.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532–1538 for State, local, or tribal governments or the private sector. This action does not impose any new requirements on State, local or tribal governments. The data elements that we are finalizing in this action would be helpful, to State, local and tribal governments to develop or modify their community emergency response plans. In addition, the data elements revised in the chemical reporting section of the Tier II inventory form would make the form more user-friendly. State and local agencies requested EPA to add most of the data elements that EPA is finalizing in this action. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The data elements that we are finalizing in this action would be helpful to State, local and tribal governments to develop or modify their community emergency response plans. In addition, the data elements revised in the chemical reporting section of the Tier II inventory form would make the form more user-friendly. State and local agencies requested that EPA add most of the data elements that EPA is finalizing in this action.

This rule does not impose any requirements on state or local governments. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, (65 FR 67249, November 9, 2000). The data elements that we are finalizing on the Tier I and Tier II inventory forms would be helpful for tribal governments to develop or modify their community emergency response plans. In addition, the data elements revised on the Tier II form would make the form more user-friendly. This action also does not impose any new requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866 and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The additional information that we are requiring on the Tier I and Tier II inventory forms will be useful to State and local officials to assist them in preparing the community in an emergency situation.

H. Executive Order 13211: Energy Effects

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or would otherwise be impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations of when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The additional information that we are requiring on the Tier I and Tier II inventory forms will be useful to State and local officials to assist them in preparing the community in an emergency situation.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 370

Emergency and hazardous chemical inventory forms, Emergency Planning and Community Right-to-Know Act (EPCRA), Hazardous chemicals, Hazardous substances, Intergovernmental relations, Reporting requirements, Superfund, Tier I and Tier II inventory forms.

Dated: July 3, 2012.

Lisa P. Jackson,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

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

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

Authority: 42 U.S.C. 11021 and 11022.

■ 2. Section 370.41 is revised to read as follows:

§ 370.41 What is Tier I inventory information?

Tier I information provides State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the previous calendar year. The Tier I information is the minimum information that you must provide to be in compliance with the inventory reporting requirements of this part. If you are reporting Tier I information, you must report aggregate information on hazardous chemicals by hazard categories. There are two health hazard categories and three physical hazard categories for purposes of reporting under this part. These five hazard categories are defined in 40 CFR 370.66. Tier I inventory form includes the following data elements:

(a) 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 as follows: “I certify under penalty of law that I have personally examined and am familiar with the information 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." This certification shall be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

Note to paragraph (a): Some states require electronic reporting (on-line or via diskettes) and electronic certification. Contact your state for the specific requirements in that state.

(b) The calendar year for the reporting period.

(c) An indication whether the information being reported on page one of the form is identical to that submitted last year.

(d) The complete name and address of the location of your facility (include the full street address or state road, city, county, State and zip code), latitude and longitude.

(e) An indication if the location of your facility is manned or unmanned.

(f) An estimate of the maximum number of occupants present at any one time. If the location of your facility is unmanned, check the box marked N/A, not applicable.

(g) The phone number of your facility (optional).

(h) The North American Industry Classification System (NAICS) code for your facility.

(i) The Dun & Bradstreet number of your facility.

(j) Facility identification numbers assigned under the Toxic Release Inventory (TRI) and Risk Management Program. If your facility has not been assigned an identification number under these programs or if your facility is not subject to reporting under these programs, check the box marked N/A, not applicable.

(k) An indication whether your facility is subject to the emergency planning notification requirement under EPCRA section 302, codified in 40 CFR part 355.

(l) An indication whether your facility is subject to the chemical accident prevention requirements under Section 112(r) of the Clean Air Act, codified in 40 CFR part 68, also known as the Risk Management Program.

(m) The name, mailing address, phone number and email address of the owner or operator of the facility.

(n) The name, mailing address, phone number, Dun & Bradstreet number and email address of the facility's parent company. These are optional data elements.

(o) The name, title, phone number, 24-hour phone number, and email address of the facility emergency coordinator, if applicable.

Note to paragraph (o): EPCRA Section 303(d)(1) requires facilities subject to the emergency planning notification requirement under EPCRA section 302 (including additional facilities designated by the Governor or the SERC under EPCRA section 302(b)(2)) to designate a facility representative who will participate in the local emergency planning process as a facility emergency coordinator. EPA encourages facilities not subject to the emergency planning notification requirement also to provide this information, if available, for effective emergency planning in your community.

(p) The name, title, phone number, and email address of the person to contact for the information contained in the Tier I form.

(q) The name, title, phone number and email address of at least one local individual that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must also provide an emergency phone number which will be available 24 hours a day, every day.

(r) An indication whether the information being reported on page two of the form is identical to that submitted last year.

(s) An estimate (in ranges) of the maximum amount of hazardous chemicals in each hazard category present at your facility at any time during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are provided in § 370.43.

(t) An estimate (in ranges) of the average daily amount of hazardous chemicals in each hazard category present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are provided in § 370.43.

(u) The maximum number of days that any single hazardous chemical within each hazard category was present at your facility during the reporting period.

(v) The general location of hazardous chemicals in each hazard category within your facility. General locations should include the names or identification of buildings, tank fields, lots, sheds or other such areas. You may also attach one or more of the following with your Tier I inventory form:

(1) A *site plan* with site indicated for buildings, lots, areas, etc. throughout your facility.

(2) A *list of site coordinate abbreviations* that correspond to

buildings, lots, areas, etc., throughout your facility.

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

(w) An indication whether you are including any attachments (optional).

■ 3. Section 370.42 is revised to read as follows:

§ 370.42 What is Tier II inventory information?

Tier II information provides State and local officials and the public with specific information on the amounts and locations of hazardous chemicals present at your facility during the previous calendar year. Some states may require you to use a state reporting format including electronic reporting and certification for submitting your hazardous chemical inventory. Contact your state for the specific requirements in that state. Tier II inventory form includes the following data elements:

(a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier II submission is true, accurate, and complete as follows: "I certify under penalty of law that I have personally examined and am familiar with the information 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." This certification must be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all Confidential and Non-Confidential Information Sheets and all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

Note to paragraph (a): Some states require electronic reporting (on-line or via diskettes) and electronic certification. Contact your state for the specific requirements in that state.

(b) The calendar year of the reporting period.

(c) An indication whether the information being reported on page one of the form is identical to that submitted last year.

(d) The complete name and address of the location of your facility (include the full street address or state road, city, county, State and zip code), latitude and longitude.

(e) An indication if the location of your facility is manned or unmanned.

(f) An estimate of the maximum number of occupants present at any one

time. If the location of your facility is unmanned, check the box marked N/A, not applicable.

(g) The phone number of your facility (optional).

(h) The North American Industry Classification System (NAICS) code for your facility.

(i) The Dun & Bradstreet number of your facility.

(j) Facility identification numbers assigned under the Toxic Release Inventory (TRI) and Risk Management Program. If your facility has not been assigned an identification number under these programs or if your facility is not subject to reporting under these programs, check the box marked N/A, not applicable.

(k) An indication if your facility is subject to the emergency planning notification requirement under section 302 of EPCRA, codified in 40 CFR part 355.

(l) An indication whether your facility is subject to the chemical accident prevention requirements under section 112(r) of the Clean Air Act (CAA), codified in 40 CFR part 68, Chemical Accident Prevention Provisions, also known as the Risk Management Program.

(m) The name, mailing address, phone number and email address of the owner or operator of the facility.

(n) The name, mailing address, phone number, Dun & Bradstreet number and email address of the facility's parent company. These are optional data elements.

(o) The name, title, phone number, 24-hour phone number and email address of the facility emergency coordinator, if applicable.

Note to paragraph (o): Section 303(d)(1) of EPCRA requires facilities subject to the emergency planning notification requirement (including additional facilities designated by the Governor or the SERC under EPCRA section 302(b)(2)) to designate a facility representative who will participate in the local emergency planning process as a facility emergency coordinator. EPA encourages facilities not subject to the emergency planning notification requirement also to provide *this information, if available, for effective emergency planning in your community.*

(p) The name, title, phone number and email address of the person to contact regarding information contained in the Tier II form.

(q) The name, title, phone number and email address of at least one local individual that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must also provide an emergency phone number which will be available 24 hours a day, every day.

(r) An indication whether the information being reported on page two of the form is identical to that submitted last year.

(s) For each hazardous chemical that you are required to report, you must:

(1) *Pure Chemical:* Provide the chemical name (or the common name of the chemical) as provided on the Material Safety Data Sheet (MSDS) and provide the Chemical Abstract Service (CAS) registry number of the chemical provided on the MSDS.

Note to paragraph (s)(1): If you are withholding the name in accordance with trade secret criteria, you must provide the generic class or category that is structurally descriptive of the chemical and indicate that the name is withheld because of trade secrecy. Trade secret criteria are addressed in § 370.64(a).

(2) Indicate whether the chemical is a solid, liquid, or gas; and whether the chemical is an EHS.

(3) *Mixture:* If you are reporting a mixture, enter the mixture name, product name or trade name as provided on the Material Safety Data Sheet (MSDS) and provide the Chemical Abstract Service (CAS) registry number of the mixture provided on the MSDS. If there is no CAS number provided or it is not known, check the box "Not Available."

(4) If the mixture you are reporting contains EHS(s), provide the name(s) of each EHS in the mixture. As provided in § 370.14(a), you also have an option to report the non-EHS hazardous components in the mixture.

(5) *Pure Chemical or Mixture:* Indicate which hazard categories apply to the chemical or the mixture. The five hazard categories are defined in § 370.66.

(6) Provide an estimate (in ranges) of the maximum amount of the hazardous chemical present at your facility on any single day during the preceding calendar year. If you are reporting a mixture, provide an estimate of the total amount of the mixture present at your facility on any single day during the preceding calendar year. If the mixture contains any EHS, provide the total amount of each EHS in that mixture. You must use the codes that correspond to different ranges. The amounts and associated range codes are in § 370.43.

(7) Provide an estimate (in ranges) of the average daily amount of the hazardous chemical present at your facility during the preceding calendar year. If you are reporting a mixture, provide an estimate of the average daily amount of the mixture. You must use the codes that correspond to different ranges. The amounts and associated range codes are in § 370.43.

(8) Provide the maximum number of days that the hazardous chemical or mixture was present at your facility during the preceding calendar year.

(9) Provide the type of storage for the hazardous chemical or the mixture containing the hazardous chemical at your facility. Examples for types of storage: Above-ground tank, plastic or non-metallic drum, steel drum, cylinder, rail car, etc.

(10) Provide the storage conditions for the hazardous chemical or the mixture containing the hazardous chemical at your facility. Examples for types of storage conditions: Ambient pressure, ambient temperature, less than ambient temperature/pressure, cryogenic conditions, etc.

Note to paragraphs (s)(9) and (10): Your SERC or LEPC may have specific instructions for reporting types of storage and/or storage conditions.

(11) Provide a brief description of the precise location(s) of the hazardous chemical(s) or the mixture(s) at your facility. You may also attach one of the following with your Tier II inventory form:

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

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

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

(12) Under EPCRA section 324, you may choose to withhold from disclosure to the public the location information for a specific chemical. If you choose to withhold the location information from disclosure to the public, you must clearly indicate that the information is "confidential." You must provide the confidential location information on a separate sheet from the other Tier II information (which will be disclosed to the public), and attach the Confidential Location Information Sheet to the other Tier II information. Indicate any attachments you are including.

(13) You may provide additional reporting. For example, if your State or local agencies require you to provide inventory information on additional chemicals or if you wish to report any hazardous chemical below the reporting thresholds specified in § 370.10, check the appropriate box.

(t) An indication whether you are including any attachments (optional).

■ 4. Section 370.43 is revised to read as follows:

§ 370.43 What codes are used to report Tier I and Tier II inventory information?

(a) *Weight range codes.* Except as provided in paragraph (b) of this section, you must use the following codes to report the maximum amount and average daily amount when reporting Tier I or Tier II inventory information:

| Range codes | Weight range in pounds | |
|-------------|------------------------|-----------|
| | From | To |
| 01 | 0 | 99 |
| 02 | 100 | 499 |
| 03 | 500 | 999 |
| 04 | 1,000 | 4,999 |
| 05 | 5,000 | 9,999 |
| 06 | 10,000 | 24,999 |
| 07 | 25,000 | 49,999 |
| 08 | 50,000 | 74,999 |
| 09 | 75,000 | 99,999 |
| 10 | 100,000 | 499,999 |
| 11 | 500,000 | 999,999 |
| 12 | 1,000,000 | 9,999,999 |
| 13 | 10,000,000 | (*) |

* Greater than 10 million

Note to paragraph (a): To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

(b) Your SERC or LEPC may provide other range codes for reporting maximum amount and average daily amount, or may require reporting of specific amounts. You may use your SERC's or LEPC's range codes (or specific amounts) provided the ranges are not broader than the ranges in paragraph (a) of this section.

[FR Doc. 2012-16951 Filed 7-12-12; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF JUSTICE

41 CFR Part 128-1

[Docket No. FBI 151]

RIN 1110-AA32

Federal Bureau of Investigation Anti-Piracy Warning Seal Program

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Final rule.

SUMMARY: In this document, the Federal Bureau of Investigation (FBI) finalizes its proposed regulation regarding the FBI Anti-Piracy Warning Seal (APW Seal). The final rule provides a general authorization allowing all copyright holders to use the APW Seal, subject to specific conditions of use.

DATES: This rule is effective on August 13, 2012.

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SUPPLEMENTARY INFORMATION: In this document, the FBI finalizes a regulation proposed on September 7, 2011 (76 FR 55332), regarding the FBI APW Seal Program. In this regulation, the FBI extends access to the APW Seal to all United States copyright holders, subject to specific conditions of use.

A. Discussion

The FBI APW Seal is a modified image of the FBI's Official Seal with the words "FBI Anti-Piracy Warning" superimposed on it. The APW Seal was designed to graphically enhance the impact of language warning users of copyrighted media about the potential consequences of intellectual property crime, and the FBI's role in investigating such crime. It serves as a vivid and widely recognizable reminder of the FBI's authority and mission with respect to the protection of intellectual property rights.

Beginning in December 2003, the FBI implemented a pilot program in which the FBI entered into separate Memoranda of Understanding with each of five entertainment and software industry associations. Members of these associations were able to request approval to use the APW Seal from the association, and the association administered the process and record-keeping. Largely as a result of this program, the APW Seal and its anti-piracy message have reached a large segment of the public. Unfortunately, the pilot program also had the effect of excluding non-members of these five associations from being able to use the APW Seal on their works.

In order to enhance the availability, use, and effectiveness of the APW Seal on lawful, copyright-protected works, this rule establishes a regulation governing the use of the APW Seal. The image of the APW Seal will be made available on the FBI's Web site, and it may be downloaded for use on eligible works as specified in the text of the regulation below. There will be no fee associated with using the APW Seal. This regulation will be a significant improvement over the current program, which has tended to limit the use of the APW Seal and requires each user to enter into a written agreement governing the use. Once this regulation is effective, the FBI will work with the participating associations to terminate the pilot program.

B. Overview of Public Comments Received

All public comments were considered in preparing this final rule. Of the forty-

five comments received, most expressed general agreement with the proposed rule. Twenty-four comments specifically noted the benefits of expanding the use of the APW Seal beyond the five associations participating in the pilot program. Many of these spoke favorably about eliminating the financial and administrative obstacles to use of the APW Seal under the pilot program. Four comments noted the benefits of speed and ease of access offered by the proposed on-line process for obtaining the APW Seal.

The comments received from self-identified copyright holders expressed strong support for the proposed rule. For example, two comments from organizations in the spectator sports and independent film industries highlighted the direct negative impact that copyright piracy has on each industry. These comments noted that the "perishable nature" of live sporting events and the need to justify income projections in order to secure financing for independent films leaves these industries vulnerable to the financial consequences of piracy. These comments support the FBI's belief that increased availability of the APW Seal will assist copyright holders in educating users and protecting their works from piracy.

Six comments expressed opposition to the proposed rule, noting various concerns either with the effectiveness of the APW Seal program in deterring piracy generally, or with the new direction outlined in the proposed rule. These included assertions that the APW Seal and accompanying warning do not effectively deter piracy of intellectual property and are a waste of FBI resources; that the lack of positive control over who downloads the APW Seal could lead to increased misuse of the APW Seal and undermine the effectiveness of the anti-piracy message and the FBI's reputation; and that the APW Seal program and other United States Government efforts to combat copyright piracy are merely the product of pressure from the entertainment industry.

The FBI responds to these comments with three points. First, the FBI believes that the APW Seal and accompanying warnings convey important messages to the public and are a significant component of its efforts to deter and to investigate federal crimes involving the piracy of intellectual property. Allowing use by copyright holders who are not members of industry associations will enhance those efforts. Second, although broader access may make unauthorized use more likely, this concern is overshadowed by the value of