

defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that will raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 6, 2010, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: July 7, 2010.

Robert C. McPetridge,

Director, Regulation Policy and Management.

■ For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.304 as follows.

■ a. Revise the introductory text of paragraph (f).

■ b. Redesignate paragraphs (f)(3) and (f)(4) as paragraphs (f)(4) and (f)(5), respectively.

■ c. Add new paragraph (f)(3).

The revision and addition read as follows:

§ 3.304 Direct service connection; wartime and peacetime.

* * * * *

(f) *Posttraumatic stress disorder.* Service connection for posttraumatic stress disorder requires medical

evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. The following provisions apply to claims for service connection of posttraumatic stress disorder diagnosed during service or based on the specified type of claimed stressor:

* * * * *

(3) If a stressor claimed by a veteran is related to the veteran’s fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of posttraumatic stress disorder and that the veteran’s symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran’s service, the veteran’s lay testimony alone may establish the occurrence of the claimed in-service stressor. For purposes of this paragraph, “fear of hostile military or terrorist activity” means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran’s response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

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[FR Doc. 2010–16885 Filed 7–9–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 355 and 370

[EPA–HQ–SFUND–1998–0002; FRL–9168–7]

Emergency Planning and Community Right-to-Know Act; Guidance on Reporting Options for Sections 311 and 312 and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Guidance and interpretations.

SUMMARY: In this document, the U.S. Environmental Protection Agency (EPA or the Agency) is providing guidance on various reporting options that States and local agencies may choose in implementing sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). In addition, the Agency is also providing some new interpretations and revising some existing ones to help facilities comply with certain of the requirements under EPCRA.

DATES: *Effective Date:* July 13, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-SFUND-1998-0002. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <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, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-8019; fax number: (202) 564-2620; e-mail address: jacob.sicy@epa.gov. Also, you may 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 site at <http://www.epa.gov/emergencies>.

SUPPLEMENTARY INFORMATION: Here are the contents of the document:

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- A. UST Forms To Fulfill the Requirements for Tier I Information Under EPCRA Section 312
- B. Partnership Programs for Joint Access to Information and Streamlined Submission of EPCRA Sections 311 and 312 Reporting
- C. Electronic Submittal for EPCRA Section 312 Reporting
- D. Incorporation of Previous Submissions Into EPCRA Section 312 Reporting
- E. Electronic Access to Facility MSDS Database
- F. EPCRA Section 312 Reporting To Fulfill Reporting Requirements Under Section 311

IV. Interpretations.

- A. Emergency Release Notification
- B. Hazardous Chemical Exemption for Solids Under EPCRA Section 311(e)(2)

I. Who is affected by this guidance?

This guidance is provided to States and local agencies on various reporting options that they may choose for implementing sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Entities that would be affected by this guidance are those organizations and facilities subject to EPCRA and its implementing regulations found in 40 CFR parts 355 and 370.

II. What is the background of this guidance?

A. Statutory

EPCRA, which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), (SARA) Title III, establishes authorities for emergency planning and preparedness, emergency release notification, 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 agencies, fire departments, and other emergency officials with information concerning potential chemical risks in their communities.

Section 302 of EPCRA requires facilities to notify their State Emergency Response Commission (SERC) of any EHS present at their site above its threshold planning quantity (TPQ). This information is then used by the Local Emergency Planning Committee (LEPC) to develop emergency response plans for the community. The implementing regulations, EHSs and their TPQs are codified in 40 CFR part 355.

Section 304 of EPCRA requires facilities to notify their SERC and the community emergency coordinator for

the LEPC of any release of an EHS or a CERCLA hazardous substance above its reportable quantity (RQ). The RQs for the CERCLA hazardous substances are in Table 302.4 of 40 CFR Part 302. The implementing regulations for section 304 of EPCRA are codified in 40 CFR part 355.

Sections 311 and 312 of EPCRA require facilities to submit information on hazardous chemicals at their sites above the threshold quantities. The information on hazardous chemicals is submitted to the SERC, LEPC and the local fire department. The implementing regulations for sections 311 and 312 are codified in 40 CFR part 370.

B. Regulations and Guidance

On June 8, 1998, EPA published a proposed rule (63 FR 31268) to streamline the reporting requirements under EPCRA.¹ Specifically, EPA proposed four major regulatory revisions, along with draft guidance to provide flexibility to the States and local agencies in implementing the EPCRA program. The four proposed regulatory revisions were: (1) Higher threshold levels for reporting gasoline and diesel fuel at retail gas stations; (2) relief from routine reporting for substances with minimal hazards and minimal risks; (3) relief from routine reporting for sand, gravel and rock salt; and (4) "Other Regulatory Changes," such as: Reporting of mixtures; removing the Tier I and Tier II inventory forms and instructions from the CFR, as well as some other revisions to the forms and instructions; and some minor changes to the emergency planning and emergency release notification regulations (40 CFR part 355). The regulatory provisions for items (1) and (4) were finalized on February 11, 1999 (64 FR 7031) and November 3, 2008 (73 FR 65452), respectively. The regulatory provisions for items (2) and (3) may be finalized at a later date.

In addition to the four regulatory revisions, EPA took comment on various reporting options to streamline the reporting requirements for facilities and to reduce the information management burden for SERCs, LEPCs and fire departments in the form of draft guidance in the preamble to the June 8, 1998 proposed rule. The main objective of the draft guidance was to provide flexibility to the States and local agencies in implementing sections 311 and 312. In particular, EPA stated that

¹ The regulations were first promulgated in 1987 and amended in 1990, 1999 and 2008. See **Federal Register** Notices April 22, 1987 (52 FR 13378), October 15, 1987 (52 FR 38344), February 11, 1999 (64 FR 7031), July 26, 1990 (55 FR 30632) and November 3, 2008 (73 FR 65452).

States may implement any or all of the reporting options provided in the preamble whether EPA finalized the guidance or not. Since the proposed rule, many States have adopted at least one or two reporting options, such as electronic filing via diskettes or on-line filing of the Federal reporting form, Tier II, or the State equivalent form. States were always given the flexibility to implement the EPCRA program as necessary to meet the goals of EPCRA, which is to prepare for and respond to releases of EHSs and to provide the public with information on potential chemical risks in their communities. This flexibility includes adding more chemicals, setting lower reporting thresholds and creating a reporting form or format that includes more information than is required by the Federal reporting requirements.

EPA did not propose any regulatory revisions, but sought comments on various reporting options under sections 311 and 312. The reporting options discussed were: (1) The use of Underground Storage Tank (UST) forms to fulfill the requirements for Tier I Information under EPCRA section 312; (2) partnership programs for joint access to EPCRA sections 311 and 312 information by SERCs, LEPCs, and fire departments; (3) electronic submittal for EPCRA section 312 reporting; and (4) incorporation of previous submissions into EPCRA section 312 reporting. These four options, the Agency believed, would reduce the information management burden for States and local agencies, as well as minimize the reporting burden for the regulated community. (See preamble to the June 8, 1998 proposed rule for further discussion on the various reporting options.)

EPA also suggested a few other options to streamline reporting and revise some existing regulatory interpretations for facilities. These additional options, the Agency believed, would also reduce the information management burden for States and local agencies. The options and suggested interpretations are: (1) Electronic access to a facility's databases of MSDSs; (2) interpretation of the hazardous chemical exemption for solids under EPCRA sections 311(e)(2); and (3) EPCRA section 312 reporting to fulfill the reporting requirements under section 311. (See preamble to the June 8, 1998 proposed rule for further discussion on the various options and suggested interpretations.)

In the June 1998 preamble, EPA also defined and took comment on several terms or phrases used in the regulations. EPA requested comments on whether

the Agency should provide guidance on the meaning of the term "promptly" associated with providing notice of any changes relevant to emergency planning (40 CFR part 355) and the phrase "as soon as practicable" associated with providing a written follow-up emergency notice under the emergency release notification requirements (40 CFR part 355). The Agency did not intend to revise the regulatory requirements, but only to provide guidance for these two terms. However, EPA received comments from many States and local agencies that the term "promptly" should be defined in the regulations since receiving information from facilities on changes relevant to emergency planning is crucial in developing and/or updating emergency response plans. As a result, the Agency defined this term in the recent final rule published on November 3, 2008 (73 FR 65452). The requirement added to 40 CFR 355.20 states that any changes relevant to emergency planning must be provided to the LEPC within 30 days after the changes have occurred. EPA will define the phrase, "as soon as practicable" associated with providing written follow-up emergency notice under the emergency release notification requirements in this guidance.

III. What are the various reporting options for implementing Sections 311 and 312 of EPCRA?

EPA requested comments on the draft guidance in the preamble to the June 1998 proposed rule (63 FR 31268) in an effort to streamline compliance with the reporting requirements. EPA did not propose any regulatory changes, but sought comments on the options provided. The Agency stated in the 1998 preamble that States and local agencies may implement any or all of the options regardless of whether EPA issues final guidance, provided the approach adopted met the statutory and regulatory requirements.

In general, commenters supported some of the options provided in the draft guidance. However, a few commenters stated that the options may actually increase compliance costs and the risk of non-compliance at companies with multiple facilities due to the loss of consistency in data management and compliance reporting. As noted previously, the various reporting options under EPCRA sections 311 and 312 were to provide flexibility to the States and local agencies so they may implement the program as necessary for their community emergency planning and response efforts. States may need to develop specific methods to manage the

information provided by facilities within their State so that LEPCs can develop emergency response plans and provide the public with information. Thus, States are not required to adopt or implement these options.

The following is a more specific discussion of each of the reporting options and guidance on implementing them.

A. UST Forms To Fulfill the Requirements for Tier I Information Under EPCRA Section 312

At the time of the June 1998 proposal, many States were accepting the Tier I inventory form, which contains the minimum information about hazardous chemicals at a facility.² Only a few States required the Tier II inventory form, which contains specific information about hazardous chemicals at the facility.³ To provide flexibility, the draft guidance offered States the option to allow facilities to use the UST form required under the Resource Conservation and Recovery Act (RCRA) to comply with the reporting requirements under section 312 of EPCRA. This option reduces the reporting burden for those facilities that only have USTs on their site containing hazardous chemicals. In most cases, these facilities are retail gas stations which usually only have USTs that may be subject to the reporting requirements under sections 311 and 312. At the same time, in the June 1998 proposed rule, EPA proposed to raise the reporting thresholds for gasoline and diesel fuel at retail gas stations provided these facilities meet certain requirements. EPA finalized the higher reporting thresholds for gasoline and diesel fuel on February 11, 1999 (64 FR 7047).

A few commenters supported the use of the UST form to fulfill the section 312 requirements, but most opposed it. These commenters argued that it would be confusing and burdensome for LEPCs and fire departments and would make electronic filing more difficult. Some of these commenters also stated that the differences in information and filing schedules would make this approach

² Tier I information provides the general types and locations of hazardous chemicals present at the facility during the previous calendar year. The Tier I information is the minimum information to be provided to be in compliance with the inventory reporting requirements. If Tier I information is reported, the hazardous chemicals must be aggregated by hazard categories. There are two hazard categories and three physical hazard categories for purposes of reporting under Tier I. These five hazard categories are defined in 40 CFR 370.66.

³ Tier II information provides the specific amounts and locations of hazardous chemicals present at the facility during the previous calendar year.

inappropriate. Other commenters argued that EPA's approach would not result in streamlining and that EPA should eliminate duplicative reporting, not duplicative forms. These commenters also questioned the need for the approach because most States require the Tier II form and the higher reporting thresholds for gasoline and diesel fuel will remove most of the facilities subject to UST reporting from Part 370.

The Tier I inventory form provides the minimum information required under EPCRA section 312 and its implementing regulations. When the proposed rule was published in June 1998, some States were accepting the Tier I form. However, all States now require facilities to submit a State specific form or the Federal Tier II inventory form. Therefore, use of the UST form as suggested in 1998 may not be beneficial for implementing agencies. Additionally, EPA expected that the UST form would be used instead of the Tier I form mainly by retail gas stations since they likely only have underground storage tanks containing hazardous chemicals. Since EPA raised the reporting threshold for gasoline and diesel fuel stored at retail gas stations on February 11, 1999 (64 FR 7047), most retail gas stations may not need to report. Therefore, the Agency's guidance is that the use of the UST form as a replacement of the Tier I form for reporting under EPCRA section 312 is not recommended.

B. Partnership Programs for Joint Access to Information and Streamlined Submission of EPCRA Sections 311 and 312 Reporting

To streamline the submission process, EPA suggested in the draft guidance that SERCs, LEPCs, and fire departments could partner together and agree that one agency would receive the section 311 and 312 reporting information and make it available electronically to the others. Although the statute and its implementing regulations in 40 CFR part 370 state that facilities are required to submit their MSDSs or chemical lists under section 311 of EPCRA and the Tier I or Tier II form to their SERC, LEPC and the local fire department, EPA believed the single point submission option satisfies the intent of the statute and its implementing regulations. If implementing agencies choose to use this option, EPA stated that they should ensure that all statutory and regulatory requirements are met, especially the deadline for submission.

Many commenters supported the idea of partnerships to allow filing of information to a single point. Other

commenters, while supporting this approach, cited problems. For example, many LEPCs and fire departments do not have access to computers or the Internet. A few commenters also stated that they provide compliance assistance to facilities and a centralized compliance point would take away this working relationship.

The Agency suggested the single point submission to reduce the burden on the regulated community, as well as reduce information management burden on some implementing agencies. For example, a SERC could develop a reporting format for facilities to submit the Tier II form or an equivalent State form. The SERC could collect the information and then make it immediately available electronically to LEPCs and fire departments on-line. Electronic access eliminates searching through hundreds of papers during an emergency situation. If LEPCs and/or fire departments do not have the capability to access the information on-line, then the SERC could provide the information to these entities on diskettes or in hard copy.

At the time of the June 1998 proposed rule, only a few States were accepting the Tier II form or the State form electronically. Today, many States have developed their own electronic reporting system or are using EPA's Tier II reporting system (Tier2 Submit). Most of these States accept section 312 reports on-line. EPA encourages these States to explore ways to provide their LEPCs and fire departments joint access to the information. EPA also expects that today most LEPCs and fire departments can accept or access section 312 reports electronically.

EPA realizes that a lack of funding may limit a State's capability to set up a partnership or to develop database systems and access to information. Since the EPCRA program has matured over the past ten years, many States have established program funding mechanisms through reporting fee systems, Federal grants, *etc.* EPA encourages States to use these mechanisms to provide the necessary resources to develop a database system and access to information for LEPCs and fire departments.

Although States have the flexibility to choose any method for submittal and joint access to information, that method must meet the March 1 reporting deadline specified in the statute. To ensure this deadline is met, States may want to revise their right-to-know program regulations to require facilities to submit the Tier II form or State equivalent before March 1 to allow enough time for processing and access

by LEPCs and fire departments by March 1. If States choose to implement a partnership program for sharing of information, we believe that a formal agreement is necessary between the three entities. States should then notify the facilities about this agreement and the new submission process. That is, States should inform the facilities that they can submit their section 312 report to the SERC and it will provide access to the LEPC and the fire department.

C. Electronic Submittal for EPCRA Section 312 Reporting

Since the beginning of EPCRA, the Agency encouraged States to implement the EPCRA program as necessary to meet its goals: to prepare for and respond to emergency releases of extremely hazardous substances and provide information to the public on potential chemical risks in their communities. States have the flexibility to tailor the program to their needs by adding chemicals or setting lower reporting thresholds, *etc.* Over the years, States have reported that their biggest burden is handling thousands of paper Tier I/II form submissions. Some States requested that they be allowed to create an electronic reporting format for facilities to use to comply with EPCRA section 312. Electronic reporting would reduce the burden on facilities since they need to enter most of their information on the Tier II form only in the first year and then revise it as needed in subsequent years. As discussed in the previous section, electronic reporting makes joint access easier.

Many commenters supported electronic submittals, but noted that it would not be practical for many LEPCs, fire departments, and smaller facilities since they likely don't have the capability. Other commenters opposed the idea because of the financial burden on State and local agencies. Still other commenters supported electronic reporting and provided ideas for certification of electronic submissions.

The Agency understands the concerns raised by commenters on electronic reporting. Prior to the June 1998 proposed rule, many States and local agencies requested that the Agency develop an electronic reporting system to reduce the burden of information management at the State and local level. Some State and local agencies asked that they be allowed to develop their own electronic reporting format. This is why EPA suggested in the draft guidance that States and local agencies have the flexibility to choose any reporting options provided the statutory and regulatory requirements are met.

EPA has since developed and offered States an electronic reporting system—Tier2 Submit electronic reporting software. Many States also have created electronic reporting formats and require on-line reporting or submission via diskettes. Only a few States accept paper Tier II report submissions. EPA recognizes that there may be facilities that do not have the capability to submit Tier II forms electronically. EPA encourages States and local agencies to allow these facilities to submit paper copies of their Tier II report, unless the States make arrangements to collect and provide the data to LEPCs and the fire departments.

Recently, many States requested guidance on electronic signatures and certification of electronically submitted information. Currently, the regulations in part 370 require the facility owner or operator (or the officially designated representative of the owner or operator) submit a certification statement with their hazardous chemical inventory form containing an original signature that the information submitted is true, accurate and complete. The June 8, 1998 draft guidance stated that the States and local agencies may continue to develop their own reporting format, including electronic reporting as long as the information required includes the information required by the statute and its implementing regulations and that certification is required regardless of the format in which it is submitted. The draft guidance also stated that if States and local officials allow section 312 reporting information to be submitted via the Internet, it will be necessary for the facility owner or operator or its officially designated representative to certify the information submitted.

At the time the draft guidance was published in June 1998 **Federal Register**, on-line submittal and certification options were not available for reporting under section 312. Recently, States and the regulated community requested that EPA provide guidance on how the original signature requirement stated in 40 CFR 370.41 and 370.42 could be met if facilities submit the hazardous chemical inventory form on-line.

EPA advises States and the regulated community that for electronic section 312 reporting, the original signature as required by 40 CFR part 370 may be provided on paper (i.e. a “wet” signature) or by electronic certification according to requirements established by the State. (*Memorandum from Debbie Dietrich to EPA Regional Superfund Managers on Electronic Reporting and Signature under EPCRA Section 312, July 30, 2009.* This memorandum is

available on the Agency’s Web Site at <http://www.epa.gov/emergencies>). States have the flexibility to use any system for collecting chemical inventory information under section 312 and to establish the means to ensure the information is true, accurate, and complete so they may effectively and efficiently manage chemical risks and provide information to the public. Facilities that submit the hazardous chemical inventory form and certification on-line, do not need to also submit a certification statement on paper unless the State and local agencies require it. EPA encourages facility owners and operators to contact their State and local agencies for the reporting requirements in each State. The regulated community and the implementing agencies may visit the Agency’s Web site at <http://www.epa.gov/emergencies> for Federal reporting requirements and access to each of the State Web sites.

D. Incorporation of Previous Submissions Into EPCRA Section 312 Reporting

Under EPCRA section 312, facilities are required to submit a Tier I form or, if requested, a Tier II form annually to the SERC, LEPC and the fire department even though the information submitted in a previous year has not changed. To reduce the burden on facilities that have no changes in their data from the previous year’s submission, EPA discussed several options in the June 1998 preamble for meeting the requirements under EPCRA section 312 without having to re-create the information.

One approach suggested in the draft guidance would be for the facility to simply reference and attach a copy of the unchanged information from the previous year’s submittal to the current year’s submission. This would mean that the facility would have to retain a copy of its previous submission. A second approach would be for the facility to reference previous submittals already retained by the SERC, LEPC and local fire department. A third approach would require reporting only if the information changed.

Some commenters opposed the option to require reporting only when changes have occurred. Few commenters supported the idea of simply referencing and/or attaching a copy of the unchanged information. They stated this approach could increase the burden on implementing agencies because they would need to maintain and reference previous years’ files. These commenters also stated that facilities probably would

forget to report and could consider some changes unimportant.

At the time the various approaches were discussed in the preamble to the June 1998 proposal, States did not have electronic reporting methods in place. Now that many States have established electronic reporting or are using the Tier2 Submit software developed by EPA, the burden for facilities to re-create information on paper does not exist for most facilities. Facilities can store their Tier II report electronically and revise as needed for subsequent years. Therefore, EPA is no longer suggesting that facilities be allowed to incorporate previous submissions as part of the EPCRA section 312 reporting requirement since it is unlikely to reduce the reporting burden. However, States that still require submission of a facility’s Tier II or State equivalent forms on paper may still consider options for incorporation of previous submissions to reduce the paperwork burden.

E. Electronic Access to Facility MSDS Database

Some facilities maintain an electronic database of MSDSs for the hazardous chemicals on their site. EPA requested comments whether a facility should be allowed to give the SERC, LEPC and the local fire department electronic access to its MSDS database instead of actually submitting the MSDSs to the three entities as required under EPCRA section 311.

A few commenters supported this option and some asked for development of a central database that would include MSDSs from all facilities. However, other commenters opposed the approach for a number of reasons, such as it would raise concerns about the security of a company’s computer systems, it would not meet the requirements of the statute, as well as the fact that many LEPCs and fire departments do not have the capability to access databases electronically. Still other commenters stated that access would need to be assured even when power outages occur.

Submission of MSDSs for hazardous chemicals present at a facility to the SERC, LEPC and the fire department is a statutory requirement. EPA has codified this requirement in 40 CFR part 370. The Agency suggested electronic submission of MSDSs or providing access to a facility’s MSDS database to reduce the burden on the regulated community and reduce the information management burden on implementing agencies. However, such an approach does raise a number of issues, including whether it would meet the statutory

requirements under EPCRA section 311. Therefore, the Agency is no longer recommending such an approach in place of the submission of the MSDS forms for hazardous chemicals at the facility to the SERC, LEPC and fire departments, except as discussed elsewhere in today's notice.

F. EPCRA Section 312 Reporting To Fulfill Reporting Requirements Under Section 311

EPA's draft guidance suggested another approach to reduce the reporting requirements for facilities. Specifically, the Agency sought comments on whether the section 312 reporting requirement can fulfill the section 311 reporting requirements provided that the section 312 reporting conforms to the required time frame and that the Tier II information is accurate and complete. Since reporting under both sections 311 and 312 are submitted to the SERC, LEPC and the fire department, this approach should not pose any additional burden on these entities.

Section 311 of EPCRA and its implementing regulations require the submission of MSDSs or a list of hazardous chemicals to the SERC, LEPC, and fire department within three months after becoming subject to the reporting requirements, or within three months after discovery of significant new information concerning a hazardous chemical that has already been reported, or within 30 days of a request from the SERC, LEPC or fire department. Section 312 of EPCRA requires a submission of a Tier I (or Tier II) form to these three entities by March 1 of each year. Since the section 312 report is due by March 1, for information from the previous calendar year, some facilities may submit their Tier I/II form between January 1 and March 1. Therefore, Section 312 could be used to meet the section 311 reporting requirements for those facilities that become subject to reporting under section 311, or discover significant new information concerning a hazardous chemical between October 1 and December 31 of any given calendar year.

All but one commenter who addressed this issue supported EPA's draft guidance regarding this matter. Many States indicated they already use this approach and find that it works well allowing them to utilize its resources in a more efficient manner. One commenter objected because it would require reprogramming of company systems.

After reviewing the comments, the Agency, recognizing that some States

are already implementing this reporting option, is retaining this option in this final guidance. However, those States that choose to implement or are already implementing this reporting option will need to require facilities to submit a section 312 report three months after acquiring a new chemical in order to be in compliance with the section 311 reporting requirements.

IV. Interpretations

A. Emergency Release Notification

In addition to providing draft guidance to the implementing agencies for various reporting options under EPCRA section 312, EPA also provided draft guidance to the regulated community on defining certain terms and phrases used in the regulations. In the June 1998 proposed rule, EPA requested comments on the Agency's interpretation of the meaning of the term "promptly" in section 355.20 and the phrase "as soon as practicable" in section 355.40. The Agency did not intend to revise the regulatory requirements, but only to provide guidance for these two terms.

EPA received comments from many States and local agencies that the term "promptly" should be defined in the regulations since receiving information from facilities on changes relevant to emergency planning is crucial in developing and/or updating emergency response plans. Therefore, to be consistent with EPCRA section 303(d)(2), the Agency proposed to add the term "promptly" to the regulations in 40 CFR 355.20 associated with providing the LEPC with notification of any changes occurring at the facility which may be relevant to emergency planning. Commenters supported this revision, but suggested that the Agency provide a specific time period, such as 10, 20 or 30 days because of the need for this information for emergency planning. As previously noted, the final rule published on November 3, 2008 (73 FR 65452) revised 40 CFR 355.20 to state that any changes relevant to emergency planning must be provided to the LEPC within 30 days after the changes have occurred.

EPA also requested comments on whether the Agency should provide guidance on the meaning of the phrase "as soon as practicable" under the emergency release notification in 40 CFR 355.40, which states (at 40 CFR 355.40(b)) that a written follow-up emergency notice must be provided by a facility "as soon as practicable" after a release. EPA sought comments on whether 30 days should be allowed to provide a written follow-up notice.

Commenters generally supported defining "as soon as practicable," but differed on whether 30 days was a reasonable period. Some commenters stated that the period should be shorter (7 or 14 days) or longer (45 to 90 days), while other commenters supported the 30-day period. A few commenters noted that 30 days was inconsistent with EPA's guidance on enforcement actions.

Based on the comments and EPA's evaluation, the Agency has decided that 30 days should be sufficient to submit the written follow-up notice of the emergency release to the SERC and LEPC. The Agency will be revising its enforcement response policy to reflect this change. States may implement a more stringent timeframe if they so choose.

B. Hazardous Chemical Exemption for Solids Under EPCRA Section 311(e)(2)

EPCRA section 311 provides some exemptions for certain substances from the definition of hazardous chemical. Under section 311(e)(2), "any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use" is exempt from the definition of hazardous chemical and therefore need not be reported under sections 311 and 312. However, EPA's interpretation of this exemption has been that if portions of the solid metal are modified, such that exposure to a hazardous chemical can occur, then all of the solid metal should be included and counted to determine the quantity of hazardous chemical present for threshold purposes. For example, if there are 10,000 pounds of steel undergoing a welding process at a facility at any one time, then 10,000 pounds would need to be counted toward the quantity for threshold determination even if only a portion of the steel is welded. EPA believes this interpretation occasionally requires reporting of information that is unnecessary for emergency planning and community right-to-know purposes. To relieve the burden for facilities and to relieve the burden on information management for implementing agencies, the Agency suggested that this interpretation be modified in the preamble to the June 1998 proposed rule. Under the new interpretation, facilities would only have to include and count the amount of fume or dust emitted or released from a manufactured solid that is being modified to determine whether the EPCRA sections 311 and 312 reporting thresholds have been reached. EPA requested comments on this new interpretation and

commenters generally supported this new interpretation for this exemption.

Based on the comments provided by the regulated community and the implementing agencies, EPA is revising its interpretation for the exemption for solids under section 311(e)(2), such that facilities would only have to include and count the amount of fume or dust given off a piece of metal that is being modified toward the threshold determination. In addition, as EPA stated in the preamble to the June 1998 proposed rule, stamping a piece of metal doesn't negate the exemption for that

piece of metal; the piece of metal would still qualify for the exemption. EPA believes that the stamping of sheet metal does not present exposure to a hazardous chemical.

This new interpretation would also apply to bricks or any other manufactured solid item that undergoes a modification process (for example, cutting). Thus, facilities would need to count the amount of fume or dust released during the modification process toward the threshold determination.

These interpretations are provided as guidance. States may implement more stringent requirements if they so choose.

The Agency realizes the format for this guidance is different from the usual EPA format. Since the Agency requested comments on the various reporting options and interpretations, we decided to publish the guidance in the **Federal Register** to address the comments. A fact sheet that includes all the elements in this guidance is available on the Agency's Web site at <http://www.epa.gov/emergencies>.

SUMMARY OF THE REPORTING OPTIONS

Reporting Option	Guidance
Use of UST Forms to Fulfill the Requirements for Tier I Information under EPCRA Section 312.. Partnership Programs for Joint Access to Information and Streamlined Submission of EPCRA Sections 311 and 312 Reporting. If a single point submission is allowed for facilities, then one agency would receive the information and provide access to the other two agencies.. Electronic Submittal and Certification for EPCRA Section 312 Reporting	Since all States now require facilities to submit Tier II or State equivalent forms, this reporting option is no longer useful. States may implement this approach, but the statutory and regulatory requirements must still be met. That is, all three entities get access to section 312 information by March 1 annually. • States may require facilities to submit information using Tier 2 Submit, the Federal electronic reporting format or the State equivalent electronic reporting format. • Those facilities that do not have capability to file electronically should be given the option to file a hardcopy. • The original signature requirement in 40 CFR 370.41 and 370.42 could be met by providing the certification statement on paper (<i>i.e.</i> wet signature) or by any electronic certification established by State and local agencies. (<i>Memorandum from Debbie Dietrich to EPA Regional Superfund Managers on Electronic Reporting and Signature under EPCRA Section 312, July 30, 2009.</i> This memorandum is available on the Agency's Web site at http://www.epa.gov/emergencies).
Incorporation of Previous Submissions into EPCRA Section 312 Reporting. Electronic Access to Facility MSS Database	States may adopt this reporting approach, especially for those facilities that submit section 312 information on paper. EPA believes that this approach is inappropriate since there is a concern for computer and information security. • This reporting approach is only beneficial to those facilities that acquire a new chemical between October 1 and December 31 of any given calendar year. • States may implement this reporting approach ensuring that facilities comply with section 312 three months after acquiring a new chemical.
EPCRA Section 312 Reporting to Fulfill Reporting Requirements under Section 311.	

SUMMARY OF THE INTERPRETATIONS

Interpretations	Guidance
Emergency Release Notification	Facilities may have up to 30 days to submit a written follow-up report to State and local agencies. States may implement more stringent requirements.
Hazardous Chemical Exemption for Solids under EPCRA section 311()(2).	Facilities would only have to count the amount of fume or dust given off a piece of metal, brick or any other manufactured solid item that undergoes a modification process (<i>i.e.</i> cutting, welding, <i>etc.</i>). States may implement more stringent requirements.

Dated: June 22, 2010.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2010-17031 Filed 7-12-10; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10-51; FCC 10-88]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Interim rule.

SUMMARY: In this document, the Commission adopts an interim rule addressing the certification of provider information for Telecommunications Relay Services (TRS) calls. By requiring providers to be more accountable for their submissions, the Commission takes necessary, affirmative steps to preserve the Interstate TRS Fund (Fund).

DATES: Effective July 13, 2010, except for the amendment to 47 CFR 64.604 (c)(5)(iii)(I), which contains new information collection requirements subject to the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget (OMB). Written comments by the public on the new information collections are due September 13, 2010. The Commission will publish a document in the **Federal Register** announcing the effective date of these requirements.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission via e-mail at PRA@fcc.gov and Cathy.Williams@fcc.gov, and to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395-5167, or via e-mail to Nicholas_A_Fraser@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Gregory Hlibok, Consumer and Governmental Affairs Bureau at (202) 559-5158 (VP), or e-mail: Gregory.Hlibok@fcc.gov. For additional information concerning the information collection requirements contained in this document, contact Cathy Williams

at (202) 418-2918, or e-mail:

Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Structure and Practices of the Video Relay Service Program*, Order, document FCC 10-88, adopted May 24, 2010, and released May 27, 2010, in CG Docket No. 10-51. Simultaneously with the Order, the Commission also issued a Declaratory Ruling and Notice of Proposed Rulemaking in CG Docket No. 10-51.

The full text of document FCC 10-88 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document FCC 10-88 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site <http://www.bcpweb.com> or by calling 1-800-378-3160. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Document FCC 10-88 can be also downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

Paperwork Reduction Act of 1995 Analysis

Document FCC 10-88 contains new information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. Public and agency comments are due September 13, 2010. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Synopsis

The rapid growth of the Fund within a five year span requires the Commission to take immediate steps in preserving the Fund to ensure the

continued availability of TRS. Indeed, the Commission has a fiduciary duty to ensure that the Fund operates efficiently, and to guard against waste, fraud, and abuse. The Commission takes steps in document FCC 10-88 to uphold that duty.

Section 553 of the Administrative Procedure Act requires that agencies provide notice of, and an opportunity for public comment on, their proposed rules except, *inter alia*, "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Notice and comment have been excused in emergency situations or where delay could result in serious harm. Additionally, agencies, including this Commission, have been afforded "substantial deference" when imposing interim regulations with or without prior notice and comment, particularly where such regulations have been shown to be necessary to prevent irreparable harm and the agency is seeking comment on the matter in a rulemaking proceeding.

In this case, the Commission finds good cause to adopt the interim rule below to make providers more accountable by requiring senior executives to certify compliance with the Commission's regulations under penalty of perjury. By requiring providers to be more accountable for their submissions, the Commission takes necessary, affirmative steps to preserve the TRS Fund. The Commission adopts an interim rule to require the Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a relay service provider to certify, under penalty of perjury, that: (1) Minutes submitted to the Fund administrator for compensation were handled in compliance with section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives, or payments or kickbacks, to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates or methodologies are true and correct. In the accompanying *NPRM* section of document FCC 10-88, the Commission seeks additional comment on whether it should make this rule permanent.

The TRS rules currently require providers to "submit reports of * * * TRS minutes of use to the [Fund] administrator in order to receive payments." The rules further require