

**Statement Supporting the Renewal of the  
Information Collection Procedure for EPCRA  
Trade Secret Regulations**

**1. Identification of the Information Collection**

**1 (a) Trade Secrets Claims for Community Right-to-Know and  
Emergency Planning (EPCRA Section 322) (Renewal)  
EPA ICR No. 1428.09, OMB No. 2050-0078**

**1 (b) Short Characterization**

This information collection request pertains to trade secrecy claims submitted under section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as EPCRA of SARA, the Superfund Amendments and Reauthorization Act. EPCRA contains provisions requiring facilities to report to State and local authorities, and EPA, the presence, use and release of extremely hazardous substances (described in sections 302 and 304) and hazardous and toxic chemicals (described in sections 311, 312 and 313 respectively). Section 322 of EPCRA allows a facility to withhold the specific chemical identity from these EPCRA reports if the facility asserts a claim of trade secrecy for that chemical identity. The provision establishes the requirements and procedures that facilities must follow to request trade secret treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the “sufficiency” of trade secret claims. EPA published the trade secret regulations on July 29, 1988 (58 FR 28772), codified in 40 CFR Part 350.

Trade secret protection is provided for specific chemical identities contained in reports submitted under each of the following provisions in EPCRA:

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

Section 322 requires that facilities requesting trade secret protection submit to EPA, in conjunction with their EPCRA report, an explanation showing that their claim for the chemical identity meets the four statutory criteria of trade secret enumerated in subsection (b) of that provision.

Facility owners and operators submit trade secret claims only to EPA. Claims consist of either one or two versions of the EPCRA report depending on the type of report, and two versions of an up-front substantiation of the trade secret claim. The substantiation is designed to gather sufficient factual support to indicate whether the claim will meet the four statutory criteria of trade secrecy. It is an EPA-developed form, and is discussed in detail in Part 3(b)(i) below.

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

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

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

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

Two preconditions must be met in order for health professionals to gain access to trade secret chemical identity in non-emergency and preventative measure situations: they must submit a written statement of need and a written confidentiality agreement to the facility owner or operator prior to obtaining the information. No such requirements exist in the medical emergency situation, but the owner or operator disclosing the information may require a written confidentiality agreement and statement of need as soon as circumstances permit.

The Offices that will use trade secret information are the Office of Emergency Management (OEM) in the Office of Solid Waste and Emergency Response (OSWER) and the TRI Program Division in the Office of Environmental Information (OEI). Trade secrecy claims are stored in areas designed to assure the confidentiality of the collected information.

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

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

The specific provision of EPCRA authorizing this collection is section 322 of EPCRA. Congressional intent in writing trade secrecy provisions under EPCRA was to balance industry's concern with the protection of legitimate trade secrets with communities' right-to-know chemical identification information. Congress established procedures for companies to assert claims, for the public to obtain review of their validity, and for an Agency claim review process which eliminates legally invalid and frivolous claims.

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

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

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

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

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

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

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

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

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

Based on reviews of the substantiations submitted in past reporting years, EPA's experience has been that use of a standardized substantiation form has: (1) enabled submitters to adequately understand and develop information necessary to submit a sufficient claim; (2) enabled EPA to ensure that all submissions are evaluated on the basis of comparable information, and; (3) served as an efficient identifier of the trade secret status of the document and associated report, and hence, has ensured the use of appropriate Agency handling and routing procedures protective of their confidentiality.

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

The trade secrecy claim information is used only by OSWER and OEI and is needed by these Offices in order to: (1) perform the Agency's review of claims as required by section 322(d) to determine whether the claims are sufficient to support a finding that the specific chemical identity withheld is a trade secret; (2) ensure that claims for all withheld chemical identities are complete in accordance with the requirements of sections 322 (a)(1) and (a)(2), and; (3) evaluate claims for frivolousness and the attendant assessment of penalties stipulated in section 325 (d)(1).

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

### **(a) Nonduplication**

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

### **(b) Public Notice**

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Agency notified the public through a *Federal Register* notice on the resubmission of this ICR on June 8, 2012 (77 FR 34037). EPA did not receive any comments.

### **(c) Consultations**

EPA contacted a few facilities that submitted trade secrecy claims to develop an average estimate on how much burden the trade secrecy regulations impose on the facilities. The following facilities were contacted.

Rick Foery  
ESCO Company LLC  
Chester VA  
(804) 530-9794

Bruce Katje  
Dupont Teijin Films  
Muskegon MI  
(231)726-3106

Roxanna Huffman/John Moles  
Cryotech Deicing Technology  
Fort Madison, IA  
(319) 372-6012

Lyon Cornelius  
Future Fuel Chemical Company  
Batesville, AZ  
870-698-5634

Jane Rix  
Vertex Chemical Corp.  
St. Louis, MO  
(314) 471-0500

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

Although submitting answers to the questions on the trade secrecy substantiation form is a necessary step towards ensuring eventual protection of a chemical identity, the decision to seek that protection is entirely voluntary. The submission process involves one initial collection of information for sufficiency, with the possibility of a request for supplementary information [as provided in section 322 (d)(3)(A)] to establish veracity of the assertions stated in the substantiation if EPA determines that a claim is initially sufficient during a review initiated by public petition or the Agency.

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

All trade secrecy claims submitted to EPA under EPCRA are handled and stored according to procedures set out in the *Manual for Physical Handling, Security, and Protection of files containing Trade Secret Claims submitted under Sections 303, 31 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), March 2010*. The procedures for handling reports submitted under section 313 and the trade secret claims submitted under section 313 are set out in the *Trade Secret Manual for TRIPS Data Processing Center, February 2011*.

These procedures were developed expressly for EPCRA trade secrecy claims with the knowledge that these documents are sensitive. Handling and review of documents containing EPCRA trade secret information is permitted only by persons who have obtained formal clearance to access the information based on a work-related need to engage in these activities. When not being processed or reviewed by authorized individuals, the claim submissions containing trade secret information are stored in restricted access areas. To ensure that appropriate handling procedures are activated and the confidentiality of EPCRA trade secret submissions is maintained, the Agency attaches a cover sheet to the top of each trade secret document and otherwise marks the document to clearly identify the document as EPCRA confidential.

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

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

Sections 303, 311 and 312 claims may be submitted by manufacturing and non-manufacturing sectors. Section 313 claims are submitted by facilities in covered sectors that trigger TRI reporting thresholds. Sectors covered by Section 313 include: metal mining; coal mining; manufacturers; electric utilities (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce); commercial hazardous waste treatment (limited to facilities regulated under the RCRA Subtitle C, 42 U.S.C. section 6921 et seq.); chemical and allied products-wholesale; petroleum bulk terminals and plants (also known as stations)-wholesale; and, solvent recovery services (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis). To determine whether your sector is covered by Section 313, you should carefully examine the applicability criteria in Part 372, Subpart B, of Title 40 of the Code of Federal Regulations. EPA has required reporting using North American Industry Classification System (NAICS) codes beginning with TRI Reporting Year 2006. The following table provides a crosswalk from TRI-covered Standard Industrial Classification (SIC) codes to TRI-covered NAICS codes. For a complete list of TRI-covered NAICS codes that includes certain industry exceptions and limitations, please refer to the EPA TRI web site at <http://www.epa.gov/tri/lawsandregs/naic/ncodes.htm>.

##### **TRI SIC-NAICS Table**

<b>INDUSTRY</b>	<b>SIC</b>	<b>NAICS</b>
Coal Mining	1221, 1222, 1231	212111, 212112, 212113
Metal Mining	10 <sup>a</sup>	212221, 212222, 212231, 212234, 212299
Electric Utilities	4911, 4931, 4939	221111, 221112, 221113, 221119, 221121, 221122, 221330*
Food	20	311 <sup>b</sup> , 111998*
Beverage and Tobacco Products	20, 21	312 <sup>c</sup>
Textiles	22	313 <sup>d</sup>
Textiles Products	22	314 <sup>e</sup>
Apparel and Accessories	23	315 <sup>f</sup>
Leather and Allied Products	31	316
Wood Products	24	321, 113310
Paper	26	322
Printing and Publishing	27	323 <sup>g</sup> , 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*
Petroleum and Coal Products	29	324
Chemicals	28	325 <sup>h</sup> , 211112*
Plastics and Rubber	30	326 <sup>i</sup>
Stone, Clay, Glass and Cement	32	327 <sup>j</sup> , 212324*, 212325*, 212393*, 212399*
Primary Metals	33	331
Fabricated Metal Products	34	332
Machinery	35	333
Computers	35	334 <sup>k</sup>
Electronic Products	36, 38	335 <sup>l</sup>
Transportation Equipment	37	336, 488390*, 541712*, 811490
Furniture	25	337 <sup>m</sup>
Miscellaneous Manufacturing	39	339 <sup>n</sup>
Chemical Wholesalers	5169	424690, 425110*, 425120*
Petroleum Bulk Terminals	5171	424710
Hazardous Waste	4953	562211*, 562212*, 562213*, 562219*, 562920*
Solvent Recovery	7389	562112*

\* --> With limitations

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

b --> Does not include NAICS 311811; Exemptions exist for NAICS 311119, 311330, 311340, 311611, 311612  
C --> Exemptions exist for NAICS 312112, 312229  
d --> Exemptions exist for NAICS 313311, 313312  
e --> Exemptions exist for NAICS 314121, 314129, 314999  
f --> Exemptions exist for NAICS 315222, 315223, 315233.  
g --> Exemptions exist for NAICS 323114.  
h --> Exemptions exist for NAICS 325998.  
i --> Does not include NAICS 326212.  
j --> Exemptions exist for NAICS 327112.  
k --> Does not include NAICS 334611; Exemptions exist for NAICS 334612  
l --> Exemptions exist for NAICS 335312  
m --> Exemptions exist for NAICS 337110, 337121, 337122.  
n --> Does not include NAICS 339111, 339116; Exemptions exist for NAICS 339113, 339115

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

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

Based on the four substantiation requirements in section 322(b), the Agency developed six core questions to comprise a standard substantiation form.

Questions one and two refer directly to the first criterion of section 322(b). The first question, on “specific measures” is the detail required by the submitter to prove to the EPA reviewer that reasonable safeguards have been taken to prevent unauthorized disclosure of the specific chemical identity. Answers to the second question will be used by the Agency to evaluate the facility's claim that the specific chemical identity has not been disclosed to anyone not bound by a confidentiality agreement.

Question three corresponds to the statute's second criterion that the submitter show either that a State or Federal agency has not already determined that the chemical identity is not a trade secret, or that no existing State or Federal statutes prohibit claiming the chemical identity as a trade secret.

Questions four and five require information about the facility's known connection with the use of the chemical, and estimates of competitive harm that would result from disclosure. Submitters must provide EPA with a description of their unique use of the chemical (3.4i), known linkages of the chemical to the facility in publications and patents (3.4ii), an explanation of how competitors could deduce use from disclosure of the chemical identity (3.4iii), and why knowledge of this use would be valuable to competitors (3.4iv). Specific indications of the competitive harm resulting from disclosures must be provided in question five. These questions refer back to the third criterion of section 322.

Question six enables EPA to identify the prevalence of the chemical in the company's products or releases, and the corresponding ability of competitors to identify the chemical

through reverse engineering. This issue is specifically addressed in the fourth criterion.

In addition, blocks on the first page of the form provide space for accurate identification of the claimed trade secret chemical (CAS number, chemical identity), a field for substitution of the generic class or category, a check-off box to clearly identify the type of EPCRA report for which the claim is being asserted, and the facility's Dun and Bradstreet number (for precise facility and record identification). Collecting this information generates no additional burden because it is transferred directly from the reports required under the various sections of EPCRA for which a claim is being made.

Finally, the submitter must sign a certification statement, found on the last page of the form that the information is true to the best knowledge and belief of the submitter.

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

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

No specific petition format is required. However, the rule does require that the following be included in a petition:

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

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

### **5. The Information Collected -- Agency Activities, Collection Methodology, and Information Management**

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

- Process and store the data;

- Review the claims for completeness, sufficiency, and frivolousness;
- Respond to requests for confidential information from State governors, and non-confidential information from the public;
- Respond to petitions from the public for disclosure of chemical identities claimed as trade secret; and,
- Prepare adverse health and environmental effects data for relevant chemical identities claimed as trade secret.

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

The collection of trade secrecy claims is accomplished by respondents sending their claim submissions to EPA. The sanitized or non-trade secret versions of the EPCRA report and the substantiation are stored so as to be easily accessible to the public. Data reported on the sanitized version of a EPCRA, section 313 report are entered in the Toxic Chemical Inventory database. The unsanitized versions of the EPCRA report and the substantiation are handled, labeled and stored in a manner protective of their confidentiality.

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

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

The public petition process applies only to a chemical identity that a facility claims as trade secret, and not to other information contained in a substantiation which a facility has claimed as a trade secret. After receiving a petition, EPA has 30 days to determine whether the assertions on a facility's substantiation form (if true) would form a sufficient basis for a trade secrecy claim. If the form meets the criteria of sufficiency, EPA will notify the submitter that they have 30 days to submit supplemental material supporting the truth of the assertions made in the substantiation. If the claim does not meet the criteria of sufficiency, EPA will notify the

submitter that the claim will be denied. The facility may appeal to the Office of General Counsel or submit a statement of good cause to amend the substantiation. EPA will then accept or reject the statement, allowing or disallowing the submission of additional information. Finally, based on all the information a facility has submitted, EPA will determine whether the claim warrants trade secrecy protection.

EPA-initiated reviews are conducted following the same steps involved in the public petition process and may result in an Agency decision regarding the sufficiency of the trade secrecy claims. However, EPA-initiated reviews may be less formal and culminate in the withdrawal of a claim by a facility prior to the issuance of a formal Agency decision on the merits of the claim. The less formal reviews usually involve claims which are determined incomplete upon EPA review or complete claims which are thought by EPA to demonstrate obvious problems or weaknesses. In the circumstance of an incomplete package (no substantiation form), the Agency issues an NDC (Notice of Data Change). In those instances when a complete but deficient package is submitted, the Agency issues a notice of insufficiency which is some times accepted by the facility and on one occasion during the last ICR timeframe, appealed to OGC.

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

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

The decision to submit a trade secrecy claim on a EPCRA report is voluntary. Facilities that submit trade secrecy claims are doing so because they believe it is to their benefit. In addition, the need to claim trade secrecy protection for a chemical identity is just as important to small companies as it is to large companies. Therefore, the need to supply information to support a submission, as well as to review it, is dependent upon a firm's demonstration that it can adequately answer the four criteria found in the statute. Any firm, regardless of size, need only provide as much, or as little, detail as it feels necessary to support its claim under the statute.

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

Under section 322, a specific chemical identity claimed as a trade secret is withheld from EPCRA reports. That provision requires that claim explanations, and the information claimed as a trade secret, be submitted concurrently with the submission of the EPCRA reports. Apart from the statutory mandate that requires the filing of a claim each time the subject chemical is reported in a EPCRA submission, an updated claim is necessary to establish the current applicability of the four statutory criteria of trade secrecy. Even the slightest change in the circumstances which support the claim can be pivotal to the sufficiency, validity, and frivolousness of the claim. Even where previously created substantiations are relevant and appropriate for use at a later time, EPA encourages submitters to carefully review the substantiations.

In the case of sections 312 and 313, the reporting is annual and facilities submit a current claim annually with those reports. Under section 311, a claim must be resubmitted to EPA if an MSDS or list is updated. Under section 311, an initial MSDS or list must be updated within three months after the facility owner or operator discovers significant new information regarding an aspect of a hazardous chemical. Under section 303(d)(2) and (d)(3), a claim need not be resubmitted to EPA after the initial communication to the relevant LEPC unless further communication follows between the facility and LEPC which discusses the specific chemical identity in question.

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

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

Costs to the Government and to respondents are based on actual numbers of trade secrecy claims received during reporting years (RYs) 2009 through 2011 and on estimates of future activity for the upcoming three-year period. The reporting year corresponds to the calendar year. Trade secret claims are due at the same time the EPCRA reports are submitted. For example, the deadline for submitting claims under section 312 for RY 2012 is March 1, 2013, which is the deadline for submitting the Emergency and Hazardous Chemical Inventory Form under section 312. The deadline for RY 2012 for section 313 claims is July 1, 2013, which is the deadline for submitting Toxic Chemical Release Reporting Form. Any facilities that wish to file trade secrecy claims in these reporting forms must submit the trade secrecy claim package with these reports to EPA. Although Section 312 report is submitted to the SERC, LEPC and the local fire department, the trade secret claims with substantiation should be submitted to EPA.

Table 1 presents the actual number of submissions indicating trade secret claims for all sections of EPCRA for RY09, RY10 and RY11. For the three-year period, the total number of claims submitted under section 313 was 19. In summary, there were 9 claims by 3 facilities in RY 09, 6 claims by 2 facilities in RY 10, and 4 claims by 1 facility in RY 11. Claims submitted by a given facility were identical for each successive reporting year.

The number of claims in Table 1 for EPCRA sections 303 to 312 may not accurately reflect the actual number of claims. In the past, we have received a number of EPCRA reports with no claims. We contacted those facilities and they informed us that they are simply sending a copy of the report to EPA as well as to the SERC and LEPC. The Agency have not conducted any review of claims submitted under EPCRA sections 303 to 312 to determine if each package is complete. Currently, the EPA reporting center managed by a contractor logs in all the trade secret documents that are received and a number is assigned to each. A number is assigned to each document whether it is sanitized form, unsanitized form, EPCRA report (Tier II or MSDS) etc. The numbers shown below may not reflect the actual number of claims received since each package should contain all four items as discussed in section 2(a) of this document. The Agency is planning to initiate reviews of the claims submitted under section 303 to 312 of EPCRA during this ICR period. In the next ICR, the numbers in Table 1 would reflect the actual number of claims received. For this ICR, the numbers of actual claims under sections 303 to 312 is still an estimate, although it is labeled as actual number of claims.

Table 2 shows the estimated numbers of trade secret claims under sections 303, 311, 312 and 313 expected to be filed by facilities in the new ICR period of RY12 through RY14. No claims are expected to be filed under section 303.

**Table 1  
Actual Number of Trade Secret Claims**

<b>SARA Section</b>	<b>RY09</b>	<b>RY10</b>	<b>RY11</b>	<b>Total</b>
303(d)2 and (d)(3)	0	0	0	0
311	24	23	12	59
312	301	273	339	913
313	9	6	4	19
<b>Total</b>	<b>334</b>	<b>302</b>	<b>355</b>	<b>991</b>

**Table 2  
Estimated Number of Trade Secret Claims**

<b>SARA Section</b>	<b>RY12</b>	<b>RY13</b>	<b>RY14</b>	<b>Total</b>
303(d)2 and (d)(3)	0	0	0	0
311	22	22	22	66
312	304	304	304	912
313	6	6	6	18
<b>Total</b>	<b>332</b>	<b>332</b>	<b>332</b>	<b>996 (three years)</b>

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

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

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

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

Fixed costs are incurred for maintenance and operation of the existing storage and filing system for trade secret claims. Fixed costs for the three-year period (RY09 through RY11) covered by the expiring ICR for storage space for section 313 claims were \$2,185 (\$728 annually). Fixed costs for 311/312 claims for the three-year period (RY09 through RY11) covered by the expiring ICR were approximately \$5,200 (\$1,734 annually). We assume the same for the period covered by this ICR.

Variable costs are estimated by program. For sections 311 and 312 of EPCRA, costs supporting inventory of new claims; storage, retrieval, and logging the claims on a database, are estimated to be approximately \$15,000 annually. Variable costs associated with processing section 313 claims are estimated to be approximately \$2,000 annually.

Based on these figures, costs for processing trade secret submissions for OEI and OEM are estimated to be \$19,479 per year or a total of \$58,437 for the three-year period covered by this ICR.

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

In addition to the costs associated with processing and storing trade secret claim documents, the Federal government will also incur costs by responding to petitions filed by the public requesting the Agency's review of specific claims, and as a result of EPA initiated review of claims.

The actual number of petitions which has been filed over the history of the program is two; the first petition in 1989 pertained to one claim, and the second in 1990 pertained to 10 claims asserted by one facility. No new petitions have been received by the Agency since 1990.

In the previous ICR, the Agency based its estimates of future burden and costs for complex reviews on data pertaining to actual reviews conducted under section 313, which were estimated to be five per year. However, no high level, complex reviews were performed in the previous three-year ICR period. This ICR is estimating that three high-level Agency reviews will take place during the next three-year period. The average burden per complex review is estimated at 37 hours, and the average cost per review is estimated to be \$1,788.95 (all labor at fully-loaded GS 13, Step 5, rate for 2012). The annual burden for three complex reviews is thus estimated to be 111 hours and the total annual cost, \$5,367. For the three-year period, the total burden is estimated to be 333 hours, and the cost, \$16,101. The Agency have not initiated reviews of claims made under sections 311 and 312 but may review in the next ICR period.

Under section 322(g), EPA has the responsibility to provide trade secret information to States that request such information. However, EPA does not receive such requests so this ICR does not estimate costs or burdens because no additional requests are expected, and the Agency does not have adequate experience on which to base an estimate.

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

One of the major cost components associated with trade secret claims is the cost to facilities to prepare substantiations. The time required to complete this process for each chemical will vary with the complexity of the situation, the number of chemicals that a facility seeks to claim as trade secrets, and the amount of detail that a facility includes in each answer.

EPA contacted a few facilities (see section 5 of this document) to estimate the time it takes to fill out the substantiation form submitted with each claim. The average number of hours per chemical reported by facilities is 7.4 to 8.0 hours. Although the facilities that the Agency contacted informed us that it takes less time to re-submit claims that were submitted previously, EPA is using the conservative estimate of 9.5 hours that has been used in previous ICRs. For each claim, EPA assumes that the technical personnel will spend 5.5 hours to prepare answers to each question in the substantiation form, management will spend 3.0 hours to review the claim and substantiation and the attorney will spend 0.5 hours to review the claim. Finally, clerical staff will spend 0.5 hours to make copies and mail the package to EPA.

Although it takes less time for facilities to re-submit claims, we assume that current facilities and new facilities may take the same time to complete the trade secret claim package.

As discussed in section 6(a) of this document, the actual number of claims submitted under sections 303 to 312 are not available, however we used some conservative estimate in providing the number of claim we expect to be submitted during the period covered by this ICR in Table 2. During this ICR period, EPA is planning to conduct an initial review to determine if facilities have submitted a complete package for each claim. The next ICR would show the actual number of claims received rather than estimate.

Information on the number of claims for section 313 in Table 1 and 2 reflect more closely to the actual number of claims.

The cost to respondents is estimated based on the time needed to complete the substantiation forms and submit to EPA. Hourly wage rates, including fringe costs and overhead, are \$77.92 for management labor, \$84.00 for lawyer, \$64.24 for technical labor, and \$39.74 for clerical labor. (*Source: Bureau of Labor and Statistics, March 2012*). For one claim at a facility, the unit cost is estimated to be \$620.95.

EPA estimates that approximately 332 facilities (Table 2) may submit trade secret claims annually under sections 303, 311, 312 and 313 of EPCRA. The estimated burden for 332

facilities is 3,154 hrs at a cost of \$206,155 annually (9,462 hours at a cost of \$618,466 for three years covered by this ICR).

ii) **Petition and Review**

As mentioned in the previous section of this document, EPA does not expect any petitions under any of the sections of EPCRA during the period covered by this ICR. EPA only has received two petitions as of 1990. Therefore, we do not expect any burden associated with this activity.

**(iv) Capital and O&M Costs**

No capital and operation and maintenance costs are associated with any requirements in this ICR.

**(v) Explanation of Difference of Annual Reporting Burden**

The previous ICR requested an average annual burden of 3,106 hours, while this ICR requests 3,154 hours. The increase in burden is due to the slight increase in the number of facilities that EPA estimates for the next three years covered by this ICR. The annual number of estimated in the previous ICR was 327, while this ICR estimates 332 claims.

**6(d) Burden Statement**

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-SFUND-2006-0361, which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the Superfund Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the

telephone number for the Superfund docket is (202) 566-0276. An electronic version of the public docket is available at [www.regulations.gov](http://www.regulations.gov). This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-SFUND-2006-0361 and OMB Control Number 2050-0078 in any correspondence.