

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 310**

[FR-5958-1]

RIN 2050-AE36

**Reimbursement to Local Governments for Emergency Responses to Hazardous Substance Releases**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

**SUMMARY:** In response to President Clinton's regulatory reform initiative to reduce the burden on small entities, and eliminate, streamline, and rewrite regulations in plain English, the Environmental Protection Agency ("we" or EPA) is issuing this interim final rule (regulation). Through this regulation, EPA will streamline procedures used to reimburse local governments for emergency response costs. Local governments may be reimbursed for certain costs they incur in taking temporary emergency measures related to releases of hazardous substances, pollutants and contaminants. Through this regulation, we are: Easing program and reporting requirements to make reimbursement more accessible; Simplifying the application process; Streamlining EPA's evaluation process to speed up reviewing applications and paying eligible applicants; and, Reorganizing the entire part 310 to make it clearer and easier to use.

Reimbursement through this program will help lighten financial burdens placed on local governments that respond to hazardous releases or threats. Reimbursement will also help strengthen effective emergency response at the local level.

**DATES:** The effective date for this interim final rule is February 18, 1998. The Director of the **Federal Register** has approved the incorporation by reference of certain publications listed in this regulation as of February 18, 1998. Comments must be received on or before April 20, 1998.

**ADDRESSES:** Mail comments on specific aspects of this rulemaking and the information collection to Local Governments Reimbursement Program, Office of Emergency and Remedial Response (5204-G), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. You may review information collection materials from 8:30 a.m. to 5:30 p.m., Monday through Friday, by visiting Public Docket No. LGR-xx, located at 1235 Jefferson Davis Highway (ground floor), Arlington,

Virginia. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** For information on specific aspects of this final rule for reimbursement to local governments, contact: Lisa Boynton, (703) 603-9052, Local Governments Reimbursement Project Officer, Office of Emergency and Remedial Response (5204-G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** We have included a summary of the changes in today's Register. If you would like to see a detailed description of the changes and the rationale for them, contact Lisa Boynton at the address provided under "For Further Information." If you would like to skip the discussion of the changes and refer directly to the requirements for reimbursement, turn to § 310.1.

**I. What Is the Statutory Authority for This Program?**

Section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9623, authorizes EPA to reimburse local governments for expenses incurred in carrying out temporary emergency measures. These measures must be necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance, or pollutant or contaminant. Additionally, Section 123(d) of CERCLA, 42 U.S.C. 9623(d), directs the EPA Administrator to issue regulations to implement this program.

The authority to receive, evaluate, and make determinations regarding requests for reimbursement and to issue payments to qualified applicants is delegated to the Director of the State and Site Identification Center within the Office of Emergency and Remedial Response. This rulemaking discusses changes designed to streamline the Agency's current procedures for reimbursing local governments and clarifies how the reimbursement program works.

**II. What Else Do I Need to Know About CERCLA?**

CERCLA provides broad federal authority to respond directly to releases or threatened releases of hazardous substances and pollutants or contaminants that may endanger human health or welfare or the environment. CERCLA responses usually are joint efforts by federal, state and local agencies. As local public safety and

health organizations are normally the first government representatives at the scene of a hazardous substance release, they play a critical role in providing temporary emergency measures.

**III. Did Congress Specify What Was to be Reimbursed Under This Program?**

Reimbursement under this program can provide some financial relief (limited to \$25,000 per single response) to local governments most seriously affected by costs above and beyond those incurred routinely and traditionally. Congress made it clear in the Conference Report for the Superfund Amendments and Reauthorization Act of 1986 that "reimbursement under this provision shall not include reimbursement for normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting." With the specific requirement in section 123 that reimbursement not supplant local funds normally provided for response, Congress intends that local governments continue to bear some share of expenses for providing temporary emergency measures. However, Congress recognized that in the past, conducting such response activities has placed a significant financial burden on some local governments.

**IV. Why Is EPA Amending This Regulation?**

EPA believes that the regulations must be amended to: (1) make funds that are available under this program more accessible to local governments; (2) reduce the reporting burden on local governments that apply for reimbursement; and (3) speed up the review and payment of funds to eligible applicants. Therefore, EPA is revising this regulation to ease several program and reporting requirements and to simplify the procedures that local governments follow when applying for reimbursement.

**V. Did EPA Get Input From Local Governments in Making Changes to This Regulation?**

Yes. Through consultation, training and outreach, EPA obtained input from local government officials who have participated in the reimbursement process. This input has given EPA a greater understanding of the difficulties that local governments encounter when seeking reimbursement which may discourage overall participation in the reimbursement program.

**VI. Why Is EPA Issuing an Interim Final Rule for These Changes?**

Because this rule falls under the grants, benefits, and contracts exemption of Section 553 of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), the Agency is not required to solicit public comment before this rule becomes effective. In addition, the Agency may make the rule effective immediately upon publication.

The interim final approach is designed to allow EPA to implement these changes and to make the reimbursement money available quickly, while continuing to solicit public comments. Public comments are invited and should be sent to the address listed in the ADDRESSES section above. Comments received by April 20, 1998 will be considered in the final rule.

**VII. What Is EPA Changing in This Regulation?**

Based on the Agency's experience in overseeing the reimbursement program and its ongoing consultation with local governments, EPA is making the following substantive changes to the 1993 Final Rule:

(1) Section 310.5 has been modified to clarify the purpose of the regulations and the possibility that funds may not be available in a particular year;

(2) Section 310.10 has been modified to include several abbreviations;

(3) Section 310.11 has been modified to include definitions of the terms application, Federally-recognized Indian tribes, and potentially responsible parties;

(4) Section 310.25(a) has been added to specify remedies EPA may rely on if incorrect, false or misleading information is submitted with an application for reimbursement;

(5) Section 310.20 has been modified for clarification purposes;

(6) Section 310.30 has been changed to ease the program and reporting requirements for requesting reimbursement;

(7) Section 310.40 has been changed to clarify allowable costs and to streamline the cost documentation requirements;

(8) Section 310.50 has been changed to reduce the reporting requirements and to clarify the application signature authority;

(9) Section 310.60 has been changed to:

(a) streamline and clarify the application evaluation process (including the Agency's approach when there are competing demands on available reimbursement funds);

(b) extend the time periods for applicants to provide additional information to EPA to support their applications; and

(c) give applicants an opportunity to request exceptions to the requirements when there is good cause;

(10) Section 310.70 has been changed to reduce applicant record keeping requirements from ten years to three;

(11) Section 310.80 has been incorporated into Section 310.60 for organizational purposes; and

(12) Section 310.90 has been renumbered and modified to clarify the disputes resolution process.

**VIII. What Else Is Different?**

EPA reorganized the entire Part 310 to make it clearer and easier to use. The conversion table below will allow you to determine where the various sections of the old regulation are now located:

Existing section	Action	New section(s)
310.5 .....	Revise .....	310.1, 310.5, 310.6.
310.10 .....	Revise .....	310.4.
310.11 .....	Revise .....	310.3.
310.12 .....	Revise .....	310.24.
310.20 .....	No change	310.5, 310.6.
310.30 .....	Revise .....	310.11, 310.13, 310.14, 310.17.
310.40 .....	Revise .....	310.11, 310.12, 310.16.
310.50 .....	Revise .....	310.7, 310.8, 310.9, 310.10, 310.15, 310.17.
310.60 .....	Revise .....	310.18, 310.19, 310.20, 310.23, 310.24.
310.70 .....	Revise .....	310.22.
310.80 .....	Revise .....	310.23.
310.90 .....	Revise .....	310.65.

**IX. Regulatory Analyses**

**A. Executive Order No. 12866**

Under Executive Order No. 12866, EPA must judge whether a regulation is "major" and thus would be subject to the requirement of a Regulatory Impact Analysis. The Agency believes that the notice published today does not meet the definition of a significant regulation because it does not have an annual effect on the economy of \$100 million or more; nor does the rule fall within the other definitional criteria for a significant regulatory action because the rule eases program and reporting requirements. Therefore, EPA has not prepared a Regulatory Impact Analysis under the Executive Order. OMB did not review this rule because it is not significant.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

This regulation involves reimbursement to local governments for the costs of responding to a hazardous substance release. This is a benefit authorized by CERCLA and does not adversely affect the private sector economy or small entities, which may include local governments. In fact, this rule provides a benefit to local governments in the form of reimbursement to offset financial hardship incurred from responses to hazardous substances, pollutants or contaminants. The revisions to this regulation are intended to minimize the burden imposed on local governments in seeking this benefit. EPA, therefore, certifies that this regulation will not have a significant impact on a substantial number of small entities.

**C. Paperwork Reduction Act**

OMB has approved the original information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned control number 2050-0077.

The revised information collection requirements in this rule was submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1425.04) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. The information

requirements are not effective until OMB approves them.

The Agency requires applicants for reimbursement to submit an application package that demonstrates consistency with program eligibility criteria and certifies compliance with the reimbursement requirements. This information collection is necessary to ensure proper use of the Superfund and appropriate distribution of reimbursement awards among applicants. EPA will receive and closely evaluate reimbursement requests in accordance with the promulgated final rule to ensure that the most deserving cases receive awards. We estimate the public reporting burden for this collection of information to average 9 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We estimate we will receive 36 responses per year for an annual burden estimate of 324 hours per year.

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.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St.,

N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by March 20, 1998. Include the ICR number in any correspondence.

#### *D. Small Business Regulatory Enforcement Fairness Act*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *E. Unfunded Mandates Reform Act*

"Today's rule is not subject to the requirements of sections 202, 203 and 205 of the UMRA. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. On the contrary, the Agency expects that today's rule will ease program and reporting requirements for local governments so that reimbursement is more accessible.

In addition, the Agency does not believe that today's rule is subject to section 203 of the UMRA to the extent that today's rule simplifies the application process for local governments and does not impose additional regulatory requirements. Indeed, today's rule is being promulgated in response to a long standing request by local governments after substantial input from such local governments into the rule's development."

#### **List of Subjects in 40 CFR Part 310**

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Intergovernmental relations, Local governments, Reporting and recordkeeping requirements, Superfund.

Dated: January 27, 1998.

**Carol Browner,**  
*Administrator.*

For the reasons set out in the preamble, EPA amends title 40, chapter I of the Code of Federal Regulations by revising part 310 to read as follows:

## **PART 310—REIMBURSEMENT TO LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASES**

### **Subpart A—General Information**

Sec.

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#### **Appendices to Part 310**

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- Appendix II to Part 310—EPA Regions and NRC Telephone Lines
- Appendix III to Part 310—FORM: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Release Under CERCLA Sec. 123

**Authority:** 42 U.S.C. 9611(c)(11), 9623.

### **Subpart A—General Information**

#### **§ 310.1 What is the purpose of this part?**

This part sets up procedures for EPA to reimburse local governments for certain emergency response costs. Local

governments may receive up to \$25,000 to help lighten financial burdens related to emergency response to hazardous substance releases. This reimbursement does NOT replace funding that local governments normally provide for emergency response.

**§ 310.2 What is the statutory authority for this part?**

This part is authorized under section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510, 42 U.S.C. 9601-9675), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499, 42 U.S.C. 9601).

**§ 310.3 What terms have specific definitions?**

For purposes of this part except when otherwise specified:

(a) *Application* means Form 9310-1, shown in Appendix III of this part, including all documentation and additional information you submit to support a request for reimbursement.

(b) *Date of completion* means the date when you have completed all field work and you have received all deliverables (such as lab results, technical expert reports, or invoices) due under a contract or other agreement.

(c) *Emergency Planning and Community Right-to-Know Act of 1986* means Title III—Emergency Planning and Community Right-to-Know Act of the Superfund Amendments and Reauthorization Act of 1986 (EPCRA) (Pub. L. 99-499, 42 U.S.C. 11000-11050).

(d) *Federally-recognized Indian Tribe*, as defined by section 101(36) of CERCLA, means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) *General purpose unit of local government* means the governing body of a county, parish, municipality, city, town, township, Federally-recognized Indian tribe or similar governing body. This term does not include special purpose districts.

(f) *Hazardous substance*. (1) *Hazardous substance*, as defined by section 101(14) of CERCLA, means:

(i) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (Pub. L. 101-380, 33 U.S.C. 1251 *et seq.*);

(ii) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(iii) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (Pub. L. 89-272, 42 U.S.C. 3259 *et seq.*) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);

(iv) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act (Pub. L. 101-380, 33 U.S.C. 1251 *et seq.*);

(v) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401-7642); and

(vi) Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (Pub. L. 94-469, 15 U.S.C. 2601-2629).

(2) The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under paragraphs (f)(1)(i) through (f)(1)(vi) of this section, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(g) *Local emergency response plan* means the emergency plan prepared by the Local Emergency Planning Committee (LEPC) as required by section 303 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or SARA Title III).

(h) *National Contingency Plan* means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

(i) *National Response Center* means the national communications center located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate Federal officials.

(j) *Pollutant or contaminant*, as defined by section 104(a)(2) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

The term does not include petroleum, including crude oil and any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(k) *Potentially responsible party* (PRP) means any person who may be liable under section 107 of CERCLA for a release or threatened release of hazardous substances or pollutants or contaminants.

(l) *Release*, as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment, but excludes: any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, by-product or special nuclear materials from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under section 122(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604, 42 U.S.C. 2014 *et seq.*); and the normal application of fertilizer. For purposes of this part, release also means the threat of release.

(m) *Single response* means all of the concerted activities conducted in response to a single episode, incident, or threat causing or contributing to a release or threatened release of hazardous substances, or pollutants or contaminants.

**§ 310.4 What abbreviations should I know?**

The following abbreviations appear in this part:

CERCLA—The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510, 42 U.S.C. 9601-9675), as amended by the Superfund Amendments and Reauthorization Act of 1986, also known as Superfund.

EPA or the Agency—Environmental Protection Agency.  
 EPCRA—Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499, 42 U.S.C. 11000-11050).  
 LEPC—Local Emergency Planning Committee.  
 NCP—National Oil and Hazardous Substances Pollution Contingency Plan also known as the National Contingency Plan (40 CFR part 300).  
 NRC—National Response Center.  
 OMB—Office of Management and Budget.  
 PRP—Potentially Responsible Party.  
 SARA—The Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 42 U.S.C. 9601).  
 SERC—State Emergency Response Commission.  
 USCG—U.S. Coast Guard.

## Subpart B—Provisions

### Who Can Be Reimbursed?

#### § 310.5 Am I eligible for reimbursement?

If you are the governing body of a county, parish, municipality, city, town, township, federally-recognized Indian tribe or general purpose unit of local government, you are eligible for reimbursement. This does not include special purpose districts.

#### § 310.6 Are states eligible?

States are NOT eligible for reimbursement under this part, and states may NOT request reimbursement on behalf of their local governments.

#### § 310.7 Can more than one local agency or government be reimbursed for response to the same incident?

No. EPA will accept only one reimbursement request for a single response. A single response includes all of the temporary emergency measures that ALL local governments or agencies conduct in response to a single hazardous substance release. If more than one local government or agency responds, you must decide among yourselves who will request reimbursement on behalf of all.

### What Can Be Reimbursed?

#### § 310.8 Can EPA reimburse the entire cost of my response?

Possibly not. EPA can only reimburse you for temporary emergency measures you take in response to releases of hazardous substances, pollutants, or contaminants. The statute allows reimbursement for only certain costs, and by statute, the total amount of the reimbursement may not exceed \$25,000 for a single response.

#### § 310.9 If more than one local agency or government is involved, can each receive up to \$25,000?

No. The maximum amount EPA can reimburse is \$25,000 for a single

response, which includes all activities by ALL local responders. If the costs incurred by multiple local governments or agencies exceed \$25,000, you must decide among yourselves how the total reimbursement will be divided.

#### § 310.10 What are temporary emergency measures?

(a) Temporary emergency measures are actions taken to control or eliminate immediate threats to human health and the environment.

(b) Examples of temporary emergency measures are:

- (1) Site security;
- (2) Controlling the source of contamination;
- (3) Containing the release to prevent spreading;
- (4) Neutralizing or treating pollutants released; and
- (5) Controlling contaminated runoff.

#### § 310.11 What costs are allowable?

(a) Reimbursement under this part does NOT supplant funds you normally provide for emergency response. Allowable costs are only those necessary for you to respond effectively to a specific incident that is beyond what you might normally respond to.

(b) Examples of allowable costs are:

- (1) Disposable materials and supplies you acquired and used to respond to the specific incident;

- (2) Payment of unbudgeted wages for employees responding to the specific incident (for example, overtime pay for response personnel);

- (3) Rental or leasing of equipment you used to respond to the specific incident (for example, protective equipment or clothing, scientific and technical equipment) (Note: rental costs are only allowable for the duration of your response; once you complete the response to the specific incident, further rental costs are NOT allowable);

- (4) Replacement costs for equipment you own that is contaminated or damaged beyond reuse or repair, if you can demonstrate that the equipment is a total loss and that the loss occurred during the response (for example, self-contained breathing apparatus irretrievably contaminated during the response);

- (5) Decontamination of equipment contaminated during the response;

- (6) Special technical services specifically required for the response (for example, costs associated with the time and efforts of technical experts/specialists that are not on your staff);

- (7) Other special services specifically required for the response (for example, utilities);

- (8) Laboratory costs of analyzing samples that you took during the response;

- (9) Evacuation costs associated with the services, supplies, and equipment that you procured for a specific evacuation; and

- (10) Containerization or packaging cost and transportation and disposal of hazardous wastes.

(c) To be allowable, costs must:

- (1) NOT be higher than what a careful person would spend for similar products or services in your area; and

- (2) Be consistent with CERCLA and the federal cost principles outlined in OMB Circular A-87, "Cost Principles for State and Local Governments."

(Copies of the circular are available from the Office of Administration, Publications Office, New Executive Office Building, 725 17th Street, NW., Room 2200, Washington, DC 20503.)

- (d) EPA will make final determinations on whether your costs are reasonable.

#### § 310.12 What costs are NOT allowable?

(a) Costs that are NOT allowable are expenditures you incur in providing what are traditionally local services and responsibilities. Examples include:

- (1) Routine firefighting;
- (2) Preparing contingency plans;
- (3) Training; and
- (4) Response drills and exercises.

(b) Costs that are NOT allowable also include items such as supplies, equipment, and services that you routinely purchase to maintain your ability to respond effectively to hazardous releases when they occur. Examples of other costs that are NOT allowable are:

- (1) Purchase or routine maintenance of durable equipment expected to last one year or more, except when contaminated or damaged as described in § 310.11(b)(4) and (b)(5);

- (2) Materials and supplies you did NOT purchase specifically for the response;

- (3) Rental costs for equipment that you own or that another unit of local government owns;

- (4) Employee fringe benefits;

- (5) Administrative costs for filing reimbursement applications;

- (6) Employee out-of-pocket expenses normally provided for in your operating budget (for example, meals or fuel);

- (7) Legal expenses you may incur due to response activities, including efforts to recover costs from PRPs; and

- (8) Medical expenses you incur due to response activities.

**How to get Reimbursed****§ 310.13 Do I need to notify anyone while the response is underway?**

No. You should notify EPA, the National Response Center, or use another established response communication channel, but it is not a requirement for reimbursement. Telephone numbers for EPA regional offices and the NRC are in Appendix II to this part.

**§ 310.14 Must I try to recover my costs from those potentially responsible for the emergency?**

Yes. Before applying for reimbursement from EPA, you must try to recover your costs from all known potentially responsible parties (PRPs). After you ask them for payment, you should give PRPs 60 days either to pay you, express their intent to pay you, or indicate willingness to negotiate. You must also try to get reimbursed by other sources (for example, your insurance company or your state). If you are not successful, you must certify on your reimbursement application that you made a good-faith, reasonable effort to recover your costs from other sources before applying to EPA. If you recover any portion of the costs from these sources after you receive reimbursement from us, you must return the recovered amount to EPA.

**§ 310.15 How do I apply for reimbursement?**

(a) You must apply for reimbursement on EPA Form 9310-1, shown in Appendix III to this part.

(b) You must submit your request within one year of the date you complete the response for which you request reimbursement. If you submit your application late, you must include an explanation for the delay. We will consider late applications on a case-by-case basis.

(c) Your application must be signed by the highest ranking official of your local government (for example, mayor or county executive), or you must include a letter of delegation authorizing a delegate to act on his or her behalf.

(d) Mail your completed application and supporting data to the LGR Project Officer, (5204-G), Office of Emergency and Remedial Response, Environmental Protection Agency, 401 M Street SW, Washington DC 20460.

**§ 310.16 What kind of cost documentation is necessary?**

Cost documentation must be adequate for an audit. At a minimum, you must:

(a) Include a description of the temporary emergency measures for which you request reimbursement;

(b) Specify the local agency that incurred the cost, (such as, the Town Fire Department, the County Health Department, or the City Department of Public Works);

(c) Include invoices, sales receipts, rental or leasing agreements, or other proof of costs you incurred; and

(d) Certify that all costs are accurate and that you incurred them specifically for the response for which you are requesting reimbursement.

**§ 310.17 Are there any other requirements?**

(a) You must certify that reimbursement under this regulation does not supplant local funds that you normally provide for emergency response. This means that the reimbursement you request is for costs you would not normally incur; rather, they are for significant, unanticipated costs related to a specific incident beyond what you normally respond to.

(b) You must also certify that your response actions are not in conflict with CERCLA, the National Contingency Plan (NCP), and the local emergency response plan prepared by your Local Emergency Planning Committee, if there is one. If you need help with this requirement, contact the LGR Help line (800-431-9209) or your EPA regional office.

(c) You, as a local government, should be included in the local emergency response plan completed by your LEPC, as section 303(a) of EPCRA requires. This does not apply if your State Emergency Response Commission (SERC) has not established an LEPC responsible for the emergency planning district(s) that encompasses your geographic boundaries.

**§ 310.18 How will EPA evaluate my application?**

(a) When we receive your application, we will make sure it meets all requirements of this section. If your request is incomplete or has significant defects, we will contact you for additional information. You should provide any additional information within 90 days. If you don't provide requested information within a year, we may deny your application.

(b) If your application meets all requirements, we will consider whether the costs claimed are allowable and reasonable. We will then send you written notification of our decision to award or deny reimbursement in full or in part.

**§ 310.19 Under what conditions would EPA deny my request?**

We may deny your reimbursement request in full or in part if:

(a) Your records, documents, or other evidence are not maintained according to generally accepted accounting principles and practices consistently applied;

(b) The costs you claim are NOT reasonable or allowable, that is, they are higher than what a careful person would spend for similar products or services in your area; or

(c) You do not supply additional information within one year from when we request it; and

(d) Reimbursement would be inconsistent with CERCLA section 123, or the regulations in this part.

**§ 310.20 What are my options if EPA denies my request?**

If we deny your request because you failed to meet a requirement in this regulation, you may request, in writing, that EPA grant an exception. You may also file a request for an exception with your initial application. In your request for an exception, you must state the requirement you cannot comply with and the reasons why EPA should grant an exception. We will grant exceptions only if you establish good cause for the exception and if granting the exception would be consistent with section 123 of CERCLA.

**§ 310.21 How does EPA resolve disputes?**

(a) The EPA reimbursement official's decision is final EPA action unless you file a request for review by registered or certified mail within 60 calendar days of the date you receive our decision. Send your request for review to the address given in § 310.15(d).

(b) You must file your request for review with the disputes decision official identified in the final written decision.

(c) Your request for review must include:

(1) A statement of the amount you dispute;

(2) A description of the issues involved;

(3) A statement of your objection to the final decision; and

(4) Any additional information relevant to your objection to EPA's decision.

(d) After filing for review:

(1) You may request an informal conference with the EPA disputes decision official;

(2) You may be represented by counsel and may submit documentary evidence and briefs to be included in a written record; and

(3) You will receive a written decision by the disputes decision official within 45 days after we receive your final submission of information unless the

official extends this period for good cause.

**Other Things You Need To Know**

**§ 310.22 What records must I keep?**

(a) If you receive reimbursement under the regulations in this part, for three years you must keep all cost documentation and any other records related to your application. You must also provide EPA access to those records if we need them.

(b) After three years from the date of your reimbursement, if we have NOT begun a cost recovery action against a potentially responsible party, you may dispose of the records. You must notify EPA of your intent to dispose of the records 60 days before you do so, and allow us to take possession of these records beforehand.

**§ 310.23 How will EPA rank approved requests?**

(a) If necessary, EPA will rank approved reimbursement requests according to the financial burden the response costs impose on the local governments. We will estimate your financial burden by calculating the ratio of your allowable response costs to your annual per capita income adjusted for population. We will make adjustments for population so that a large city with a low per capita income will not necessarily receive a higher rank than a small town with a slightly higher per capita income. We will also consider other relevant financial information you may supply.

(b) We will use the per capita income and population statistics published by the U.S. Department of Commerce, Bureau of the Census, in Current Population Reports, Local Population Estimates, Series P-26, "1988 Population and 1987 Per Capita Income Estimates for Counties and Incorporated Places," Vols. 88-S-SC, 88-ENC-SC, 88-NE-SC, 88-W-SC, 88-WNC-SC, March 1990. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies are available from the Bureau of the Census, Office of Public Affairs, Department of Commerce, Constitution Avenue, NE., Washington, DC 20230 (1-202-763-4040). You may review a copy at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 800 N. Capitol Street, NW., 7th Floor, Suite 700, Washington, DC.

(c) Larger ratios receive a higher rank. We will reimburse requests with the highest ranks first. Once we rank your request, we will either:

- (1) Reimburse the request; or

(2) Hold the request for reconsideration once additional funding is available.

(d) The EPA reimbursement official will give you a written decision on whether the request will be reimbursed or held for future reconsideration.

**§ 310.24 What happens if I provide incorrect or false information?**

(a) You must not knowingly or recklessly make any statement or provide any information in your reimbursement application that is false, misleading, misrepresented, or misstated. If you do provide incorrect or false information, and EPA relies on that information in making a reimbursement decision, we may deny your application and withdraw or recover the full amount of your award. In such a case, we would give you written notice of our intentions.

(b) If you, as a reimbursement applicant or someone providing information to the applicant, knowingly give any false statement or claim as part of any application for reimbursement under section 123 of CERCLA, you may be subject to criminal, civil, or administrative liability under the False Statement Act (Pub. L. 97-398, 18 U.S.C. 1001) the False Claims Act (Pub. L. 99-562, 31 U.S.C. 3729), and the Program Fraud and Civil Remedies Act (Pub. L. 99-509, 31 U.S.C. 3801).

**Appendices to Part 310**

**Appendix I to Part 310—Frequently Asked Questions**

(1) Can I be reimbursed for hazmat team salaries?

Generally, no; only unbudgeted overtime and/or extra time can be considered for reimbursement. (§ 310.11(b)(2))

(2) Will I be reimbursed for the cost of a destroyed fire truck?

Up to \$25,000 of the cost of a lost fire truck can be considered an allowable cost and therefore, reimbursable. However, if the local government has insurance covering such losses, then we would not reimburse you for a destroyed fire truck. (§§ 310.11(b)(4) and 310.14)

(3) If I have a release in an elementary school, can the school district apply for reimbursement?

No, for purposes of the regulation in this part, a school district is considered a special purpose district of local government and therefore not eligible for reimbursement. The county or city where the incident happened may apply for reimbursement on behalf of the school district. (§§ 310.03(e) and 310.05)

(4) Why are incidents that involve a release of petroleum not eligible?

Because this program is authorized under CERCLA, and petroleum is excluded under CERCLA, we can't reimburse you for response to releases involving only petroleum. If, however, some hazardous

substances are also involved, your incident may be reimbursed. (§ 310.03(f))

(5) Can I be reimbursed for laying water lines to a community whose drinking water is affected by a release?

No, laying water lines doesn't fall within the definition of temporary emergency measures. Providing bottled water on a temporary emergency basis is reimbursable. (§ 310.10(a))

(6) What if EPA gets too many applications in one year?

In the beginning of the program, there was a statutory limitation on the amount of the Superfund that could be used for reimbursements. That limitation was approximately \$1,000,000. The limitation has expired, and EPA has only reimbursed slightly over \$1,000,000 in ten years. There has not been a year where we received too many applications.

(7) If I incur significant costs trying to recover from the PRP, can I be reimbursed by EPA for those costs?

No, legal expenses are not allowable costs. (§ 310.12(b)(7)).

(8) Can I add attachments to the Application Form?

Yes, attach any additional information that you feel is necessary. EPA will review all the information that you send.

(9) Do I have to notify EPA before I send an application in, or before I take a response action?

No, you aren't required to notify EPA in either case. We do suggest that you call the National Response Center to report the hazardous substance release, or if you use other response reporting channels, use them. If you need some help before submitting your application, we do suggest you call the LGR Help line (800-431-9209).

(10) If two incidents happen in my town, within hours of each other, do I have to submit two separate applications?

You aren't required to submit separate applications in this case, but if your total response costs are more than \$25,000, it may be in your interest to submit separate applications for each single response. (§ 310.9)

**Appendix—II to Part 310—EPA Regions and NRC Telephone Lines**

National Response Center .....	(800) 424-8802
EPA Regional Phone Numbers:	
Region I (ME, NH, VT, MA, RI, CT) .....	(617) 223-7265
Region II (NJ, NY, PR, VI) .....	(908) 548-8730
Region III (PA, DE, MD, DC, VA, WV) ....	(215) 597-9898
Region IV (NC, SC, TN, MS, AL, GA, FL, KY) .....	(404) 347-4062
Region V (OH, IN, IL, WI, MN, MI) .....	(312) 353-2318
Region VI (AR, LA, TX, OK, NM) .....	(215) 655-2222
Region VII (IA, MO, KS, NE) .....	(913) 236-3778
Region VIII (CO, UT, WY, MT, ND, SD) ....	(303) 293-1788

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Region IX (AZ, CA, NV, AS, HI, GU, TT)	(415) 744-2000	Region X (ID, OR, WA, AK) .....	(206) 553-1263
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Appendix—III to Part 310—Form: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Release Under CERCLA Sec. 123

EPA Form 9310-1, Application for Reimbursement to Local Governments

Please type or print all information

	United States Environmental Protection Agency Washington, D.C. 20460 <b>Application for Reimbursement                  to Local Government for                  Emergency Response to Hazardous                  Substance Releases Under CERCLA Sec. 123</b>	Form Approved  OMB No 2050-0077  Approved expires
<b>1. Local government Identification</b>		
a. Name of Local government	b. Contact Name and Telephone Number	
c. Official Address	d. Date of Application	
<b>2. Release Description</b>		
a. Date and Time of Occurrence or Discovery	b. Location	
c. Source or Cause of Release		
d. Hazardous Substances Released and Quantity (Petroleum, crude oil, or any unspecified fractions thereof are <u>excluded</u> )		
e. Threats to human health and Environmental		
f. Attach any additional material pertinent to the release		
<b>3. Response Description</b>		
a. Date and Time of HazMat Response Initiation	b. Was anyone notified of the response?  <input type="checkbox"/> EPA <input type="checkbox"/> NCR <input type="checkbox"/> OTHER	
c. EPA Region	d. Date and Time Contact Made	e. Date of Response completion (Local government has received all data, reports, and charges for response)
f. Jurisdiction in Which Response Occurred	g. Is your local government a participant in the Title III Emergency Response Plan?  (Check one ) <input type="checkbox"/> Yes <input type="checkbox"/> No	
h. Responding Agencies and Jurisdictions		

i. Summary of Response Actions	
j. Temporary Measures for Which Reimbursement is Sought	
<b>4. Cost Information</b>	
a. Total Response Cost \$	b. Total Reimbursement Requested \$
c. Complete and Attach Table 1, "Detailed Cost Breakdown" d. Complete and Attach Table 2, "Cost Recovery Summary" e. Attach Other Pertinent Financial Information	
5. Certification and Authorization (To be completed by highest ranking official of applying local government.)  I hereby certify that: <ol style="list-style-type: none"> <li>1) All costs are accurate and were incurred specifically for the response for which reimbursement is being requested.</li> <li>2) Reimbursement for costs incurred for response activities does not supplant local funds normally provided for response</li> <li>3) Cost recovery was pursued as presented in the attached Table 2; and</li> <li>4) Reimbursement funds for which costs are later recovered will be returned to EPA</li> </ol> I further certify that I am authorized to request this reimbursement and to receive funds from the Federal Government.	
Printed or Typed Name of Highest Ranking Local Government Official or Authorized Representative	Signature of Highest Ranking Local Government Official or Authorized Representative
Title	Date
Burden Statement:  The Agency requires applicants for reimbursement to submit an application package that demonstrates consistency with program eligibility criteria and certifies compliance with the reimbursement requirements. This information collection is necessary to ensure proper use of the Superfund and appropriate distribution of reimbursement awards among applicants. EPA will receive and closely evaluate reimbursement requests in accordance with 40 CFR 310 to ensure that the most deserving cases receive awards.  The public reporting and recordkeeping burden for this collection of information is estimated to average 9 hours per response annually. 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.  Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.	

EPA Form 9310-1

\* Form 9310-1 is not considered complete unless it is signed by the highest ranking official of the local government requesting reimbursement, or signed by the authorized representative indicated in an enclosed letter delegating signature authority for this application process.

ATTACHMENT 1 TO FORM 9310-1 COST ELEMENT CODES AND COMMENTS  
 [Cost Element Codes for use in Table 1]

Code	Cost category	Cost element	Comments
PC .....	Personnel Compensation.	PC1: Overtime—for services excess of the local agency's standard work day or work week. PC2: Experts and consultants—for services rendered on a per diem or fee basis or for services of an intermittent, advisory nature.	Compensation of overtime costs incurred specifically for a response will be considered only if overtime is not otherwise provided for in the applicant's operating budget.
TR .....	Transportation .....	TR1: Passenger vehicle rental—for transportation of persons during evacuation. TR2: Nonpassenger vehicle rental—for transportation of equipment or supplies.	Passenger and nonpassenger vehicle rental costs will be considered for private vehicles not owned or operated by the applicant or other unit of local government.
RC .....	Utilities .....	RC1: Utilities—for power, water, electricity and other services exclusive of transportation and communications.	Utility costs will be considered for private utilities not owned or operated by the applicant or other unit of local government.
OS .....	Other Contractual Services.	OS1: Contracts for technical or scientific analysis—for tasks requiring specialized hazardous substance response expertise. OS2: Decontamination services—for specialized cleaning or decontamination procedures and supplies to restore clothing, equipment or other serviceable gear to normal functioning.	May include such items as specialized laboratory analyses and sampling.
SM .....	Supplies and Materials.	SM1: Commodities—for protective gear and clothing, cleanup tools and supplies and similar materials purchased specifically for, and expended during, the response.	May include such items as chemical foam to suppress a fire; food purchased specifically for an evacuation; air purifying canisters for breathing apparatus; disposable, protective suits and gloves; and sampling supplies.
EQ .....	Equipment .....	EQ1: Replacement—for durable equipment declared a total loss as a result of contamination during the response. EQ2: Rents—for use of equipment owned by others	Equipment replacement costs will be considered if applicant can demonstrate total loss and proper disposal of contaminated equipment. Equipment rental costs will be considered for privately owned equipment not owned or operated by the applicant or other unit of local government.



**Table 2  
Cost Recovery Summary**

**Note: This "Cost Recovery Summary" must accompany each request for reimbursement.  
You Must Fill Out Each Section Of This Form.**

Name and Title of Source Contacted	Date(s) Contacted	Brief Summary of Response	Details Attached
Attempts to Recover Costs from Potentially Responsible Parties (including PRP Insurance)			
Attempts to Recover Costs from State Funding Sources			
Attempts to Recover Costs from Local Government Insurance			

EPA Form 9310-1