

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 370**

[FRL-6300-5]

RIN 2050-AE58

**Emergency Planning and Community Right-to-Know Programs; Amendments to Hazardous Chemical Reporting Thresholds for Gasoline and Diesel Fuel at Retail Gas Stations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In today's final rule, EPA is raising the thresholds that trigger Material Safety Data Sheet (MSDS) reporting and annual chemical inventory reporting under sections 311 and 312 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), for gasoline and diesel fuel stored entirely underground at retail gas stations that comply with requirements for underground storage tanks (USTs). Today's final rule promulgates new threshold levels of 75,000 gallons for gasoline and 100,000 gallons for diesel fuel. These new thresholds will relieve most retail gas stations from reporting gasoline and diesel fuel under EPCRA. The change is intended to reduce reporting burdens while preserving the important public health and safety benefits of the hazardous chemical reporting requirements.

**EFFECTIVE DATE:** February 11, 1999.

**ADDRESSES:** Copies of materials relevant to this rulemaking are contained in the CERCLA Docket Office—Docket Number 300RR-IF1, 1235 Jefferson Davis Highway, Crystal Gateway #1, First

Floor, Arlington, VA 22202. The docket, which contains the administrative record for 40 CFR part 370, is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. You can make an appointment to review the docket by calling 703/603-9232. You may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, you will be charged an administrative fee of \$25 and a charge of \$0.15 per page for each page after 266. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/UST, Superfund, and EPCRA Hotline (the Hotline) at 800/424-9346 (in the Washington, DC metropolitan area, contact 703/412-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/535-7672 (in the Washington, DC metropolitan area, 703/412-3323). Also contact John Ferris or Meg Victor, Chemical Emergency Preparedness and Prevention Office (CEPPO), MC 5104, U.S. EPA, 401 M Street SW, Washington, DC 20460, 202/260-4043 or 202/260-1379, respectively. You may wish to visit the CEPPO Internet site at [www.epa.gov/ceppo](http://www.epa.gov/ceppo).

**SUPPLEMENTARY INFORMATION:** The contents of the **SUPPLEMENTARY INFORMATION** section of today's preamble are:

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**I. Entities Affected by This Rule**

Two general categories of entities are affected by this rule. These categories are industry and state, local, and tribal governments. Within these general categories the rule affects numerous entities, including:

Category	Examples of potentially regulated entities
Industry .....	Retail gas stations.
State, Local, and Tribal Governments .....	State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), and fire departments receive the information provided under EPCRA sections 311 and 312.

This table is not exhaustive, but rather it provides a guide for readers affected by this action. To determine whether this action affects your facility, you should carefully examine section 370.20 in today's rule, which explains the applicability of this rule. If you have questions regarding the applicability of this action to a particular entity, consult the Hotline or the people listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**II. Introduction**

**A. Statutory Authority for This Rulemaking**

This final rule is issued under the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), (SARA).

**B. Background of This Rulemaking**

EPCRA establishes a program to (1) encourage state and local planning for responding to releases of hazardous chemicals and to (2) provide the public, local governments, fire departments, and other emergency officials with information concerning chemical releases and the potential chemical risks in their communities. EPCRA section 311 requires facilities that have hazardous chemicals above specified thresholds to provide either MSDSs for

those chemicals or a list of those chemicals to their State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and local fire department. (For purposes of brevity in this document, the term "SERC" is meant to include Tribal Emergency Response Commissions (TERCs)). Under EPCRA section 312, these facilities must also report annually to the SERC, LEPC, and local fire department on the quantities and locations of hazardous chemicals they have on site above specified thresholds. Hazardous chemicals are those that meet the criteria developed by the U.S. Occupational Safety and Health Administration (OSHA) (except as provided in EPCRA 311(e)). EPA estimates that approximately 850,000 facilities are subject to reporting under EPCRA sections 311 and 312.

Facilities must report under section 312 either Tier I or Tier II inventory information. Tier I inventory information is the minimum information that facilities must report to comply with section 312, and includes information on the general types and locations of hazardous chemicals at the facility. Tier II inventory information is more specific information on amounts and locations of hazardous chemicals at the facility. A facility can choose to report Tier II inventory information, and must report it if requested by the SERC, LEPC or fire department, or if a state or local law requires it.

On October 15, 1987 (52 FR 38344) and July 26, 1990 (55 FR 30632), EPA published final rules setting reporting requirements and threshold quantities for reporting under EPCRA sections 311 and 312. A facility must report on a hazardous chemical only if at any time during the prior year it had a quantity of the chemical equal to or greater than the threshold. For extremely hazardous substances (EHSs) (listed in 40 CFR part 355), the threshold is the lesser of 500 pounds or the threshold planning quantity listed in 40 CFR part 355. For all non-EHS hazardous chemicals, the threshold quantity has been 10,000 pounds (today's rule changes the 10,000 pound threshold in certain situations for gasoline and diesel fuel, which are non-EHS hazardous chemicals). However, if the LEPC requests MSDSs or the SERC, LEPC or fire department requests inventory information from a facility, the threshold for reporting in response to requests is zero (as established in the October 15, 1987 rule, 52 FR 38365). In other words, a facility with any quantity of a hazardous chemical is required to provide this information upon request by a SERC, LEPC or fire department.

On June 8, 1998 (63 FR 31267), EPA proposed raising the thresholds for gasoline and diesel fuel stored entirely underground at retail gas stations in compliance with the underground storage tank (UST) regulations. EPA proposed the higher thresholds because input from stakeholders and the experience gained through the first 10 years of EPCRA implementation indicated that emergency responders and the public are generally aware of the hazards of gasoline and diesel fuel and know the locations of retail gas stations. Therefore, nationwide annual reporting for these operations would not be necessary to meet the objectives of EPCRA sections 311 and 312. The proposed thresholds would provide relief from annual reporting for approximately 193,000 retail gas stations. The proposal gave the public 90 days to comment.

Today, EPA is adopting the proposed thresholds of 75,000 gallons for gasoline (all grades combined) and 100,000 gallons for diesel fuel (all grades combined) when these fuels are stored entirely underground at retail gas stations that are in compliance with the UST requirements.

EPA proposed other changes in the June 8, 1998, notice in addition to raising the gasoline and diesel fuel reporting thresholds. At this time the Agency has not reached a final decision on these other proposed changes, and they are not addressed in this rule.

### III. Discussion of the Final Rule

This section of the notice provides a brief summary of the final rule, including the Agency's rationale for promulgating the rule and some issues involved in this rulemaking. The following section in this notice, which is called "Discussion of Public Comments Received on the Proposal," provides a summary of the public comments received on the proposal, and of the Agency's responses to the comments. If you are interested in a more detailed discussion of the rule, the Agency's rationale, and the issues involved in the rulemaking, you should read the "Discussion of Public Comments Received on the Proposal" section in this notice. You can review an even more detailed summary of the public comments and the Agency's responses, entitled "Comment Response Summary: EPCRA Sections 311-312 Proposal to Raise Reporting Thresholds for Gasoline and Diesel Fuel," which is available from the CERCLA Docket Office in docket number 300RR-IF1 (for the address of the docket office, see the ADDRESSES section in this notice).

#### A. General Discussion

EPCRA sections 311(b) and 312(b) give EPA authority to establish threshold quantities for the reporting of hazardous chemicals. These statutory provisions give EPA discretion to base the thresholds on classes of chemicals or categories of facilities.

Today's final rule amends 40 CFR 370.20, which contains the applicability provisions for the hazardous chemical reporting requirements under EPCRA sections 311 and 312. Section 370.20 is amended to provide new threshold levels for gasoline and diesel fuel at retail gas stations (subject to certain criteria as discussed below), and to provide a definition for "retail gas station." Section 370.20 is also reformatted to make it easier to understand the requirements.

For gasoline and diesel fuel, when stored entirely underground at a retail gas station that is in compliance with all applicable UST requirements (40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281), the new minimum thresholds for reporting under EPCRA sections 311 and 312 are 75,000 gallons for gasoline and 100,000 gallons for diesel fuel. In order for a retail gas station to be eligible to apply the new thresholds for reporting for a given calendar year, the facility must have been in compliance with UST requirements at all times during that year. For purposes of this rule, EPA defines "retail gas station" as "a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land." This rule is effective beginning with the 1998 calendar year reporting, which is due on or before March 1, 1999.

Over the years since EPCRA was enacted, EPA has heard from many stakeholders that the section 311 and 312 reports for gasoline and diesel fuel from retail gas stations are unnecessary for emergency planning and community right-to-know purposes. Stakeholders have pointed out that the public and emergency planners and responders are generally aware of the locations of gas stations and of the hazards of gasoline and diesel fuel, without the need for EPCRA reporting. Further, they have pointed out that some of the information reported by retail gas stations under EPCRA sections 311 and 312 duplicates some of the information already reported under UST requirements. EPA has evaluated this issue, and believes that section 311 and 312 reporting is not warranted nationwide, for gasoline and diesel fuel stored entirely underground

at retail gas stations that are in compliance with the UST requirements.

As discussed in EPA's June 8, 1998, proposed rule, the Agency believes that gasoline and diesel fuel, when stored entirely underground at retail gas stations that are in compliance with UST requirements, present a special situation for which separate reporting thresholds under EPCRA sections 311 and 312 are warranted. Factors contributing to this special situation, and which EPA considered in establishing the higher reporting thresholds, include: (1) The public and local emergency officials are generally familiar with the location of retail gas stations, are aware that these facilities have gasoline and diesel fuel, and can typically discern the general storage location of the gasoline and diesel fuel at the facility; (2) the public and local emergency officials generally are aware of the hazards associated with gasoline and diesel fuel; (3) retail gas stations typically store gasoline and diesel fuel in tanks that are entirely underground, which generally mitigates the risk of catastrophic release; and (4) underground storage tanks are regulated under the Underground Storage Tank (UST) program of the Resource Conservation and Recovery Act (RCRA), so a comprehensive regulatory program is in place that establishes standards for the safe performance and operation of USTs, including a requirement to notify government agencies of the presence of such tanks. Although each of these factors alone wouldn't necessarily warrant separate higher thresholds, in combination these factors present a special situation for gasoline and diesel fuel stored at retail gas stations. For these reasons, EPA has raised the threshold levels for reporting under EPCRA sections 311 and 312, for gasoline and diesel fuel stored entirely underground at retail gas stations that are in compliance with UST requirements. The new threshold levels will relieve retail gas stations that have typical quantities of gasoline and diesel fuel from routinely reporting these fuels under EPCRA. Gas stations having unusually large inventories will continue to report their gasoline and diesel fuel.

Although EPCRA section 311 and 312 reporting will not be required nationwide for gasoline and diesel fuel stored at retail gas stations meeting the criteria in this rule, some state or local governments may want such reporting. For example, some state or local agencies may find it convenient for emergency planning purposes to receive information on retail gas stations reported annually on an inventory form.

State or local emergency officials who want to obtain this information can still receive it under EPCRA regulations upon request, because this rule does not amend the threshold for reporting in response to a request, which is zero. See 40 CFR 370.20 for the zero threshold provision. Those state or local governments that want retail gas stations to report routinely can also establish state or local laws with lower reporting thresholds than the new federal thresholds promulgated today.

In addition to hazardous chemical reporting, state or local emergency officials may also be able to obtain information on retail gas stations from their state UST offices and other sources, such as telephone listings, chambers of commerce, or trade associations. EPA believes that communications between local emergency planners and facility owners or operators need not be restricted to EPCRA section 311 and 312 reporting.

In establishing new EPCRA sections 311 and 312 reporting thresholds for gasoline and diesel fuel, EPA seeks to strike a balance between the value of information generated for the public and emergency planners and responders, and the burden of generating that information. EPA believes that excluding the majority of retail gas stations from the requirement to report routinely under EPCRA sections 311 and 312 will promote a more manageable EPCRA program, while still protecting the public health and safety of individuals in the community and emergency response officials. Retail gas stations are a large portion of the regulated community under EPCRA sections 311 and 312. Relieving the majority of retail gas stations from routine EPCRA reporting will reduce the quantity of paperwork that SERCs, LEPCs and fire department file, allowing them to focus their resources on other facilities. Since information on the chemical hazards at retail gas stations is already generally known, and can be accessed by means other than EPCRA reporting, emergency planning and response activities will not be impaired.

In addition to the new threshold levels for gasoline and diesel fuel under EPCRA sections 311 and 312, EPA's June 8, 1998, notice proposed other changes to the regulations at 40 CFR parts 355 and 370. At this time, the Agency is only finalizing the new thresholds for gasoline and diesel fuel at retail gas stations. The Agency has not reached any decision on any other of the changes proposed in the June 8 notice. The Agency also has not reached any decision on any other issues that arose in the public comments on the June 8

notice, including new thresholds for gasoline and diesel fuel stored at facilities other than retail gas stations, or new thresholds for other types of fuels.

Today's rule becomes effective upon publication in the **Federal Register**. The Administrative Procedure Act (APA) generally requires that a rule not become effective until at least 30 days after its publication. See 5 U.S.C. § 553(d). The APA exempts from this requirement a rule "that grants or recognizes an exemption or relieves a restriction." Today's rule provides relief from routine EPCRA reporting on gasoline and diesel fuel to all qualifying gas stations. Therefore the rule qualifies for the effective date exemption provided by the APA.

#### *B. Changes to the Proposal*

##### Plain Language Format

On June 8, EPA proposed to re-write and reorganize all of the regulations at 40 CFR parts 355 and 370 in "plain language" format, to make the regulations easier to understand and to use. EPA is not finalizing the proposed "plain language" regulatory language at this time. The final rule published today, which amends 40 CFR 370.20, is written in a format consistent with the current language in the CFR. Therefore, the final regulatory language raising the gasoline and diesel fuel thresholds is in a format different from that of the proposed language. Although today's rule is not written in the "plain language" format that was proposed in the June 8 notice, EPA has reorganized section 370.20 to make it easier to understand. While all of section 370.20 has been reorganized, the only substantive regulatory changes that EPA has made to that section are the new gasoline and diesel fuel thresholds. When EPA promulgates 40 CFR parts 355 and 370 in "plain language" format, today's rule will be reformatted accordingly.

##### Definition of Retail Gas Station

For the purposes of today's rule, EPA defines "retail gas station" as "a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land." This definition is added to 40 CFR section 370.20. The final definition published today is different from the proposed definition in several ways, as discussed below.

EPA's final definition of "retail gas station" does not explicitly include convenience stores, although the proposed definition included them specifically. Any convenience store that is a "retail facility engaged in selling

gasoline and/or diesel fuel principally to the public" is included in EPA's definition of "retail gas station." EPA has chosen to promulgate a broad definition of "retail gas station" for the purpose of this rule, rather than listing specific facilities such as truck stops or convenience stores that retail gasoline, to avoid excluding other facilities by implication.

EPA has added the phrase "for motor vehicle use on land" to the definition of "retail gas station" as it was published in the proposed rule. The Agency added this phrase to clarify that gas stations in marinas and airports that sell fuel for boats or airplanes are not intended to be included in the definition of "retail gas station" for the purposes of this rule at this time.

EPA has added "and/or diesel fuel" to the definition to clarify that "retail gas station" includes those facilities that sell diesel fuel primarily to the public.

EPA changed the phrase "retail gasoline facility principally engaged in selling gasoline to the public," to "retail facility engaged in selling gasoline and/or diesel fuel principally to the public," in the final definition because the proposed definition might have led to interpretations that were more narrow than the Agency's intended meaning of the term. EPA made this change to clarify that a facility's primary sales need not necessarily be of gasoline or diesel fuel in order to be considered a "retail gas station" for purposes of this rule. In other words, the facility does not have to make the majority of its sales in gasoline or diesel fuel. However, the majority of the facility's sales of gasoline and/or diesel fuel must be to the public, to be considered a "retail gas station" for purposes of this rule.

#### Compliance With UST Requirements

In EPA's proposed rule, the new gasoline and diesel fuel thresholds applied only to gasoline or diesel fuel "at a retail gas station, when stored in tanks entirely underground and in compliance with the UST regulations at 40 CFR part 280 \* \* \*" The final rule language, however, limits applicability of the new thresholds to gasoline or diesel fuel "that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements (40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281) \* \* \*" EPA made several clarifying changes to the proposed language, as discussed below.

First, the final rule language clarifies that to be eligible for the new gasoline and diesel fuel thresholds, a retail gas station must be in compliance with either the Federal UST requirements at 40 CFR part 280 or, the state UST requirements of the program approved by EPA to operate in lieu of the Federal UST program. Second, the final rule clarifies that, in order for a retail gas station to be eligible to apply the new thresholds for reporting for a given calendar year, the facility must have been in compliance with UST requirements at all times during that year. And third, the final rule clarifies that an entire retail gas station must be in compliance with applicable UST requirements to apply the new thresholds.

If a retail gas station was temporarily out of compliance with UST requirements at any time during a particular calendar year, the facility is ineligible to use the new gasoline and diesel fuel thresholds for reporting for that calendar year. Instead, it must use the standard 10,000 pound hazardous chemical thresholds for any gasoline or diesel fuel it had during that year.

A retail gas station that was in compliance with UST requirements at all times during the preceding year—and is therefore eligible for that year to apply the new thresholds to their gasoline and diesel fuel that are stored entirely underground—applies gasoline and diesel fuel thresholds as follows:

- If the gas station had present at least 10,000 pounds of gasoline or diesel fuel stored in tank(s) *not entirely underground*, the gas station owner/operator must report the gasoline or diesel fuel. The owner/operator must report on the total gasoline or diesel fuel at the facility, regardless of whether it is stored aboveground or underground.
- If the gas station had present at least 75,000 gallons of gasoline or 100,000 gallons of diesel fuel stored in tank(s) entirely underground, the gas station owner/operator must report the gasoline or diesel fuel. The owner/operator must report on the total gasoline or diesel fuel at the facility, regardless of whether it is stored aboveground or underground.
- If the gas station had neither 10,000 pounds of gasoline or diesel fuel stored in tank(s) not entirely underground, nor 75,000 gallons of gasoline or 100,000 gallons of diesel fuel stored in tank(s) entirely underground, the gas station need not report any gasoline or diesel fuel.

If a retail gas station temporarily ceases operations for an entire calendar

year, then for that year the facility does not fit EPA's definition of a retail gas station (for the purposes of this rule, a facility must be " \* \* \* engaged in selling gasoline and/or diesel fuel principally to the public \* \* \*" to be considered a retail gas station). Such a facility would be subject to the standard 10,000 pound reporting thresholds for gasoline and diesel fuel under EPCRA sections 311 and 312 for that calendar year, regardless of whether its gasoline and diesel fuel are stored entirely underground, and regardless of whether the facility was in compliance with UST requirements for that year. If a retail gas station ceases operations only for a portion of a calendar year the facility still may apply the new gasoline and diesel fuel thresholds (provided the facility meets all of the criteria in today's rule, including complying with UST requirements).

If a retail gas station closes any or all of its underground tanks either permanently or temporarily, the tanks must be closed in compliance with applicable UST requirements. A facility cannot apply the new gasoline and diesel fuel thresholds if it has closed underground tanks not in compliance with UST requirements.

A facility is not in compliance with the UST requirements (and therefore not eligible for the higher EPCRA thresholds of today's rule) when it first fails to meet the UST requirements. For example, if an owner or operator of a retail gas station has a tank system that was not in compliance with UST requirements that went into effect in December of 1998 (see 40 CFR 280.21(a) and 281.31), that owner or operator cannot apply the new thresholds in today's rule for the EPCRA section 312 report that is due March 1, 1999.

For more information on compliance with UST requirements and the relationship between this rule and the UST program see section IV.D in this preamble, which discusses the public comments received on this issue and the Agency's responses.

#### IV. Discussion of Public Comments Received on the Proposal

EPA received 164 comments related to the new thresholds for gasoline and diesel fuel from a variety of stakeholders, primarily state and local government, industry, and the public. The number of commenters in each group is as follows: industry, 20 commenters; SERCs and state government agencies, 17 commenters; LEPCs and local government agencies, 47 commenters; public interest groups, 2 commenters; individuals, 73 commenters; tribal governments, 2

commenters; professional organizations, 1 commenter; and Federal agencies, 1 commenter. A complete summary of all comments and EPA's responses to them is presented in "Comment Response Summary: EPCRA Sections 311-312 Proposal to Raise Reporting Thresholds for Gasoline and Diesel Fuel," which is available from the docket (see ADDRESSES above). The major issues raised by the commenters and the Agency's responses to them are described below.

#### *A. Access to Right-to-Know Information on Retail Gas Stations*

Several commenters stated that the proposal decreases ready access to community right-to-know information concerning retail gas stations and their hazards. EPA believes that the public and emergency response officials have a general knowledge of the locations of retail gas stations in their communities, and a general knowledge of the hazards associated with gasoline and diesel fuel. Routine reporting under EPCRA is not necessary nationwide for the public and emergency planners and responders to have knowledge of gas stations. Retail gas stations prominently advertise the presence of gasoline and diesel fuel at their facilities, encourage the public to come on site, and often permit the public to dispense the gasoline and diesel fuel themselves.

Further, any SERC, LEPC, fire department, or member of the public that wants more specific information on retail gas stations may obtain it in several ways. First, this rule does not change the existing requirements for providing MSDSs and inventory information upon request. The SERC, LEPC or fire department having jurisdiction over a facility may ask a facility's owner or operator to submit inventory information, and the owner or operator must comply with such a request (the threshold is zero for reporting in response to such a request). Additionally, any person may obtain MSDS or inventory information with respect to a specific facility by requesting it (MSDS requests are made to the LEPC; inventory information requests are made to the SERC or LEPC). If the SERC or LEPC does not have the requested information, it must request the information from the facility. (However, in the case of a facility that doesn't store more than 10,000 pounds of the substance, the statute provides that a person's request for inventory information must include a statement of need, and the SERC or LEPC has discretion on whether to request the information from the facility. Note that the new higher thresholds for reporting

for gasoline and diesel fuel don't affect this statutory 10,000 pound level.) Facilities must provide requested information to the SERC or LEPC making the request, and SERCs and LEPCs then must make the requested information available.

SERCs, LEPCs, fire departments, and members of the public also can obtain information on retail gas stations from other sources. They can contact their UST offices, or can take advantage of information available elsewhere in telephone listings, chambers of commerce, or trade associations to obtain information on gas stations in their planning areas. Finally, state or local governments that want to receive inventory information routinely from retail gas stations can set lower thresholds for gas and diesel fuel at retail gas stations under state or local laws.

In summary, the public can still receive information on gas stations from their SERCs or LEPCs. If those agencies do not have the requested information, generally they must request it from the facility and provide it to the person making the request. At the same time, EPCRA is not the only source of information on retail gas stations. The public can also obtain information on retail gas stations from other agencies, such as UST agencies.

EPA acknowledges that in some cases some information on retail gas stations may now be less readily available, but this does not justify nationwide the substantial burdens of routine reporting by retail gas stations. The purposes of EPCRA reporting are to provide information to state and local emergency officials for planning for chemical emergencies, and to provide information to the public on the potential chemical risks in their communities. Since information on retail gas stations is generally known to emergency responders and the public, and more specific information is available, the general purpose of EPCRA reporting is satisfied without the need for retail gas stations to report routinely.

The Agency recognizes that some SERCs, LEPCs or fire departments send EPCRA section 312 reporting packages to retail gas stations that have submitted section 312 reports for the previous reporting year. Sending such reporting packages to retail gas stations could be considered requesting information from specific facilities under EPCRA section 312, for which the reporting threshold is zero (see 40 CFR 370.20). Retail gas stations receiving such packages should contact the SERC, LEPC or fire department that sent the package, to determine if they are required to report.

#### *B. Knowledge of Locations and Hazards at Retail Gas Stations*

A number of commenters supported the proposed increases in reporting thresholds for gasoline and diesel fuel, asserting that the public and emergency responders are aware of the locations of retail gasoline stations independent of EPCRA reporting. Others emphasized that the public and emergency responders are knowledgeable about the hazards of gasoline and diesel fuel. However, a number of commenters disagreed and argued that the public and emergency responders are not aware of the locations or hazards associated with gasoline and diesel fuel.

EPA believes the public and emergency response officials already have a general knowledge of the locations of retail gas stations, and of the general storage locations for gasoline and diesel fuel at gas stations. Retail gas stations prominently advertise the locations of their facilities, and the presence of gasoline and diesel fuel at these facilities. The general storage location for the gasoline and diesel fuel can be determined by the location of the fuel pumps at a facility.

EPA further believes the public and emergency response officials already have a general knowledge of the hazards associated with gasoline and diesel fuel storage at retail gas stations. Gasoline and diesel fuel are common substances that are widely used by the public, and so are familiar to them. Further, routine reporting under EPCRA is not necessary to obtain more specific hazard information. Anyone requiring more specific hazard information on gasoline and diesel fuel (beyond the fire and explosion hazards that are already well known) may obtain it in several ways.

First, this rule does not change the existing requirements for providing upon request MSDSs and inventory information on gasoline and diesel fuel at gas stations—all individuals may obtain MSDS or inventory information with respect to a specific facility by requesting it (MSDS information is requested from the LEPC; inventory information is requested from the SERC or LEPC). Second, some facilities provide hazard labeling voluntarily at their fuel pumps. EPA encourages this practice, which makes some hazard information and warning immediately available to the consumer at the point of use. In addition, some MSDS information may be obtained from other sources—for example, some businesses post MSDSs for their products on the Internet. In summary, information on the hazards of gasoline and diesel fuel has been available, is well known, and

will continue to be available upon request without routine EPCRA reporting.

Several commenters described the hazards posed by gasoline and diesel fuel at retail gas stations and noted that the proposal did not eliminate these hazards. One commenter argued that by raising the threshold level EPA is suggesting that these facilities no longer pose a risk. A few organizations noted that petroleum-based substances are involved in a substantial number of chemical emergencies.

EPA recognizes that hazards exist at retail gas stations and does not suggest that state and local agencies stop planning for emergencies involving such facilities. State and local agencies set their own priorities for emergency planning, based on their assessment of local chemical risks and resources. However, EPA believes that routine reporting by retail gas stations is not necessary nationwide for emergency planners to plan for emergencies involving retail gas stations. The public and local emergency officials are generally familiar with the locations of gas stations, the gasoline and diesel fuel stored at gas stations, and the hazards of those products. EPA's objective is to find a sound balance between the burden of collecting information and the value of that information. As noted previously, state and local emergency officials who want to obtain this information can receive it upon request under EPCRA regulations (the threshold for reporting in response to a request is zero; see 40 CFR 370.20); they may be able to obtain information from their state UST offices; and they can require the information under state or local law and can consult available sources such as telephone listings and trade associations, for locations or other information on gas stations.

One commenter asked whether LEPCs can request information on components of gasoline that are hazardous, such as benzene or MTBE. If a SERC or LEPC specifically requests a facility to complete a Tier II report, the SERC or LEPC could specify that the facility report based on the components of the gasoline. However, the retail gasoline station may not know the concentration of the various constituents that make up gasoline because MSDSs are not required to contain this information.

Finally, several of the comments addressed the risk of ground water contamination. EPA recognizes that protecting groundwater is critical and understands that USTs have the potential to contaminate groundwater. However, the UST program is the regulatory program that provides for the

protection of groundwater from leaking underground storage tanks. EPA's UST requirements (codified at 40 CFR part 280), as well as the requirements of state UST programs approved by EPA, establish standards for the safe performance and operation of USTs to protect groundwater.

### *C. Need for Information on Gas Stations for Emergency Planning and Response*

Many SERCs, LEPCs, and fire departments commented that they do not need inventory information reported on retail gas stations, and that managing the gas station data takes limited resources away from more hazardous, less familiar situations. With higher Federal thresholds for gasoline and diesel fuel, SERCs, LEPCs and fire departments still have the flexibility to obtain the information that they need from gas stations for emergency planning and community right-to-know purposes, while those that do not want or need such information can implement a program that directs their resources elsewhere. Because SERCs, LEPCs and fire departments receive only the information that they need, this rule reduces their burden in administering EPCRA as well as minimizing the burden on retail gas stations.

Many other commenters, primarily LEPCs and SERCs, addressed the need to continue current reporting thresholds for retail gas stations to ensure the continued availability of information needed for emergency planning and response. Commenters mentioned a need to receive notice of changes in ownership or contact information, and a need for specific information on locations and amounts stored at retail gas stations.

EPA believes that local emergency planners can include gas stations in their emergency plans without the need for nationwide annual reporting under EPCRA sections 311 and 312. Local emergency officials are generally familiar with the location of retail gas stations, are aware that gasoline and diesel fuel are stored at gas stations, and can discern the general storage location of the gas and diesel fuel at gas stations. Also, as noted above, they can obtain the information from sources other than EPCRA reporting.

Some comments supported the use of current inventory reporting to enable local agencies to track changes in emergency contact information, including 24-hour emergency contacts. EPA does not believe that the need by some SERCs, LEPCs, and fire departments for 24-hour emergency contact reporting justifies retaining EPCRA sections 311 and 312 reporting

nationwide for gas and diesel fuel at retail gas stations. State or local governments that need the 24-hour emergency contact information may obtain it from retail gas stations by requesting inventory information under EPCRA 312; they could tailor their requests to require only the emergency contact information (by indicating in a request that the respondent may comply with the request by providing only the specified information). State or local governments can also require gas stations to report emergency contact information under state or local law. Other means exist for obtaining contact information, including state UST offices, fire inspection reports, chamber of commerce information, telephone listings, or trade associations.

Many states collect annual fees or insurance premiums for registered USTs, so the potential exists for an annual update of emergency contact information at the time that the fees are submitted. EPA encourages EPCRA and UST offices to work together toward obtaining 24-hour emergency contact information from gas stations for those EPCRA programs desiring this information.

Some comments suggested that EPA still require that retail gas stations report annually some basic information, such as owner or operator name and emergency contacts. One commenter suggested that full reporting be required on a specified interval, such as every three years. Several commenters suggested that EPA require one-time-only reporting for retail gas stations, with additional reports only if substantive information changes or the facility goes out of business. Another commenter suggested that gas stations submit an annual certification that they qualify for the higher thresholds.

EPA has determined that routine reporting under EPCRA sections 311 and 312 is not needed nationwide for gasoline and diesel fuel stored at retail gas stations under the criteria set forth in the rule. State and local governments, however, may choose to implement state or local laws to tailor EPCRA programs to suit their own needs and resources. For example, state or local governments could require gas stations to report less frequently than yearly, make an "initial" or "one-time-only" notification, or submit annual certifications under state or local laws. EPA believes that it is better to allow state and local agencies to decide whether this information is needed from retail gas stations and have them seek the information through state or local statutes or other means.

Gas stations already must make an initial notification for their gasoline and diesel fuel USTs under the Federal UST regulations (40 CFR part 280). This is a "one-time-only" notification such as that suggested by the commenters. EPA encourages coordination between UST program offices and EPCRA program offices to disseminate UST information to EPCRA agencies and the public. EPA expects that, as cooperative relationships develop between EPCRA program offices and UST program offices, access to UST information will increase.

A few commenters argued that the proposal weakens the relationship between LEPCs and fire departments and owners/operators of gas stations. One commenter feared that the proposed rule would cause confusion and make LEPCs look bad. EPA understands the importance of communications between LEPCs/fire departments and gas station owners/operators. LEPCs and fire departments can contact gas station owners/operators to maintain communications, and can (and many routinely do) conduct inspections in their local planning districts. Communications between LEPCs and retail gas stations need not (and ideally should not) be restricted to formal yearly reporting. EPA does not believe that EPCRA routine reporting under sections 311 and 312 is the most efficient way for the local agencies and retail gas stations to communicate.

#### *D. Relationship of This Rule to the Underground Storage Tank Program*

The new EPCRA thresholds apply only to gasoline and diesel fuel in tanks entirely underground at retail gas stations that comply with Federal UST requirements (40 CFR part 280) or, if applicable, requirements of the state UST program approved by the Agency under 40 CFR part 281. The UST program establishes standards for the safe performance and operation of USTs, and requires facilities to make UST notifications. Some of the information reported under UST duplicates some of the information reported under EPCRA, and can be valuable for emergency planning purposes.

States with UST programs approved under 40 CFR part 281 are authorized to administer their state UST program in lieu of the Federal program. State UST programs may be implemented by regulation or by statute. Approximately half of the states currently have approved state UST programs. All approvals and withdrawals of approvals are published in the **Federal Register**. Whether or not a state operates an

approved UST program, UST notification forms are submitted to the state (or territory), not to EPA. Retail gas stations on Indian Lands must comply with the Federal UST requirements (40 CFR part 280).

EPA provides addresses and phone numbers for state and territorial UST contacts on the Internet at [www.epa.gov/swerust1/states/statcon1.htm](http://www.epa.gov/swerust1/states/statcon1.htm), and through the RCRA/UST, Superfund & EPCRA Hotline, at (800) 424-9346. Information about state UST program approval (including a list of approved states) may be accessed at [www.epa.gov/swerust1/states/spa1.htm](http://www.epa.gov/swerust1/states/spa1.htm).

Free plain language publications are available to help people understand the Federal UST requirements. Such publications, for example "Musts for USTs," are available through the RCRA/UST, Superfund & EPCRA Hotline, and at EPA's Office of Underground Storage Tanks (OUST) Internet site at [www.epa.gov/oust](http://www.epa.gov/oust).

#### Availability and Usefulness of UST Information

Some commenters expressed support for the proposal by saying that state UST databases can be used as a right-to-know resource. Others, however, commented that the UST reporting does not provide adequate emergency planning information, and therefore is not a proper substitute for EPCRA routine reporting.

The Federal UST regulations (40 CFR part 280) require the following information in the UST notifications: name, address, and phone number of the owner of the UST(s); address of the facility at which the UST(s) are located; name, title, and phone number of a contact person at the tank location; type of notification (for example, amended or subsequent); certification; tank information, including status of tank(s), estimated age, estimated total capacity, material of construction, internal protection, external protection, and piping; and substance currently or last stored in greatest quantity by volume. (There are additional information requirements for tank(s) installed after December 22, 1988.) Much of this information can be valuable for emergency planning purposes. In addition, many of the states require additional information from UST facilities, beyond the information required under the Federal regulations.

Furthermore, EPA does not intend that UST information will be the sole source of emergency planning information for retail gas stations. As discussed above, those emergency planners that want information from gas stations have a number of other options

for obtaining information from those facilities.

A number of commenters also feared that UST information may not be readily accessible to LEPCs, emergency responders, and the public. Several commenters suggested that EPA make UST information more accessible or modify the UST form. Commenters suggested that the UST form should be submitted to EPCRA agencies to ensure that the UST data are available. One commenter asked whether EPA would collect UST data and make it available to EPCRA agencies. Another commenter suggested that underground storage tank rules should be modified to guarantee public access to UST information.

The states and territories receive UST notification forms. EPA sees no need to duplicate the collection of UST information and provide such information to state and local EPCRA agencies. It would be more efficient and would encourage working relationships if state and local emergency planners request UST information directly from state UST agencies. EPA also notes that a change to the UST regulations would be outside the scope of this rulemaking.

EPA understands that in the majority of states, UST information is currently not reported directly to LEPCs or other emergency planners and responders. The Agency encourages increased coordination between UST program offices and EPCRA program offices desiring information on retail gas stations, to improve communication of UST information to SERCs, LEPCs, and fire departments.

States may choose to combine the UST and EPCRA reporting forms and in fact are encouraged to do so, provided that all of the requirements for both programs are met. Any comprehensive form would need to satisfy the requirements for contents of submission, timing of submission, and recipients of the submission for both the UST and EPCRA programs. The preamble to the June 8, 1998, proposal (63 FR 31267) provides further guidance on this issue.

Although states may choose to collect and disseminate information on retail gas stations through their UST programs, EPA has determined that on a nationwide basis it is not necessary to require that gas stations report annually under EPCRA sections 311 and 312. EPA believes both the public and emergency responders are already aware of most of the information that is submitted under EPCRA sections 311 and 312 for gas stations, specifically the identity of the chemical stored and the hazards associated with the chemical.

### Entirely Underground Tanks

Several organizations supported the proposal to increase reporting thresholds for gasoline and diesel fuel in entirely underground tanks. However, several other commenters argued that the phrase "entirely underground tanks" will cause confusion, because EPA's UST regulations also apply to partially underground storage tanks. A few commenters wrote that EPA should not limit the thresholds to "entirely underground" tanks. They noted that aboveground tanks are subject to fire protection standards and other rules, such as Spill Prevention, Control, and Countermeasures (SPCC) rules, that minimize environmental risk from such tanks. These commenters also stated that aboveground tanks pose less of a risk to groundwater.

The new EPCRA reporting thresholds for gasoline and diesel fuel at retail gas stations apply only to fuel stored in tanks that are entirely underground, because entirely underground storage of gasoline and diesel fuel offers an added level of protection from certain emergencies in comparison to aboveground storage. If an underground storage tank and piping holding gasoline or diesel fuel fails, releasing a large quantity of fuel, the fuel remains under the ground, away from air and ignition sources. Releases below ground can be detected by monitoring (required under UST regulations) so that emergency response action can be taken to recover the fuel and minimize contamination. By contrast, if an aboveground tank or pipeline fails, releasing a large quantity of gasoline or diesel fuel, the fuel will quickly spread and form a pool on the surface of the ground or on paved areas and evaporate, potentially exposing people to harmful vapors. Since a pool of fuel can mix with air, an explosion or large fire can occur if an ignition source is available. Further, aboveground tanks and piping are vulnerable to collision with vehicles, severe weather, and static discharge (lightning). For these reasons, the higher thresholds apply only to gasoline and diesel fuel when they are stored entirely underground.

The Federal UST regulations at 40 CFR 280.12 define an underground storage tank as any tank system that has over 10 percent of its volume underground. Because the UST program and the new EPCRA gasoline and diesel thresholds apply to different universes of tanks, the EPCRA rule cannot use the UST definition in promulgating the new reporting thresholds. Although this rule (codified in 40 CFR part 370) does refer

to entirely underground tanks, it neither provides a definition of an underground storage tank nor changes the existing definition under the UST program.

Storage tanks that are entirely underground are included within the definition of UST and would be subject to the UST requirements. EPA has made compliance with the UST requirements an additional condition for applicability of the new gasoline and diesel fuel reporting thresholds under EPCRA.

One commenter argued that EPA should not cover aboveground tanks that are located far from populations. This comment is outside of the scope of this rulemaking. EPA also notes that EPCRA 311 and 312 provide access to hazardous chemical information in all covered facilities, and do not limit the information solely to chemicals that could affect the population outside the storage site boundaries. One important reason for this is that emergency responders use EPCRA information for planning for responses within the facility boundary.

### Compliance With UST Requirements

Prior to this rule, retail gas stations had to report on gasoline and diesel fuel regardless of whether they complied with the UST requirements or whether their tanks were leaking. The new gasoline and diesel fuel thresholds provide an incentive to these facilities to comply with UST requirements. Simply being regulated under the UST program is not sufficient for applicability of the new gasoline and diesel fuel thresholds—the new thresholds only apply to gasoline and diesel fuel stored entirely underground at retail gas stations that are in compliance with Federal UST requirements (40 CFR part 280) or requirements of the state UST programs approved by EPA under 40 CFR part 281.

Many commenters agreed with EPA that compliance with RCRA's UST regulations minimizes the risk of accidental release of hazardous chemicals. All USTs must comply with regulations concerning: (1) Design, construction, installation and notification; (2) general operating requirements; (3) release detection; (4) release reporting, investigation, and confirmation; (5) release response and corrective action; (6) out of service USTs and closure; and (7) financial assurance (for USTs containing petroleum). Therefore, a comprehensive regulatory program (including notifications to government entities) is in place that establishes standards for the safe performance and operation of USTs. Limiting use of the new gasoline and

diesel fuel thresholds to those facilities in compliance with the UST program assures that only those facilities less likely to face failure of their USTs are relieved from routine reporting under EPCRA sections 311 and 312.

A number of commenters asked EPA for clarification on issues related to how non-compliance with UST requirements affects the gas and diesel fuel thresholds. Commenters asked whether compliance with UST requirements includes compliance with state UST programs approved by EPA under 40 CFR part 281. Some commenters were concerned about who was responsible for determining that a facility was in compliance with the UST requirements; a few stated that LEPCs, SERCs, and fire departments did not have the resources or expertise to make such determinations. Commenters asked that EPA clarify whether temporary non-compliance affects eligibility for the higher thresholds.

Today's final rule clarifies that applicability of the new gasoline and diesel fuel thresholds is contingent upon compliance with Federal UST requirements (40 CFR part 280) or, if applicable, the requirements of the state UST program approved by EPA under 40 CFR part 281.

If a retail gas station is not in compliance with all applicable UST requirements at any time during a calendar year, it may not apply the new higher gasoline and diesel fuel thresholds for EPCRA reporting for that calendar year. If that retail gas station exceeded the 10,000-pound reporting threshold for gasoline or diesel fuel during that year, it is subject to EPCRA penalties if it does not properly report under EPCRA sections 311 and 312.

A facility is not in compliance with the UST requirements (and therefore not eligible for the higher EPCRA thresholds of today's rule) when it first fails to meet the UST requirements. For example, if an owner or operator of a retail gas station has a tank system that was not in compliance with UST requirements that went into effect in December of 1998 (see 40 CFR 280.21(a) and 281.31), that owner or operator can not apply the new thresholds in today's rule for the EPCRA section 312 report that is due March 1, 1999.

An entire retail gas station must be in compliance with all applicable UST requirements to apply the new thresholds. If one tank at a retail gas station is out of compliance with UST requirements then that facility may not apply the new gasoline and diesel thresholds, even if other tanks at the facility are in compliance with the requirements.

LEPCs, SERCs, and fire departments are not required to make the determination themselves on whether a facility is in compliance with UST requirements, but may obtain compliance information from state UST programs. State UST program databases are in general available to EPCRA agencies, although data quality, availability, and searchability vary from state to state. EPA believes that the information generated through the UST and EPCRA programs, both of which regulate the safe operation of retail gas stations, should be coordinated to reduce duplication of effort, and in pursuit of good government and sound public policy. EPA encourages both programs to more closely coordinate information sharing efforts at the state and local levels.

The fact that a retail gas station files an EPCRA section 311 or 312 report is not an admission that it is out of compliance with UST requirements. A facility may voluntarily submit its MSDS or hazardous chemical inventory information to local emergency planners.

A commenter asked how a decision in the plaintiff's favor in a citizen suit for violation of UST requirements at a retail gas station would affect the applicability of the new higher thresholds for gasoline and diesel fuel under EPCRA. If a court found a retail gas station out of compliance with UST regulations, that facility could not apply the new gasoline and diesel fuel thresholds for reporting for any calendar year during which the facility was out of compliance with such UST requirements.

#### *E. Effect of This Rule on the Funding of State and Local Programs*

EPA understands that some states generate funds for support of state or local EPCRA programs through fees collected from facilities that comply with section 312. Such states may lose revenue since the majority of retail gas stations will no longer report their gasoline and diesel fuel inventories due to EPA's new thresholds.

Some commenters in support of the proposal stated that funding should not be an issue in EPA's decision to promulgate the change in reporting thresholds for gasoline and diesel fuel. However, other organizations noted that lack of funding is an important issue for the proposed threshold changes.

The goals of reporting under EPCRA sections 311 and 312 are to provide information to the public on the hazardous chemicals present in their communities and to provide information for emergency planning.

The EPCRA statute does not address the collection of fees for EPCRA reporting.

State and local governments establish fee programs under state or local laws and such programs are not attributable to this or other EPCRA rules.

Although EPCRA does not provide for annual Federal funds for state implementation of the EPCRA program, some Federal funds are available to support emergency planning and community right-to-know programs (for example, Hazardous Materials Emergency Preparedness Grants administered through the U.S. Department of Transportation).

#### *F. State or Local Thresholds for Gasoline and Diesel Fuel*

EPA's June 8 proposal explained that although the new gasoline and diesel fuel thresholds would provide relief from routine reporting under EPCRA, state and local governments always may choose to establish lower thresholds under their own laws. Some commenters requested that EPA not encourage states to set their own thresholds. They feared that the proposal would be ineffective in accomplishing the intended reduction in paperwork burdens, because states would use their threshold setting authorities to set lower gasoline and diesel fuel thresholds. One commenter suggested that EPA issue non-binding guidance to encourage states to use EPA's thresholds.

EPCRA section 321 specifically states that EPCRA does not preempt any state or local law. If a state or local government chooses to impose different reporting requirements (for example, different information, different thresholds) or fees to cover state or local costs, EPA has no authority to change these state rules. These state or local rules do not replace EPCRA requirements, but rather are in addition to the Federal reporting rules. States or local governments may elect to merge their requirements with EPCRA reporting (for example, by asking for additional information or requiring the submission of EPCRA forms for chemicals held at lower thresholds), but these state rules do not alter the basic requirements all covered facilities must meet to comply with EPCRA sections 311 and 312.

State and local governments have always had the authority to establish lower thresholds for reporting under state or local law. EPA merely points out that state or local governments have authority to set lower thresholds if this suits their emergency planning and community right-to-know needs. States and local governments have their own

circumstances, needs, resources, and issues concerning emergency planning and community right-to-know.

Because many state and local entities do support EPA's proposal, EPA expects that many gas stations will see reporting burden relief. EPA believes that raising the reporting thresholds for gasoline and diesel fuel at retail gas stations will still achieve the goals of planning for chemical emergencies and providing right-to-know information (since the information is available elsewhere), while enabling all planners and responders to concentrate on the priorities and needs in their own communities.

One state agency commented that it is difficult to establish more stringent thresholds at the state level. Nevertheless, neither EPCRA nor other Federal laws prohibit states from using their own authorities to enact state or local laws establishing lower thresholds for reporting. Any substantive or procedural limitations that states impose upon their own authority to promulgate lower thresholds are matters of state and local laws. It is neither feasible nor appropriate for EPA to characterize the difficulty of state or local political decisions.

Any state or local government that wants to continue to receive gasoline and diesel fuel reporting from retail gas stations at a 10,000 pound threshold can do so by enacting state or local laws, or by using the authority to request information from facilities (for which the reporting threshold is zero; see 40 CFR 370.20).

#### *G. Alternative Thresholds for Gasoline and Diesel Fuel*

Several commenters supported the proposed threshold levels for gasoline and diesel fuel as appropriate. However, a number of commenters stated that the thresholds are arbitrary because they do not correspond to the inventory range values on the Tier II form or to an amount that could pose a threat as the result of a release. Other commenters stated that the proposal unfairly excludes the largest retail gas stations, even though these facilities meet the criteria described by EPA with regard to awareness of their hazards among the public and responders and coverage by UST regulations.

The new gasoline and diesel fuel thresholds promulgated in this rule are 75,000 gallons for gasoline and 100,000 gallons for diesel fuel. The Agency's intent is to establish new thresholds corresponding to amounts just higher than the typical total amounts of gasoline and diesel fuel held at retail gas stations, so that facilities with typical

inventories would be relieved from reporting. EPA based the new thresholds on data showing that the following were typical fuel capacities at retail stations: gas stations—approximately 32,000 gallons of gasoline overall (all grades combined), and approximately 8,000 gallons of diesel fuel overall; truck stops that retail fuel to the public—approximately 60,000 gallons of gasoline overall, and 90,000 gallons of diesel fuel overall. [See Memorandum to the Docket re: Gas Station Capacity and Universe. Dated October 8, 1997 (300RR-IF1-2-26) in Docket 300RR-IF1 to this rule.]

The majority of retail gas stations, including truck stops, will have gasoline and diesel fuel inventories below the new thresholds. However, facilities with unusually large inventories will exceed the thresholds and will continue to be subject to routine reporting under EPCRA sections 311 and 312. EPA believes that the public and emergency officials are generally aware of the approximate quantities stored at typical gas stations (including truck stops), so emergency planning can occur without the need for routine reporting nationwide. In contrast, because the public and emergency officials may not be aware of the amount stored at facilities with atypically large inventories, those retail gas stations are still subject to annual EPCRA reporting.

One commenter suggested that EPA adopt only one threshold for gasoline and diesel fuel, that of 100,000 gallons. EPA decided to distinguish between gasoline and diesel fuel to specify the thresholds because the typical amounts of gasoline and diesel fuel found at retail gas stations differ. The Agency believes that 75,000 and 100,000 gallons are the upper bound quantities for gasoline and diesel fuel respectively that are stored at typical retail gas stations. Retail gas stations with unusually large inventories of gasoline or diesel fuel are still required to report, since they store atypical amounts of gasoline and/or diesel fuel. Providing a single 100,000-gallon threshold for both gasoline and diesel fuel would extend the reporting exclusion to stations holding unusually large quantities of gasoline.

In addition, some commenters argued that EPA should regulate gasoline and diesel fuel under EPCRA in a manner consistent with the Spill Prevention, Control, and Countermeasures (SPCC) regulations at 40 CFR 112. Under the SPCC regulations, the capacity (for underground storage of oil, including gasoline and diesel fuel) that triggers the requirement for development of an SPCC plan is 42,000 gallons.

Commenters argued that if the thresholds for gasoline or diesel fuel were to be raised, they should not be higher than 42,000 gallons.

EPA does not believe that the thresholds established for EPCRA sections 311 and 312 reporting need to be consistent with the Spill Prevention, Control, and Countermeasures (SPCC) program, because these programs serve very different purposes. The EPCRA reporting thresholds should be based on the purpose to be served by the information reported. The purpose of the SPCC program is to help prevent discharges of oil from certain aboveground and underground storage facilities. The SPCC program requires regulated facilities to prepare SPCC plans that address the facility's design, operation, and maintenance procedures established to prevent spills from occurring, as well as countermeasures to control, contain, clean up, and mitigate the effects of an oil spill that could affect navigable waters and adjoining shorelines. The SPCC reporting quantity was established commensurate with this purpose. In contrast, the purpose of EPCRA sections 311 and 312 reporting is to provide information to the public about the presence of hazardous chemicals in their community and to emergency planners and responders for emergency planning, prevention, and response. EPA believes that EPCRA's purposes are served by the threshold levels proposed in this rulemaking.

Further, the purpose of the increase in the EPCRA thresholds for gasoline and diesel fuel, when stored in tanks entirely underground in typical amounts at facilities that are in compliance with the UST program, is to exclude facilities where emergency response officials and the public are generally aware of the approximate gasoline and diesel fuel quantities stored at those facilities. Thus, the increased thresholds for retail gas stations will promote a more manageable EPCRA program while still providing the information needed to protect the public health and safety of individuals in the community and emergency response officials. The SPCC threshold proposed by commenters would not fully serve this purpose because it is too low. If EPA adopted the SPCC threshold, many retail gas stations that EPA intends to exclude would continue to routinely report on their gasoline and diesel fuel inventories under EPCRA, although emergency response officials and the public are generally aware of the approximate quantities stored at those facilities.

In addition, because EPA believes that the UST program offers equivalent

protection to the SPCC program, EPA has proposed regulations (56 FR 54612, 54625, October 22, 1991) to exclude from SPCC coverage underground storage tanks (as defined in section 112.2 of the SPCC rule) currently subject to the technical requirements of the UST program in 40 CFR part 280. Thus, the SPCC threshold quantities would no longer be applicable to these tanks.

#### *H. Zero Threshold for Reporting in Response to Requests for Information*

EPCRA regulations provide that a facility owner or operator must submit an MSDS to the LEPC upon request, and must submit Tier II inventory information to the SERC, LEPC or fire department upon request (see 40 CFR 370.21(d) and 370.25(c)). The regulations also specify that the threshold for reporting in response to requests for MSDS or Tier II inventory information is zero. In other words, a facility with any quantity of a hazardous chemical is required to provide information upon request by the SERC, LEPC or fire department. In the preamble to the June 8 proposal, EPA pointed out that the zero threshold provision is a useful tool that any SERCs, LEPCs or fire departments who want information from retail gas stations can use to obtain such information.

Several commenters on the proposal discussed the zero threshold provision for reporting information in response to requests. A commenter stated that EPA must maintain the zero reporting threshold for requested information from retail gas stations. Another stated that maintaining the zero threshold will encourage states to require annual Tier II reporting, which will increase the burden on facilities (Tier II information is more comprehensive than Tier I information).

The zero threshold provision for reporting in response to a request for MSDS or Tier II inventory information has been in effect since October 15, 1987, when EPA promulgated a final rule establishing the reporting requirements under EPCRA sections 311 and 312 (52 FR 38344). EPA has not proposed to change the zero threshold provision. Moreover, EPA understands that most states require Tier II reports annually under state laws or regulations; today's rule does not affect these state requirements.

EPA has determined that routine reporting under EPCRA sections 311 and 312 is not needed nationwide for gasoline and diesel fuel stored at retail gas stations under the criteria set forth in this rule. Some state and local governments, however, may want MSDS or inventory information from retail gas

stations. The zero threshold provision for reporting in response to requests provides state and local agencies the flexibility to customize the information that they receive to their emergency planning needs and the needs of their communities. They can tailor their requests to include any subset of the sections 311 and 312 information, by indicating in a request that the respondent may comply with the request by providing only the specified information. For example, they could request only the emergency contact information. Also, they can request that information be reported at any threshold level that suits their needs, from zero up to the federal thresholds.

#### *I. Effect of the Timing of This Rule on State and Local Programs*

A few states suggested that if they want to continue to receive routine EPCRA reports from retail gas stations, it will be difficult to enact state legislation in time for it to be effective before EPA's gasoline and diesel fuel threshold changes take effect. Some asked that EPA allow time for outreach to facilities, or for state and local officials to make adjustments to their programs.

EPA notes that the Agency has discussed the issue of raising the thresholds for reporting of gasoline and diesel fuel for retail gas stations for many years with state officials as a way to eliminate duplication of reporting requirements with the UST programs. Recently, EPA discussed this issue with state officials at the Hazardous Material Spills Conference in April 1998. The proposal to raise the thresholds was issued in June 1998; EPA has continued communicating with stakeholders since the publication of the proposed rule. EPA indicated its intent to raise these reporting thresholds effective for reports due March 1, 1999, in a letter to SERCs dated November 30, 1998.

EPA acknowledges the difficulties in the timing of this rulemaking for SERCs, LEPCs or fire departments that want to receive information from retail gas stations, but does not believe that these outweigh the benefits nationwide in reducing an unnecessary burden for all communities. EPA is willing to work with states to assist with compliance packages and in other ways during this transition period, and so indicated in the November 30, 1998 letter to the SERCs. EPA does not believe that continuing this reporting nationwide for an additional year is justified. States still have authority to obtain the information through requesting information under sections 311 and 312, through the UST programs, and possibly

using other existing state and local statutes or establishing new ones.

#### *J. Effect of This Rule on the Regulatory Burden to Emergency Planners and Industry*

Some commenters agreed with the Agency that the higher gasoline and diesel fuel thresholds will decrease the regulatory burden to retail gas stations, and the efforts of emergency planners that receive the EPCRA reports. Other commenters stated that the proposed thresholds will increase the burden to SERCs and LEPCs, noting in particular the efforts associated with responding to public requests for information, maintaining accurate lists of retail gas stations for planning purposes, and ensuring compliance with UST requirements. Some commenters stated that EPCRA reporting is not burdensome to gas stations and, after the initial submission, requires only a minimal amount of time annually.

The information collection analysis for this rule estimates a decrease in the burden to facility respondents in complying with EPCRA sections 311 and 312 of 587,389 hours per year. This estimate includes the time (averaging approximately 2 hours per facility) necessary to submit the Tier I form for the estimated 193,000 retail gas stations now subject to the higher gasoline and diesel fuel thresholds, and the time necessary for new retail gas stations to familiarize themselves with the regulations (averaging approximately 10 hours per new facility). EPA estimates an overall cost savings of more than \$16 million dollars per year as a result of this rule. This figure includes the reduction in costs to retail gas stations for complying, and the reduction in costs to SERCs, LEPCs and fire departments for archiving and maintaining information. EPA believes that, for SERCs, LEPCs and fire departments that choose to manage EPCRA data for retail gas stations, information management efforts will now be reduced because they can tailor the collection of information to suit only their particular needs.

Even if a retail gas station can simply copy their inventory forms from the previous year, sign and re-date the forms, and submit them for EPCRA compliance, the facility needs to spend time managing the information before it is reported, ensuring the information is accurate or modifying it to reflect changes, confirming the addresses of the SERC, LEPC, and local fire department, and submitting the information. Although the reduction in burden to an individual gas station by this rulemaking may not seem large, the

overall reduction nationwide is significant.

EPA's analysis for this rule shows that the costs to SERCs, LEPCs and fire departments nationwide will decrease by a total of approximately \$45,000, because of a reduction in the amount of paperwork that will have to be managed under EPCRA. EPA believes that the number of public requests to SERCs and LEPCs nationwide for MSDS and inventory information (estimated to be over 17,000 per year) will not change as a result of this rule. The reporting thresholds should have no effect on a member of the public's interest in having information on retail gas stations.

The Agency recognizes that some SERCs, LEPCs or fire departments may consult other sources of information beyond routine EPCRA reporting (such as state UST programs or requests for inventory information) in developing their emergency plans and responding to public inquiries. It is more efficient overall if only those SERCs, LEPCs or fire departments that want or need the information obtain it, rather than requiring reporting nationwide.

For those state or local governments that choose to enact state or local laws to continue to receive hazardous chemical inventory reports from gas stations, there will be effort involved in enacting such laws, although this will be a one-time effort. The flexibility provided by this rule allows those governments to decide where to allocate their resources.

#### *K. Thresholds for Other Facilities/ Chemicals*

In the proposal, EPA suggested that gasoline and diesel fuel stored at retail gas stations under the criteria discussed in the rule present a special situation for which separate reporting thresholds under EPCRA sections 311 and 312 are warranted. In developing the proposal, EPA considered whether any other chemicals or facilities should also be relieved of routine EPCRA reporting, such as propane at propane retailers; or gasoline or diesel fuel at motor pools, van and bus lines, rental car facilities and other vehicle fleets, or marinas. EPA did not propose to raise the reporting thresholds for any of these other chemicals or facilities, but asked for public comment on whether they should also be relieved from routine EPCRA reporting.

Many commenters stated that it would be inappropriate to raise the EPCRA sections 311 and 312 reporting thresholds for facilities other than retail gas stations. Others, however, requested that EPA expand the applicability of the

increased reporting thresholds beyond retail gas stations to cover other facilities. Types of facilities addressed in the proposal and mentioned by the commenters include fueling stations for marinas, rental car facilities, bus lines, motor pools, and other vehicle fleets.

Some commenters suggested raising the thresholds for other types of facilities that were not mentioned in the proposal, including automobile and truck dealerships, aircraft service facilities, electric utility operation centers, manufacturing and other non-retail facilities, municipal and state fleet facilities (for example, school bus and public works garages), Federal facilities, residential and commercial buildings, and trucking terminals. Some commenters wrote that promulgation of higher gasoline and diesel fuel thresholds for retail gas stations will cause other industries to request similar burden relief, which, if approved, would increase the emergency planning burden on local agencies.

The Agency notes that this final rule only addresses and promulgates higher reporting thresholds for gasoline and diesel fuel when stored in tanks entirely underground at retail gas stations that are in compliance with UST requirements. At this time EPA has not reached a final decision on whether to expand the applicability of the higher thresholds to other facilities. The standard 10,000-pound reporting threshold continues to apply for gasoline, diesel fuel, and other non-EHS hazardous chemicals stored at these other facilities. (See below for a discussion of the definition of "retail gas station" for the purposes of this rule.)

Several commenters addressed propane retailers and propane, suggesting that propane should not be eligible for a higher reporting threshold. A few commenters suggested that raising the thresholds for gasoline and diesel fuel may cause industry to request that thresholds for other substances, such as propane, also be raised. Some commenters requested that the higher threshold apply to kerosene. Most of these commenters stated that kerosene is very similar to diesel fuel and, thus, should be subject to the same 100,000-gallon proposed reporting threshold. Commenters also mentioned other petroleum products, including heating fuels (for example, #2 fuel oil), aviation fuel, and other alternative fuels (for example, methanol- and ethanol-related mixtures M85, E85, and E95).

This final rule only addresses and promulgates higher reporting thresholds for gasoline and diesel fuel when stored in tanks entirely underground at retail

gas stations that are in compliance with UST requirements. At this time the Agency has not reached a final decision on whether to expand the applicability of the higher thresholds to substances other than gasoline and diesel fuel. For the purposes of this rule, however, EPA does not consider the substances listed by the commenters to be included in the higher thresholds established for gasoline and diesel fuel. (See below for a discussion of the meaning of the terms "gasoline" and "diesel fuel" for the purposes of this rule.) The standard 10,000-pound reporting threshold continues to apply to all non-EHS hazardous chemicals, except gasoline and diesel fuel stored at retail gas stations under the criteria set forth in this rule.

#### *L. Gasoline and Diesel Fuel Thresholds in Gallons Rather Than Pounds*

A number of commenters addressed the Agency's decision to set the proposed higher thresholds for gasoline and diesel fuel in gallons instead of pounds. Many of these supported the change to gallons. Others suggested that EPA change thresholds for all liquids to gallons and that reporting should be in gallons as well.

This rulemaking addresses only new thresholds for gasoline and diesel fuel held entirely underground at retail gas stations. The Agency chose to express the thresholds in gallons instead of pounds to make it easier for retail gas stations to make their compliance determination, since their gasoline and/or diesel inventory is typically expressed in gallons. EPA's proposal did not address other issues that commenters have raised, including changing thresholds for other liquids from pounds to gallons or reporting in gallons instead of or in addition to pounds. These other changes are outside the scope of this rulemaking.

EPA believes that very few retail gas stations will have inventories over the new gasoline and diesel fuel thresholds and will therefore need to report. For those who must report, consistent with past practices and the reporting requirements of EPCRA, reporting as required in Federal regulations is in pounds. States may (as some do already) allow reporting in gallons, in pounds, or in both, consistent with their statutes, past practices, and any reporting structures or software they may have developed.

One commenter requested that the Agency eliminate all range codes used to report inventory information, and require written inventory amounts with all liquids in gallons and all dry chemicals in pounds. EPA's proposed

rule did not address elimination of or changes to the codes; such a change is outside the scope of this rulemaking.

#### *M. Defining Gasoline and Diesel Fuel*

A number of commenters discussed whether "gasoline" and "diesel fuel" should be defined for purposes of this rule. Some argued for definitions; others agreed with the Agency that such definitions are not needed. Among those supporting definitions, some stated that kerosene should be included in the definition of diesel fuel as should heating fuel and aviation fuel. One commenter asserted that lack of a definition could lead to the application of the new thresholds to alternative fuel mixtures that contain large concentrations of methanol or ethanol.

The concepts of "gasoline" and "diesel fuel," used as fuel in motor vehicles (or motor vehicle type engines), are generally understood by the regulated community and the public. Therefore, EPA does not believe that formal definitions are needed for the purposes of this rule. Definitions for "gasoline" and "diesel fuel" might be too broad or too narrow for their use in this rule and would require revisions for new gasoline or diesel fuel formulations. Codifying formal definitions of "gasoline" and "diesel fuel" would add unnecessary complexity to this rule since these terms are popularly understood.

Alternative fuels containing different proportions of ethanol, alternative fuels containing methanol, other alternative fuels, aviation fuel, heating fuel, and kerosene are not generally described as or called "gasoline" or "diesel fuel" and are not commonly understood to be present at retail gas stations. One exception—EPA includes gasohol within the term "gasoline" for purposes of this rule. Gasohol, which is composed of at least 90 percent gasoline and up to 10 percent ethanol, is commonly understood to be included in the term "gasoline." Therefore, this regulation, which establishes new thresholds for gasoline and diesel fuel at retail gas stations, does not apply to any alternative fuels (except for gasohol), aviation fuel, heating fuel or kerosene. The standard hazardous chemical threshold of 10,000 pounds (or lower thresholds for EHSs) continues to apply to these other fuels.

A few commenters suggested the need for clarification of the Chemical Abstracts Service Registry Number (CASRN) for gasoline and diesel fuel. EPA believes that listing CAS numbers for gasoline and diesel fuel is unnecessary and could cause confusion for both gas station operators and the

general public who may not be familiar with CAS numbers. As noted above, the general public is familiar with the terms "gasoline" and "diesel fuel"; specifying CAS numbers, which are unfamiliar to many and subject to change, may cause confusion and will not add clarity. EPA recognizes that there are various formulations of gasoline throughout the year as well as differences in formulations throughout the country, adding to possible confusion should EPA begin to specify subsets of "gasoline."

#### N. "Retail Gas Station" Definition

Several comment letters discussed the definition proposed for "retail gas station" for this rule. One commenter stated that the phrase "retail gas station" need not be defined because it is commonly understood. Others objected to the inclusion of the phrase "convenience store" and argued for the inclusion of truck stops. For the purposes of this rule, EPA defines "retail gas station" as "a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land." EPA asserts that this definition is sufficient for the purposes of this rule because the Agency's intended meaning is clearly understood by the general public. The Agency believes that a definition of "retail gas station" is necessary for the purposes of this rule to limit use of the new gasoline and diesel fuel thresholds to those facilities that meet the specific criteria set forth in the rule.

EPA has added the phrase "for motor vehicle use on land" to the definition of "retail gas station" as it was published in the proposed rule. The Agency added this phrase to clarify that gas stations in marinas and airports that sell fuel for boats or airplanes are not intended to be included in the definition of "retail gas station" for the purposes of this rule at this time. EPA received some comments suggesting that the new gasoline and diesel fuel thresholds be applied to facilities other than "retail gas stations." The Agency has not reached a decision on whether to apply the new thresholds at other facilities. The new thresholds apply only at "retail gas stations" as defined in this rule.

A commenter suggested that "truck stops" be explicitly included in the definition of "retail gas station." EPA intends that any truck stop that is a retail facility engaged in selling gasoline and/or diesel fuel principally to the public is included in the definition of "retail gas station" for the purposes of this rule. Such a truck stop is covered by EPA's definition of "retail gas station"; therefore, truck stops need not

be explicitly included. Convenience stores that retail gasoline to the public are also covered by EPA's definition of "retail gas station," and need not be explicitly included. EPA has chosen to promulgate a broad definition of "retail gas station," rather than listing specific facilities such as truck stops or convenience stores that retail gasoline, to avoid excluding other facilities by implication.

One commenter suggested that EPA not include convenience stores under the proposed rule because not all convenience stores sell gasoline. EPA notes that convenience stores that sell gasoline and diesel fuel satisfy the same criteria described in the proposal that apply to other retail gas stations; namely, the public and local emergency officials are generally familiar with the location of these facilities and the hazards associated with the gasoline and diesel fuel dispensed there, convenience stores typically store gasoline and diesel fuel in tanks that are entirely underground, and these tanks are regulated under RCRA's UST program. Convenience stores that are also retail gas stations have recognizable pumps, which the public can readily see. As with other retail gas stations, convenience stores that retail gasoline and diesel fuel to the public advertise the presence of these fuels at their facilities, invite the public to come on site, and generally allow the public to dispense the fuels themselves.

A number of organizations submitted comments on the issue of specific SIC/NAICS codes for retail gas stations covered by the proposal. Some commenters supported the listing of specific SIC or NAICS codes, while others did not think such codes were necessary or useful. EPA has determined that SIC/NAICS codes are too restrictive and should not be used to determine applicability of the new gasoline and diesel fuel thresholds. SIC codes (to be replaced eventually with NAICS codes) can change with shifts in the economy and, if specified, could possibly include facilities not meeting the criteria for the new thresholds. The use of multiple overlapping codes would only add confusion.

#### V. Regulatory Analysis

##### A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735, October 4, 1993], the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant

regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this rule is a "significant regulatory action" because it raises novel policy issues. Nevertheless, after reviewing information regarding this action, OMB has waived review of this action.

##### B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

##### C. Executive Order 12898

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as

appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. EPA has determined that the regulatory changes in this rule will not have a disproportionate impact on minorities and low-income populations. This rule does not address health or environmental risks or standards. Furthermore, this rule will affect regulated entities (retail gas stations) that are located throughout all communities, not only in low income or minority communities.

#### D. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks": (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. In addition, the rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

#### E. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives

of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule raises existing reporting thresholds for gasoline and diesel fuel at retail gas stations nationwide. In cases where the Indian tribal governments are themselves subject to the reporting requirements, this rule reduces their reporting burden. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has examined this rule's effect on small entities as required by the Regulatory Flexibility Act and has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule would reduce regulatory burdens for small entities. The overall economic effect of this regulation has been determined to equate to 587,389 hours of burden reduction at a total cost saving of approximately \$16 million per year to all regulated entities. Therefore, this regulation will result in a cost savings. Accordingly, the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### G. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information

collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0072.

EPA currently has an approved ICR (ICR No. 1352.06) of \$66,435,442 for the existing EPCRA sections 311 and 312 reporting requirements (40 CFR part 370). This burden estimate is based on the estimates of 803,682 annual responses from 679,051 respondents. The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 12.8 hours for new and newly regulated facilities and approximately 2 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to perform Tier I or Tier II inventory reporting under 40 CFR 370.25 is estimated to be approximately 3.2 hours per facility, including the time to develop and submit the information. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312. The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.25 hours per request.

As part of the President's program for reinventing government and reforming regulatory policy, EPA is reducing the reporting burden imposed by the EPCRA regulations at 40 CFR Part 370. EPA anticipates that today's final rule will reduce the burden on facilities for part 370 from 2,960,215 hours to 2,372,826 hours, for a reduction of 587,389 hours under ICR number 1352.06. EPA estimates the overall cost savings (including burden hour costs) from this rule to be more than \$16 million. This figure includes estimated cost savings for facilities of approximately \$16 million nationwide; and estimated cost savings for SERCs, LEPCs and fire departments of approximately \$45,000 nationwide. The savings for SERCs, LEPCs and fire departments result from a reduction in the capitol costs needed to archive and maintain information.

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 use 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.

In the ICR associated with this regulation (ICR number 1352.06), the agency has decided to adjust the time necessary for SERCs and LEPCs to respond to public inquiries from .17 hours to .25 hours. This adjustment is not due to today's action, but rather the Agency is taking this opportunity to make this adjustment because the Agency believes that the average time of .25 hours per request more adequately reflects the time necessary to respond to public inquiries.

EPA is also taking this opportunity to amend the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's changes amend the table to list those information requirements promulgated under the Hazardous Chemical Reporting: Community Right-to-Know which appeared in the **Federal Register** on October 15, 1987 (52 FR 38333). The affected regulations are codified at 40 Code of Federal Regulations (CFR) part 370. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedures Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

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.

#### H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local and tribal governments or the private sector. This rule does not impose an enforceable duty on any state, local or tribal governments or the private sector. For this same reason, 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. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The intent of this rule is to provide burden relief to regulated entities, including small governments.

#### I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

#### J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 11, 1999.

#### List of Subjects in 40 CFR parts 9 and 370

Environmental protection, Chemicals, Community right-to-know, Disaster assistance, Hazardous Substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund.

Dated: February 4, 1999.

**Carol M. Browner,**  
Administrator.

For the reasons set out in the preamble, 40 CFR parts 9 and 370 are amended as follows:

**PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new heading with entries in numerical order to the table to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

\* \* \* \* \*

40 CFR citation	OMB control No.
* * * * *	
<b>Hazardous Chemical Reporting: Community Right-to-Know</b>	
370.21 .....	2050–0072
370.25 .....	2050–0072
370.30 .....	2050–0072
* * * * *	

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

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

**Authority:** Secs. 311, 312, 324, 325, 328, 329 of Pub. L. 99–499, 100 Stat. 1613, 42 U.S.C. 11011, 11012, 11024, 11025, 11028, 11029.

2. Section 370.20 is revised to read as follows:

**§ 370.20 Applicability.**

(a) *General.* The requirements of this subpart apply to any facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(b) *Minimum threshold levels.* Except as provided in paragraph (b)(5) of this section, the minimum threshold level for reporting under this subpart shall be as specified in paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) of this section:

(1) The minimum threshold for reporting for extremely hazardous substances is 500 pounds (or 227 kgs—approximately 55 gallons) or the TPQ, whichever is lower.

(2) The minimum threshold for reporting for gasoline (all grades combined) that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements (40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281), is 75,000 gallons (or approximately 283,900 liters). For purposes of this part, retail gas station means a retail facility engaged in selling gasoline and/or diesel fuel principally

to the public, for motor vehicle use on land.

(3) The minimum threshold for reporting for diesel fuel (all grades combined) that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calendar year with all applicable UST requirements (40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281), is 100,000 gallons (or approximately 378,500 liters).

(4) The minimum threshold for reporting for all other hazardous chemicals is 10,000 pounds (or 4,540 kgs.)

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

(c) *MSDS reporting.* The owner or operator of a facility subject to this subpart shall submit an MSDS on or before October 17, 1990 (or within three months after the facility first becomes subject to this subpart), for all hazardous chemicals present at the facility at any one time in amounts equal to or greater than their thresholds.

(d) *Inventory reporting.* The owner or operator of a facility subject to this subpart shall submit the Tier I form (or Tier II form) on or before March 1, 1991 (or March 1 of the first year after the facility first becomes subject to this subpart), and annually thereafter, covering all hazardous chemicals present at a facility at any one time during the preceding calendar year in amounts equal to or greater than their thresholds.

[FR Doc. 99–3255 Filed 2–10–99; 8:45 am]

BILLING CODE 6560–50–U