United States
Environmental Protection
Agency

Office of Pollution
Prevention and Toxics
Washington, DC 20460

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EXECUTIVE ORDER 12856:

Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements.

QUESTIONS AND ANSWERS

On August 3, 1993, President Clinton signed an Executive Order pledging the Federal government to protect the environment by preventing pollution at the source. Executive Order 12856 commits the Federal government to publicly report toxic releases and transfers, and to reduce toxic releases by at least fifty percent by 1999. Executive Order 12856 is effective for 1994 and beyond.

This document is provided to assist Federal facilities in compliance with Executive Order 12856. This information has been compiled by EPA from questions received from Federal facilities. This document is intended for the exclusive use of Federal facilities in complying with sections 302, 303, 304, 311, 312, and 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and the Pollution Prevention Act of 1990, as directed by the Executive Order.

TABLE OF CONTENTS

Page #

INTRODUCTION

QUESTIONS AND ANSWERS

TABLE OF CONTENTS
(continued)

PURPOSE OF DOCUMENT

This document is intended for the exclusive use of Federal facilities in complying with Sections 302, 303, 304, 311, 312, and 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 as directed by Executive Order (EO) #12856, titled "Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements." The guidance, information, and examples contained in this document are designed to assist Federal agencies in meeting the mandate under EO 12856 to comply with EPCRA and the Pollution Prevention Act. The interpretive guidance is not intended for private sector facilities.

This document was issued specifically so that each Federal facility could determine its EPCRA reporting requirements. The intent is to aid Federal agencies in determining which of their facilities meet threshold requirements and reporting obligations as set forth in sections 302, 303, 304, 311, 312, and 313 of EPCRA. It will be necessary to address certain situations on a case by case basis.

The appendices provide additional reference materials including where you can obtain further guidance and clarifications. The EPCRA Hotline (800-535-0202) is available from 8:30 am to 7:30 pm EST to provide technical assistance in understanding regulatory issues and for obtaining EPCRA- and EO-related documents.

EPCRA BACKGROUND

EPCRA consists of five major provisions. The first, emergency planning, established an infrastructure at the state and local levels for developing a comprehensive planning process to address potential chemical hazards. Under EPCRA section 302, facilities are required to participate in this planning process by notifying the local emergency planning committees (LEPCs) and state emergency response commissions (SERCs) if the facility has present at any one time a quantity of an extremely hazardous substance (EHS) at or above a specific threshold planning quantity (TPQ). Facilities must also designate a coordinator who will participate with the LEPC in the emergency planning process. Under EPCRA section 303(d)(3), facilities may be required to provide planning information upon the request of the LEPC. This information could include facility contingency plans, standard operating procedures, Material Safety Data Sheets, hazard assessments, and site plans.

EPCRA section 304 mandates that notice of releases of CERCLA hazardous substances and EHSs be given immediately to SERCs and LEPCs for the areas likely to be affected by the release. After the initial notification, a written follow-up notice is required. There are various notification issues under this requirement that have confused many facilities, including exemptions for Federally permitted releases, reduced reporting for continuous releases, and the difference between EPCRA section 304 reporting and release reporting under CERCLA section 103.

Under EPCRA sections 311 and 312, information on hazardous chemicals is provided to emergency planners and the public on the hazards those chemicals pose and the site-specific details on how they are handled by facilities. To fulfill these reporting requirements, chemical inventory information is essential to identifying chemicals covered and for completing the section 312 Tier II reports.

Under EPCRA section 313, facilities must report to EPA and the appropriate state agency their releases and off-site transfers of over 350 chemicals and chemical categories for reporting year 1994 and over 600 listed chemicals in 1995 if the facility exceeds specified thresholds for "manufacturing, processing or otherwise use" of the chemical. (In this document, a "listed chemical," "toxic chemical," or "reportable chemical" all mean a chemical on the 313 list.) Under the Pollution Prevention Act (PPA), facilities reporting under EPCRA section 313 must also provide information on the waste management practices and on source reduction activities involving reportable listed chemicals. The data under EPCRA section 313 are made available to the public via an on-line database.

EXECUTIVE ORDER 12856 BACKGROUND

Executive Order (EO) 12856 requires Federal agencies to comply with the provisions of the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA) of 1990. EO 12856 requires:

- Compliance with emergency planning and community right-to-know provisions under sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities in light of any applicable guidance provided by EPA;

- Compliance with Toxic Release Inventory (TRI) reporting provisions under section 313 of EPCRA, Section 6607 of the PPA, all implementing regulations, and future amendments to these authorities in light of applicable guidance provided by EPA without regard to SIC code limitations;

- Development of an agency pollution prevention strategy, including a pollution prevention policy statement outlining the agency's commitment to incorporate pollution prevention through source reduction in facility management and acquisition; and a commitment to utilize source reduction as the primary means of achieving and maintaining compliance with all applicable Federal, State, and local environmental requirements;

- Development of voluntary goals to reduce total releases of toxic chemicals or toxic pollutants and off-site transfers of these chemicals or pollutants for treatment and disposal by 50 percent of the baseline quality in the first year of reporting for that chemical by December 31, 1999;

- Establishment of a plan and goals for eliminating or reducing unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals, and for reducing the facility's "manufacturing, processing, and otherwise use" of extremely hazardous substances and toxic chemicals; and

- Accessibility of strategies, plans, and reports to the public.

EO 12856 requires Federal agencies to comply with EPCRA. EO 12856 does not alter or remove any existing legal obligation of the private contractor of a government owned, contractor-operated (GOCO) Federal facility to report. EPCRA requires reporting by the owner or operator of a facility. This means that although the Federal agency with control of a covered GOCO facility will report under EPCRA, as required under EO 12856; a contractor operating the facility who is already subject to EPCRA still is legally responsible for submission of signed and certified EPCRA reports in a comprehensive and timely manner.

EO 12856 also requires pollution prevention activities at the Agency or Department and facility level. However, this Question and Answer document does not address pollution prevention issues. For more information about the EO and pollution prevention for Federal facilities, see Pollution Prevention in the Federal Government: Guide for Developing Pollution Prevention

Strategies for EO 12856 and Beyond (EPA publication #300-B-94-007, April 1994) and Federal Facility Pollution Prevention Planning Guide (EPA publication #300-B-94-013, December 1994).

I. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT: GENERAL

A. Implementation of Executive Order 12856

1. When was Executive Order 12856 signed, and when was it published in the Federal Register?

Executive Order 12856, "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements," was signed by President Clinton on August 3, 1993. The Order was published in the Federal Register on August 6, 1993 (58 FR 41981).

2. What phone number can people call to receive information on EO 12856?

To receive information on EO 12856, Federal facilities can call the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202.

3. If state right-to-know laws are more stringent than EPCRA, must Federal facilities comply with the state right-to-know requirements and EPCRA requirements as well?

No. EO 12856 does not require Federal facilities to comply with state and local right-to-know requirements that are more stringent than EPCRA requirements. However, section 5-505 of the Executive Order does encourage such compliance.

4. Can EPA fine a Federal facility if the facility does not comply with EO 12856?

No. EO 12856 does not give EPA the authority to fine Federal facilities. However, section 5-504 authorizes EPA to conduct reviews and inspections of Federal facilities as necessary to monitor compliance with toxic release inventory, pollution prevention, and community right-to-know reporting requirements as set out in sections 3-304 and 3-305. Section 5-507 requires EPA to report annually to the President on Federal agency compliance with section 3-304 of the Executive Order.

5. A Federal facility, which had voluntarily complied with EPCRA before President Clinton signed EO 12856, was designated as an LEPC by the Oklahoma SERC. At the facility, each building submits EPCRA sections 302 and 303 planning information to the facility LEPC. Does EO 12856 change any of the facility's reporting mechanisms?

No. A Federal facility that voluntarily complied with EPCRA before EO 12856 was signed and that has been designated as an LEPC, does not have to change its reporting mechanisms as long as those reporting mechanisms meet EO 12856 requirements. In this example, each building submits an EPCRA report to the facility LEPC, which has established procedures to share emergency planning information with neighboring LEPCs and the Oklahoma SERC.

6. When will EPCRA reporting begin for Federal facilities subject to Executive Order 12856?

The different sections of EO 12856 require various reports by Federal agencies and facilities at different times. See the time-line (Appendix B of this document) for all the reporting dates.

7. What are the minimum criteria for a facility to meet that could result in the agency's having to comply with EO 12856 for that facility?

Each Federal agency will need to examine activities at its various facilities and determine which facilities meet threshold conditions of EPCRA sections 302, 304, 311, 312, or 313. Facilities include government-owned contractor-operated (GOCO) facilities. Each Federal agency that either owns or operates a "facility" could potentially be required to comply with this Executive Order for any agency facility that meets certain criteria. For EPCRA section 313, the facility must have 10 or more full-time employees (i.e., 20,000 hours), and must meet or exceed "manufacture" **or** "process" **or** "otherwise use" thresholds for a toxic chemical.

B. Definition of Federal Agency

8. What is a "Federal agency" under section 2-202 of EO 12856 that is subject to the requirements of the Executive Order?

Under EO 12856 section 2-202, a "Federal agency" is equivalent to an "Executive agency" as defined in 5 USC 105. Title 5 USC 105 defines an "Executive agency" as "an Executive department (including military departments under the auspices of the Department of Defense), a Government corporation, or an independent establishment." (See Appendix A for the definitions of "Independent establishment" and "Executive agency" applicable to this Executive Order.)

9. How should a Federal facility determine if it is a "Federal agency," and, therefore, subject to comply with EO 12856?

It is the responsibility of each Federal agency to make sure that its facilities have fulfilled their obligation to comply with the EO. If a Federal facility is unsure whether its Agency meets the criteria for a "Federal agency" as defined in EO 12856 and Title 5 U.S.C., then the facility should consult its general counsel.

10. Is an Indian tribe required to report under EPCRA and PPA as a result of Executive Order 12856?

No. Facilities owned or operated by an Indian tribe are not Federal facilities, because a tribal government is not a Federal agency under section 2-202 of EO 12856. Therefore, the EPCRA and PPA reporting requirements of EO 12856 do not apply to Indian tribes.

C. Definition of Federal Facility

11. What is a Federal "facility" for EPCRA purposes?

Section 2-201 of EO 12856 incorporates-by-reference definitions found in EPCRA, PPA, and implementing regulations. According to EPCRA section 329(4), a "facility" is defined as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person)." Under sections 2-201 and 2-202 of EO 12856, the definition of "person" in EPCRA 329(7) is expanded to include Federal agencies, as defined in 5 USC 102 and 105.

12. If the Bureau of Indian Affairs operates a facility on a reservation, is the Bureau subject to EPCRA requirements as a result of EO 12856?

Yes. The Bureau of Indian Affairs is part of the Department of Interior (DOI), which is a Federal agency. According to section 1-101 of EO 12856, the responsibility for complying with this Executive Order rests with the head of each Federal agency. Although an agency may require each of its entities to submit separate reports under EPCRA, it is the Federal agency that ultimately is responsible for ensuring the agency's compliance with pollution prevention and emergency planning and community right-to-know provisions appropriate for facilities (e.g., buildings and equipment) that the Agency owns and/or operates, even if the facilities are on Tribal lands. In this example, DOI ultimately is responsible for complying with the requirements, although DOI may require the Bureau of Indian Affairs and other entities to submit separate reports.

13. Are Federal facilities on Guam in the "customs territory of the U.S.?"

No. EO 12856 incorporates by reference the definition of "customs territory of the United States" under EPCRA implementing regulations (40 CFR 372.3). According to these regulations, Guam is not in the "customs territory of the U.S." The "customs territory" includes the 50 states, the District of Columbia, and Puerto Rico. Section 1-102 provides that the Executive Order does not apply to Federal agency facilities outside the customs territory of the United States. Because the definition of "state" under EPCRA section 329 includes certain territories and possessions outside the customs territory of the U.S. (including Guam, American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands), Federal facilities located in these U.S. territories and possessions are encouraged to abide by the spirit of EPCRA. Abiding by the spirit of EPCRA means planning for and preventing potential harm to the public through chemical releases, and observing the environmental protection hierarchy in the Pollution Prevention Act (i.e., source reduction, recycling, treatment, and disposal).

14. Should a facility's contracted and/or subcontracted work off-site at a non-Federally owned facility be included in Federal EPCRA reporting?

No. Work conducted for a Federal agency at a non-Federally owned facility is not subject to Federal EPCRA activity thresholds. Federal agencies are only responsible for reporting on activities conducted by or for the Federal agency at Federally owned or operated sites.

15. Are office buildings owned by the General Services Administration (GSA) or any other Federal agency considered "facilities" under Executive Order 12856?

Yes. The General Services Administration is a Federal agency as defined in EO 12856. Because any building would be considered a "facility" under EPCRA section 329(4), any office building that GSA (or any other agency) owns or operates could be subject to the requirements of the Executive Order if an EPCRA activity or reporting threshold for a toxic chemical has been met.

16. An agency is operating out of a building that is maintained, leased, or owned by the General Services Administration. Who is responsible for reporting under EPCRA section 313?

Under EPCRA section 313, the owner **or** operator of a facility is responsible for reporting. If the owner of the facility has a "landlord or real estate interest only" in the operations conducted at the facility, then the obligation for reporting falls to the operator — who typically has the most knowledge of any toxic chemicals used at the facility. In this example, the agency is the operator and responsible for threshold determinations and release calculation — assuming that GSA had a "landlord or real estate interest only" in the facility. (Refer to Q&A #22 for a more detailed explanation of the term "landlord or real estate interest only.")

17. Under Executive Order 12856, who is responsible for complying with EPCRA section 313 when a Federal agency leases property to a private sector firm? For example, assume the Bureau of Land Management (BLM), DOI, has a 5,000-acre piece of land (broken only by public rights-of-way). BLM leases 1,000 acres to a gas exploration corporation and 1,000 acres to a local farmer for grazing. Who should perform threshold determinations and release calculations?

Under section 313, the owner or operator of a facility is responsible for reporting. According to 40 CFR 372.38(e), if any owner has a "landlord or real-estate interest only" in the property, then the reporting burden falls to the operator, who typically has the knowledge of the listed toxic chemicals used at the facility. The landlord/tenant relationship between the owner and operator must be determined by each federal facility. (Refer to Q&A #22 for a more detailed explanation of the term "landlord or real-estate interest only.")

In the example above, if BLM has more than a landlord interest in the lands it leases to a private sector firm(s), then BLM would consider the use of listed toxic chemicals by its tenant(s) in its threshold calculations. If thresholds are exceeded, BLM may choose to file Form R reports separately or jointly with its tenant(s), if the tenant(s) is subject to section 313

reporting. If BLM has only a landlord interest in the leased lands, then only tenants whose operations are classified in SIC codes 20 through 39 and have 10 or more full-time employees will need to perform threshold determinations separately for EPCRA section 313 and be responsible for submitting a Form R for each listed toxic chemical used in excess of a reporting threshold. BLM is still responsible for reporting on any activities involving listed toxic chemicals above threshold amounts that take place at the remaining property that is not leased.

18. A Federal agency owns property -- either land or a building -- and leases that property to another entity. If the agency has no involvement in the operations other than as the lessor, is the agency required to comply with EPCRA section 313 requirements for that covered facility under EO 12856?

No. According to 40 CFR 372.38(e), the owner of a covered facility is not required to comply with EPCRA section 313 requirements if that owner's interest in the facility is limited to ownership of the real estate upon which the facility is operated. This interest is often referred to as a "landlord or real-estate interest only." In general, if a Federal agency is in a simple landlord role and receives no service or benefit from a lessee (other than rent or a fee) and is not involved directly in the oversight or operation of the property, then the agency is not required to account for the lessee's activities at that facility under EPCRA section 313. The operator of the covered facility, however, may be subject to the reporting requirements.

An example of an agency's having a "landlord or real estate interest only" is when an agency owns an air field, but is responsible only for supplying the heating and cooling to the buildings at the site. Because the agency does not directly support or provide oversight for the activity at the air field, the agency is considered to have a "landlord or real estate interest only" with respect to the facility. A second example is where a Federal agency leases a building to a manufacturing operation, but is responsible only for building upkeep and repair. Because the agency is in no way involved with the operation or oversight of the facility, it would not be required to report on the activities of that facility as a result of EO 12856.

19. The Resolution Trust Corporation (RTC) takes possession of a manufacturing facility that defaults on a loan. Is RTC responsible for complying with EO 12856?

No. If RTC has only a "landlord or real-estate interest" in the manufacturer's operation, RTC is not responsible for threshold or release calculations, or for off-site transfers of toxic chemicals under EPCRA section 313 (40 CFR 372.38(e)). If, however, a federal agency takes over the manufacturing operation, then that federal agency must report releases and transfers of listed toxic chemicals under section 313 if reporting thresholds are exceeded.

20. To what governmental entities should Federal facilities with operations that straddle state or local jurisdictional lines report under EPCRA?

The facility should report to all appropriate states or local jurisdictions in which the Federal facility is fully or partially located.

21. When is a vessel part of a Federal facility under EO 12856?

A vessel is part of a Federal facility when it is located within the boundaries of that facility including any harbor space that is under the facility's control. This would include vessels in dry dock at a Federal facility.

A Federal facility is **not** responsible for including toxic chemicals associated with a vessel in threshold determinations and release reporting if the vessel is located in a public waterway, unless the waterway is under the facility's control.

22. A Federal facility is composed of two separate establishments and is filing two separate Form Rs for section 313 reporting. For Part I, section 4.5, what SIC codes should the facility list?

For a Federal facility that has multiple establishments ("distinct and separate economic activities [that] are performed at a single location"), managers of individual properties have the option of reporting releases as separate establishments as long as the entire facility accounts for all of the releases of toxic chemicals. If a facility is filing separate release reports for each establishment, enter in Facility Identification, Part I, section 4.5 of the Form R report, only the SIC code of the establishment for which data is included in the report. The SIC code for the other establishments at the Federal facility would be included in the Form R reports for those establishments. Also, managers should check that the establishment is "Part of a facility" in Facility Identification, Part I, section 4.2 of the Form R report. Facility owners or operators should be aware that their establishments may be considered separate facilities and may receive separate TRI facility identification numbers.

23. An agency has buildings and other stationary structures located on multiple properties. All of the properties are contiguous and adjacent to each other. These contiguous and adjacent properties comprise vast tracts of land (e.g., most of Western Colorado). Are these buildings and other stationary structures – which are owned or operated by one agency but managed by several district offices and located on contiguous or adjacent properties – one agency facility for EPCRA section 313 reporting purposes?

Yes. All of the buildings and other stationary items located on multiple contiguous or adjacent properties are part of one facility for EPCRA reporting. Therefore, the amount of each toxic chemical manufactured, processed, or otherwise used and the number of employees must be aggregated for all of these contiguous or adjacent properties to determine whether the entire facility meets reporting thresholds.

A manager of an individual establishment, however, does have the option of filing as a separate establishment within a multi-establishment facility by submitting a separate Form R for releases and off-site transfers of toxic chemicals, if the aggregate activity and the full-time employee thresholds are met. If a manager chooses to file a Form R report for an establishment, he or she must check that the establishment is "Part of a facility" in Facility Identification, Part I, section 4.2 of the Form R report.

24. Federally-owned military bases may be occupied by multiple Department of Defense organizations. For example, operations may be simultaneously conducted by the U.S. Marine Corps, the U.S. Army, and the U.S. Navy at a military base. For EPCRA reporting purposes, would this base be considered one facility or three separate facilities?

For purposes of EO 12856, military departments are covered under the auspices of the Department of Defense, a Federal agency. This means that the entire base, regardless of whether multiple DOD organizations conduct operations on the property, is one facility for the purposes of EPCRA reporting, and quantities of toxic chemicals would be aggregated across the facility to determine activity thresholds. DOD is ultimately responsible for ensuring that all non-exempt releases and off-site transfers of the reportable toxic chemical are accounted for in the individual Form R reports.

D. Multi-Agency Federal Facilities

25. Who is responsible for EPCRA section 313 reporting when multiple Federal agencies conduct reportable activities (manufacture, process, or otherwise use toxic chemicals in excess of the activity thresholds) at buildings located on one site? For example, the State of Washington owns land and leases buildings to NASA and DOE. DOE is the lessee and sole operator of Building A. NASA is the lessee of Building B; however, DOD and DOT also conduct reportable activities in Building B. DOD's and DOT's operations are not in support of NASA. Are NASA, DOE, DOD, and DOT considered separate facilities?

Yes. When multiple Federal agencies manufacture, process or otherwise use toxic chemicals in excess of threshold amounts at buildings located on one site, each Federal agency is responsible for activities conducted by, or solely for, that Federal agency. In the above example, NASA, DOE, DOD, and DOT are all engaged in separate activities at one site. Each of these agencies would be considered an operator of a separate facility, and would separately determine chemical activity thresholds and report releases if appropriate.

26. Who is responsible for reporting under section 313 when a Federal agency leases property to one or more other Federal agencies? For example, the General Services Administration (GSA) owns an office park where five different Federal agencies (e.g., USDA, HHS, DOJ, HUD, EPA) lease five separate buildings.

Under section 313, the owner **or** operator of a facility is responsible for threshold determinations, release calculations, and appropriate reporting. According to 40 CFR 372.38(e), if any owner has only a real-estate interest in the property, then the reporting burden falls to the operator, who typically has the knowledge of the toxic chemicals used at the facility. In the above example, if GSA (or another Federal agency) leases property to one or more Federal agencies, and GSA has only a lessor relationship with those agencies, each tenant Federal agency would be responsible for performing separate threshold determinations and release calculations under EPCRA section 313. If GSA has more than a landlord interest in the property, then GSA would consider the use of toxic chemicals by its tenants in its

threshold determinations. Once thresholds are exceeded, GSA may choose to file one Form R for the entire facility or the tenants may file separate reports.

27. If one Federal agency is the primary tenant of a site, and it and other Federal agencies conduct operations on that site, how do those agencies meet EPCRA requirements for the site?

The primary tenant of the site is responsible for reporting under EPCRA if the other agencies' activities on that site are in support of that primary tenant. If the activities conducted by the other agencies on that site are independent of, and do not support the primary tenant, then each agency files its own EPCRA reports.

E. Applicability to Government-Owned, Contractor-Operated (GOCO) Facilities

28. Does Executive Order 12856 require non-manufacturing contractors at GOCO facilities to comply with EPCRA section 313 just because Federal facilities must comply without regard to SIC code?

No. EO 12856 does not create new or different legal obligations for private parties to report under EPCRA. However, a GOCO facility is also a Federal facility for the purposes of the Executive Order and may have contractual obligations to provide the Federal agency with the information the agency needs to fulfill reporting obligations under this Executive Order. Ultimately, it is the Federal agency that owns the facility and is responsible for ensuring compliance.

29. What if the contractor at a GOCO facility conducts operations that meet all of the EPCRA section 313 reporting criteria except for the SIC code classification. Does that Federal facility still have to report?

Yes. The Federal facility must report, not the contractor. EO 12856 makes EPCRA section 313 applicable to Federal facilities without regard to SIC code. The Executive Order also requires each Federal agency to include the releases and off-site transfers from GOCO facilities when meeting the Federal agency's reporting responsibilities.

30. A GOCO facility produces electrical components under contract to the U.S. Department of Energy (DOE). The GOCO contractor conducts all of its activities on property owned by the U.S. Department of Defense (DOD). Although the contractor leases DOD property, it provides no goods or services to DOD. Must DOD or DOE include the contractor's uses of toxic chemicals when performing threshold determinations under EPCRA section 313?

The determination of which agency is responsible for meeting section 313 requirements depends on the interest of those agencies involved. According to 40 CFR 372.38(e), the owner of a covered facility (DOD in this example) is not required to comply with EPCRA

section 313 requirements if its interest in the facility is limited to ownership of the real estate upon which the facility is operated.

If the contractor is the lessee as stated in the question, then DOE does not need to evaluate the contractor's activities because the activities are not being performed at a DOE facility. If the contractor's operations are covered within SIC codes 20 through 39, and the contractor has more that 10 full-time employees, the contractor will need to perform threshold determinations and be responsible for submitting a Form R report for each toxic chemical manufactured, processed, or otherwise used in excess of applicable thresholds.

31. If a Federal facility has a laboratory on its grounds, is the Federal facility required to report on the laboratory's operations?

If a toxic chemical is being used in a laboratory for research under the supervision of a technically qualified individual, the quantity of the toxic chemical may be exempt from threshold determinations and release reporting under the "laboratory activities" exemption. However, if the Federal facility determines that a significant quantity of the chemical is being used in an exempt activity, the facility should consider whether taking the exemption is consistent with the spirit of EO 12856.

32. Executive Order 12856 does not alter a GOCO facility's responsibility to report under EPCRA section 313. As a result, EPA may receive two Form R reports that cover the same releases for a toxic chemical – one from the Federal agency and the other from the government contractor operating at that Federal facility. Has EPA developed a method to avoid double-counting these releases when data are entered into the TRI data base?

Yes. EO 12856 does not alter a GOCO contractor's reporting responsibilities under EPCRA. Contractors will still be required to submit Form R reports if SIC code, full-time employee, and chemical threshold criteria are met. EPA will avoid the potential for double-counting caused by GOCO contractors and Federal agencies reporting for the same facility through programming changes to the database and associated search structure, or by entering only the more comprehensive, Federal facility data into the TRIS database. (GOCO contractor data would be maintained for compliance and enforcement purposes.)

To help ensure that Federal reports and corresponding GOCO reports are properly identified, EPA is requesting that the Federal agency and contractor staff follow certain procedures to distinguish the Federal facility's Form R reports from the contractor's Form R reports. In particular, Federal facilities and contractors must complete Part I, section 4.1 of the Form R in a specific fashion. For example, part of a Department of Energy facility in Anytown, North Dakota, is operated by a contractor that has a legal obligation to report under EPCRA section 313. In section 4.1, Facility or Establishment Name, DOE would enter: U.S. DOE Anytown Plant. In filling out a separate Form R, the contractor would enter: U.S. DOE Anytown Plant - contractor name, in section 4.1.

In addition, a Federal facility will be asked to submit copies of the contractor's Form R reports along with the Agency's Form R reports. If a Federal facility is unable to obtain the contractor's Form R reports, the facility must, at a minimum, provide the following information in a cover letter:

- Contractor name;
- Contractor's technical contact; and
- Contractor's TRI facility name and address.

F. National Security Exemption

33. May a Federal agency that is concerned with national security be exempted from complying with EO 12856?

No. A Federal agency may not have all of its facilities exempted from the requirements of EO 12856; only a "specified site or facility" may be exempted. In the interest of national security, the head of a Federal agency may request a site-specific Presidential exemption by following the procedures set forth in section 120(j)(1) of CERCLA. Such exemptions must be renewed for each individual site or facility yearly, and Congress must be notified.

34. How long does a national security exemption last?

A national security exemption may last up to one year.

35. A Federal facility has determined that the identity and storage location of 5 of 12 chemicals on the Tier II report required by EPCRA section 312 would compromise national security pertaining to chemical weapons. Submission of EPCRA section 313 Form R reports, however, will not compromise national security. Should the facility request a national security exemption for all of the EPCRA reporting requirements?

No. The national security exemption provision in section 6-601 of EO 12856 permits the head of a Federal agency to request from the President a facility- or site-specific exemption from any or all requirements of EO 12856 when such an exemption is determined to be in the interest of national security. EO 12856 further states that Federal facilities should comply with the Executive Order to the maximum extent practicable, without compromising national security. For these reasons, the head of the agency (e.g., the Secretary of Defense) may request a Presidential order exempting the installation from EPCRA section 312 reporting requirements pertaining to the five chemicals, but the installation would not have grounds for exemption from the other portions of EPCRA.

36. Some Federal facilities use the Hazardous Materials Information System (HMIS) database of Material Safety Data Sheets (MSDSs). Several MSDSs are marked "For Official Federal Government Use Only," and the information on the MSDS so marked is unavailable to the public. Should a Federal facility using a product for which a supplier has submitted an MSDS with "For Official Government Use Only," mark on the Form R

that the product's composition is a "trade secret" under EPCRA or subject to a national security exemption?

A product containing a listed chemical for which a supplier submits an MSDS marked "For Official Federal Government Use Only" is not necessarily a "trade secret" under EPCRA or subject to a national security exemption. The Federal agency head must assess the facility-specific use of the product and the listed chemical or chemicals in it against the criteria for determining whether these exemptions are applicable.

Under EPCRA, a facility or supplier may claim only the identity of the reportable chemical as a trade secret. If a facility claims – either for itself or its supplier – that a chemical's identity is a trade secret, the facility must submit two versions of the Form R and two versions of the substantiation form prescribed in 40 CFR 350. An "unsanitized" set of forms should give the actual name and concentration of the listed chemical. The "sanitized" version should give only a generic identity of the listed chemical. If EPA finds that the trade secret claim is valid, the Agency will make only the "sanitized" set of forms available to the public.

Under EO section 6-601, the head of a Federal agency may request a yearly national security exemption for a use of a listed chemical at that facility by following the procedures set out in CERCLA section 120(j)(1). This request must be specific to the facility, and may request relief from the obligation to comply with any of the requirements of EO 12856. EO 12856 does not require a Federal facility to submit classified or national security information to EPA, to states, or to tribes; nor should a Federal facility submit that information to those governmental entities.

37. Under the authority of EPCRA section 323, a physician requests the specific chemical composition of a chemical used by a Federal facility. The exact composition of the chemical is considered national security information. Is the Federal facility required to provide the chemical composition to the doctor?

If the chemical composition of a particular chemical is considered national security information, a Federal facility does not have to divulge the information, as long as the information has been exempted under Executive Order 12856, section 6-601. Under this national security exemption, the facility would not have to provide the exact chemical composition to anyone who does not have proper security clearance.

G. Other Issues

38. Will chemicals be added to or subtracted from the EPCRA toxic chemical and extremely hazardous substance lists?

Yes. The EPCRA lists have evolved since the statute was passed in 1986. As more information has become available on the hazards and toxicity of chemicals, EPA has responded by identifying chemicals to be added to or taken off the EPCRA lists; EPA expects

to continue this activity. When chemicals are added to or taken off the EPCRA lists, EPA always publishes a notice in the Federal Register. The trade press also reports changes to the EPCRA lists.

39. How does a Federal facility determine what toxic chemicals it has on-site?

There are many ways a Federal facility can identify the toxic chemicals it has on-site. Here are some: (1) look for Material Safety Data Sheets (MSDS); (2) look at acquisition and procurement records; (3) examine existing environmental permits; (4) review process engineering records; and (5) look at chemical composition sheets provided by suppliers.

40. To what entities does a Federal agency operating a facility on Tribal lands report under EPCRA sections 302-313?

A Federal agency operating a facility on Tribal lands for which the agency must meet EPCRA section 313 requirements should submit its Form R reports to the U.S. EPA and the Chief Executive Officer of the applicable Indian tribe. If the tribe has entered into a cooperative agreement with a State, then the facility must submit the report to the receiving entity designated in the cooperative agreement.

Under EPCRA sections 302-312, a Federal agency should submit its reports to the SERC or TERC (whichever is designated by the Governor, the LEPC (this may be a Tribal entity), and the local fire department.

41. Do Federal facilities have to account for releases of toxic chemicals contained in fuel that is under active shipping papers?

No. Except for the emergency notification requirements of section 304, EPCRA does not apply to the transportation of toxic chemicals. This includes toxic chemicals stored incident to transportation (EPCRA section 327).

42. What is the difference between the terms "toxic chemical" and "toxic pollutants"?

The term "toxic chemical," as used in EO 12856, means any substance listed under section 313(c) of EPCRA. (See 40 CFR 372.65.) "Toxic pollutants," as defined in EO 12856, include toxic chemicals as well as any of the following: "extremely hazardous substances" defined by section 329(3) of EPCRA; hazardous wastes defined under the Resource Conservation and Recovery Act (RCRA); hazardous air pollutants under the Clean Air Act (CAA); or, other chemicals, provided that the Federal agency lists these pollutants in its August 3, 1994 strategy and makes yearly public reports on agency progress in reducing the chemical's use and release. The term "toxic pollutants" **does not** include hazardous waste that resulted from remedial action before the date of this order (section 2-207).

II. EPCRA SECTION 313 AND POLLUTION PREVENTION ACT REPORTING (EO §3-304)

A. Form R Requirements

43. What Federal facilities are subject to EPCRA section 313 reporting under EO 12856?

According to Executive Order 12856, EPCRA section 313 applies to each Federal facility, both government-owned/government-operated and government-owned/contractor-operated, that has 10 or more full-time employees (equivalent of 20,000 hours per year), and meets or exceeds the "manufacture" **or** "process" **or** "otherwise use" thresholds for any toxic chemical.

44. Is a Federal facility meeting the employee hours and "manufacture, process, or otherwise use" thresholds required to report if it had no releases of toxic chemicals during the calendar year?

Yes. The requirements for reporting under section 313 are based only on the number of employees and the quantity of a toxic chemical that was manufactured, processed, or otherwise used during the calendar year. The amount of toxic chemical released does not affect the reporting requirements (except in the case of exemptions for articles). The facility would report "zeros" or "NA" (not applicable), in the release estimate sections of the Form.

45. Other than those chemicals on the EPCRA section 313 list, for what chemicals do Federal facilities <u>have</u> to report?

None. Reporting on any non-listed chemical is voluntary. However, if a Federal agency wishes to submit a report voluntarily for chemicals not on the EPCRA section 313 list, and wishes to include the chemicals in its 50 percent reduction goals, the agency must have identified the non-listed chemicals in its pollution prevention strategy (which the agency should have submitted to EPA by August 3, 1994).

46. Should a Federal facility submit a Form R report for a chemical other than one on the EPCRA section 313 list if it would like the additional chemicals included in the agency's 50-percent reduction goal?

A Federal facility may submit a Form R report for chemicals other than those listed under EPCRA section 313, if the agency has identified the non-listed chemicals in its pollution prevention strategy. However, the Executive Order does not require the agency to file a Form R for these non-listed chemicals. The Form R should be used only if the information concerning the non-listed chemical can be represented adequately on the Form R (e.g., the releases can be represented in pounds/year not in some other units).

47. If a Federal facility voluntarily submits a Form R report for a non-listed toxic pollutant, what chemical identity should the facility use in Part II, Section 1 of the Form R report?

When a Federal facility reports on releases of a toxic pollutant that does not appear on the EPCRA section 313 list of chemicals, a facility should use either the specific Chemical Abstract Service (CAS) number and the chemical name for that CAS number found in the 9th Collective Index; or the CAS number and the most commonly used chemical name. Whatever name the facility uses must be consistent with the name used on the agency's pollution prevention strategy.

48. How should a Federal facility report its facility name on the Form R report?

A Federal facility should report its facility name on page one of the Form R reports (Section 4.1). It is very important that the Federal agency name precede the specific plant or site name, as shown in the following example:

U.S. DOE Savannah River Site

A GOCO contractor at a Federal facility should report its names as shown in the following example:

U.S. DOE Savannah River Site - Westinghouse Operations

49. To complete Part I, section 4.1 of the Form R, a Federal facility should enter "U.S." and the Federal agency acronym. (For example, the Department of Energy's Hanford site would be identified as "U.S. DOE Hanford.") How do Federal agencies with identical acronyms, like the Departments of Treasury and Transportation, identify themselves on the Form R ?

To complete the site name in Part I, section 4.1 of the Form R, each Federal agency should use an acronym or other identifier that is unique to that agency. For example, because the Department of Transportation is commonly called "DOT" and the Department of the Treasury is commonly called the "Treasury," the Department of Transportation could use "U.S. DOT (site name)," and the Department of the Treasury could use "U.S. Treasury (site name)," in Part I, section 4.1 of the Form R. Note that all reporting facilities within a Federal agency must use the same agency identifier.

50. For Part I, section 4.5 of the Form R, how should Federal departments and agencies determine the SIC code(s) for reporting activities being performed at Federal facilities?

Federal facilities should use SIC codes that most accurately characterize the activities being performed at the facility. The Form R allows six different SIC codes to be reported in Part I, section 4.5. For example, a ranger station and air field operated by the U.S. Department of Agriculture has a mission of servicing aircraft used for fighting fires. This facility should list

both SIC code 4581 (airports, flying fields, and airport terminal services) and SIC code 0851 (forestry services) in Part I, section 4.5 of the Form R because these SIC codes best describe the activities being performed at the facility.

51. Within military installations, all mail is delivered to and distributed within these installations by specialized mail codes, zip codes, or both. If a facility has no street address, how should the Federal facility complete the street address data element within Part I, section 4.1?

The Federal facility should report whatever identifier is used to identify the physical location as the facility address (e.g., 3 Miles south of I-30 and I-95). If the facility receives no mail at this location, the facility should report the mailing address information in the space provided in Part I, section 4, 4.1.

52. How should a Federal facility begin tracking releases, on-site waste management and source reduction activities, and off-site transfers involving reportable toxic chemicals?

Federal facilities can access much of the information needed to calculate releases, on-site waste management activities (i.e., disposal, treatment, recycling, and energy recovery), and off-site transfers from sources at the site. For example, a release through an air stack or to a receiving stream may be estimated from the appropriate air and water permits. Permit applications may also include the mathematical equations that were used to calculate permitted release amounts. These equations potentially could be modified and used to calculate releases for section 313 reporting purposes. Reaction equations and engineering notes also may provide a good source of information for release calculations and on-site waste management activities. For off-site transfers, annual or biannual RCRA reports provide an excellent source of information. These reports refer to specific hazardous waste manifests. From the manifests, off-site transfers can be estimated. Invoices and shipping receipts are essential if a reportable toxic chemical that is not a RCRA waste, is sent off-site for recycling or disposal.

B. Employee Threshold

53. How does a Federal facility determine if it has met the 10 or more full-time employee threshold under section 313?

A "full-time employee" for the purpose of section 313 reporting, is defined as 2,000 work-hours per year. In other words, if the total number of hours worked by all employees is 20,000 hours or more, the Federal facility meets the "full-time employee" threshold.

54. Does the full-time employee determination include the hours worked by field, clerical, or professional staff whose office is in the same building as the production staff actually using the toxic chemical?

Yes. The facility must count all hours worked by all employees toward the facility's employee determination, regardless of where the employees are on the facility grounds.

Hours worked off-site by administrative support or other staff employed by the facility also count toward the facility's employee determination if such work is performed for the benefit of the facility. The facility also must count any hours worked on-site by the facility's contractors.

C. Activity Threshold Determinations

55. The Postal Service is prohibited from opening any of the mail that it processes. Will EPA assume that the Postal Service should have known that a toxic chemical was present at the facility? Is the Postal Service required to include in its threshold determination those quantities of a toxic chemical at its facilities when those chemicals are present only in the mail being processed at the facilities?

No. The Postal Service need not include in its threshold determinations the quantities of toxic chemicals that are present in the mail being handled at its facilities. The Postal Service's activities in handling the mail are not "manufacture, process, or otherwise use."

56. An agency performs different activities at one location. For which activities should the agency count quantities of any toxic chemical in making its section 313 threshold determinations?

All quantities of section 313 chemicals "manufactured, processed, or otherwise used" in all non-exempt activities at a facility should be counted in threshold determinations.

57. If a Federal facility manufactures 19,000 pounds of a toxic chemical and imports another 7,000 pounds of that same chemical during the reporting year, is the facility required to report for this chemical?

Yes. For the reporting year, the Federal facility would have exceeded the manufacture threshold of 25,000 pounds ([19,000 manufacturing] + [7,000 importing] = 26,000) for this toxic chemical. Note that importing is the equivalent of manufacturing, and therefore the two "manufactured" quantities must be added for threshold determinations.

58. If a Federal facility's supply system imports a toxic chemical in excess of a threshold amount, is the facility required to report releases of that toxic chemical under section 313?

Yes. Under the authority of EPCRA section 313, EPA defines "manufacture" to mean produce, prepare, compound, or import (40 CFR 372.3). If a Federal facility causes more than 25,000 pounds of a toxic chemical to be imported, it has exceeded the "manufacture" threshold and is subject to the release reporting requirements for that toxic chemical. A facility would "cause" a toxic chemical to be imported by specifically requesting a product (containing the toxic chemical) from the a foreign source or requesting a product known to be only available from a foreign source. If, after receipt, the Federal facility processes 25

thousand pounds or otherwise uses 10 thousand pounds of that chemical, then the Federal facility must report releases of that chemical.

59. If a toxic chemical is purchased in the U.S., shipped out of the country to a U.S. facility located overseas, and then brought back to the U.S., is this toxic chemical "imported?"

As long as a toxic chemical remains under U.S. government control, although it may leave the country and later re-enter, it is not "imported" for purposes of EO 12856.

60. If a Federal facility buys 10,000 pounds of a listed chemical in 1993 and creates a mixture, (for example a metal cleaning bath), and then uses the bath in 1993 and 1994, how does it determine section 313 thresholds for each year?

In this situation, the section 313 threshold applies to the total amount of the chemical "otherwise used" during the calendar year. For the first year (1993), the Federal facility would count the entire 10,000 pounds of the toxic chemical and any amount added to the bath during that year toward the "otherwise use" threshold. During the second year (1994), only the amount of the chemical added to the bath during that year would be counted toward the section 313 "otherwise use" threshold determination.

61. Are warehouses subject to the threshold determinations of section 313?

Warehouse operations can require threshold determinations. Thresholds are based on manufacture, process, or otherwise use of a toxic chemical at the facility. Repackaging (e.g., pouring the contents of a 55 gallon drum into smaller containers) at a warehouse is considered processing and the repackaged quantities of the toxic chemicals must be counted in the facility's "process" threshold determinations. Simply receiving, storing, relabelling, distributing, or reshipping already pre-packaged quantities from a shipment of such packages is not considered "manufacture, process, or otherwise use."

62. A Federal agency is remediating a toxic chemical that was released a number of years earlier. Must the Federal facility include the toxic chemical being remediated in threshold determinations, release calculations, and reporting?

Quantities of remediated toxic chemicals are not included in section 313 threshold determinations, because remediation is not "manufacturing, processing, or otherwise use." However, if the Federal facility engages in other activities involving the same toxic chemical, and exceeds the manufacturing, process, or otherwise use thresholds for the chemical; the facility must report releases, transfers, or other appropriate quantities of that toxic chemical that occur as a result of the remediation activities. Also chemicals used in the remediation process must be counted toward threshold determinations.

63. A reportable solvent is used to de-ice runways at a Federal facility with 10 FTEs. The same reportable solvent is also being remediated from the soil and ground water at that facility. The remediated reportable solvent is mixed with water and is then also

used to de-ice runways at the facility. Should the facility account for the remediated reportable solvent when the reportable solvent meets a manufacture, process, or otherwise use threshold elsewhere at the facility?

Yes. A Federal facility must include toxic chemicals that are remediated and then further used at the facility or distributed in commerce in its threshold determinations and release calculations. Because the facility further uses the reportable solvent recovered as a result of remedial actions, the facility must include that quantity when performing threshold determinations and release calculations, just as it would consider including purchased reportable solvent.

64. A Federal facility melts down submarines and sells or further uses the constituent metals. These constituent metals contain toxic chemicals. Should the facility include the toxic chemicals in these metals in its threshold determinations?

Yes. A Federal facility that melts down submarines and sells or further uses the constituent metals that contain toxic chemicals is "processing" the toxic chemicals in those metals for further distribution in commerce. (The facility could also "otherwise use" the toxic chemical if, for example, tools were made from the metal for use on-site in production operations.) Therefore, the toxic chemicals in these metals should be included in the facility's threshold determinations. If the facility meets or exceeds an activity threshold for one or more toxic chemicals, and meets other reporting requirements, then that facility must report all releases and off-site transfers of the toxic chemicals on the Form R.

65. A private contractor conducts recycling operations involving toxic chemicals on-site at many Federal facilities. The contractor conducts these operations under contract to the Federal facilities, but the contractor owns and operates the equipment. Must a Federal facility consider operations like this in making threshold determinations and release calculations for section 313 toxic chemicals, if the Federal facility does not own or operate the stationary items used in the recycling operations?

Yes. A Federal facility should include the toxic chemicals used in operations of contractors under its control in threshold determinations and release reporting for section 313, even if the Federal facility neither owns or operates the equipment used in the contractor's operations. In the above example, the private contractor, under contract to the Federal facility, conducts recycling operations involving toxic chemicals on-site at a Federal facility, and uses equipment that the contractor owns and operates. The contractor is under the control of the Federal facility, and the facility should include the toxic chemicals used in the contractor's operations in facility threshold determinations and release reporting.

66. A Federal facility allows a company to apply waste oil containing a toxic chemical on unpaved roads to control dust. Does the facility have to consider the quantity of a toxic chemical applied in the waste oil for its threshold determinations and release calculations?

Yes. In its threshold determinations and release calculations, the facility would include the quantity of any toxic chemical contained in the waste oil applied to its unpaved roads to control dust, because the facility is otherwise using the chemical. Even though the waste oil is used to maintain a structural component of the facility, the oil is not a product that is available in a similar type or form as a consumer product.

67. A large Federal facility has a petroleum bulk terminal for storing fuel; the fuel contains some listed toxic chemicals and is later transferred to containers for use at other parts of the facility. Although this transfer is "repackaging," the facility does not distribute the fuel in commerce. Must a facility count the quantity of a toxic chemical toward the processing threshold if the chemical is not distributed in commerce?

No. Quantities of toxic chemicals that are "repackaged" but not distributed in commerce, do not meet the definition of "processed" and should be excluded from threshold determinations. However, if the fuel is used on-site in a non-exempt activity, the toxic chemical needs to be included in threshold determinations. Therefore, if the facility exceeds the "otherwise use" threshold for a toxic chemical in the fuel, transfer losses from this "repackaging" step are reportable releases.

68. Are the toxic chemicals contained in fuel used to refuel an aircraft operated by a Federal facility exempt from threshold determinations and release reporting?

Yes. Toxic chemicals contained in fuel used to refuel an aircraft that is operated by a Federal facility are exempt from threshold determinations and release calculations because of the "motor vehicle maintenance" exemption. EPA recommends, however, that facilities look at both the scale of the activity and the quantity of toxic chemical used and consider the leadership option of reporting toxic chemicals contained in fuels if the quantities of those toxic chemicals exceed the 10,000-pound "otherwise use" threshold.

69. Is the use of ethylene glycol to de-ice wings of aircraft operated by a facility exempt from the requirements of EPCRA section 313 under the "motor vehicle maintenance" exemption?

Yes. The use of ethylene glycol to de-ice wings of aircraft operated by a Federal facility is considered to be a form of motor vehicle maintenance. Because of the "motor vehicle maintenance" exemption, the ethylene glycol is exempt from the requirements of EPCRA section 313. EPA recommends, however, that Federal facilities consider the leadership option of reporting toxic chemicals.

D. Reporting Exemptions

General

70. Do the exemptions available under EPCRA section 313 apply to Federal facilities?

The exemptions listed under EPCRA section 313 apply to Federal facilities in exactly the same way as they apply to industry. EPA recommends, however, that Federal facilities consider the leadership option of reporting toxic chemicals that qualify for EPCRA section 313 reporting exemptions.

Articles

71. Is the lead contained in batteries exempt from threshold determinations and release reporting under EPCRA section 313?

Under 40 CFR 372.3, an "article" is "a manufactured item which: (1) is formed to a specific shape or design during manufacture; (2) has end use functions dependent in whole or in part upon its shape or design during end use; and (3) does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishment." If a battery containing lead is used as an "article," and there are no releases of lead from the battery, then the lead would be exempt under the "article" exemption (40 CFR 372.38(a)) from threshold determinations and release reporting.

72. A Federal shipyard facility cuts port-holes into metal plates separated by seams. The plates contain nickel, and cutting them releases fumes. The facility then produces grindings when it further grinds the metal port hole to its final shape. For the plates to retain "article" status under EPCRA section 313, total releases to all media must be less than 0.5 pounds/year. Does this cut-off value apply separately to releases from each type of "processing" or "otherwise use," or to aggregate releases from all "processing" or "otherwise use" of the same type of item?

The 0.5 pounds/year release cut-off value applies to aggregate releases from the same type of item being processed or otherwise used in any manner at the facility. This value applies to the total aggregate releases of the toxic chemical from both steps of the process. Therefore, to reach the 0.5 pounds/year value, a facility should add any releases from grinding to those from cutting.

De Minimis

73. A Federal facility "otherwise uses" toluene, a toxic chemical, in two ways. In one "otherwise use," toluene is in a product below the *de minimis* level, and is therefore exempt from threshold determinations and release reporting under EPCRA section 313. In the second "otherwise use," toluene is in a product in an amount greater than the *de minimis* level and is used in excess of the 10,000-pound "otherwise used" threshold. Because the facility must prepare a Form R for toluene, must the facility report all of the

releases and off-site transfers in the report, including those that qualified for the "*de minimis*" exemption?

No. If a facility has multiple uses of a single toxic chemical, and one of those uses meets the criteria for an exemption, then the quantity of the toxic chemical that meets the criteria for the exemption is exempt from threshold determinations and release reporting requirements. In the above example, the facility must file a Form R for toluene and must report all releases and off-site transfers of toluene that result from all **non-exempt** uses of the chemical.

Laboratory Activities

74. Are laboratories exempt from EPCRA section 313 reporting?

Not necessarily. The type of the laboratory activity and conditions under which the activity occurs determine whether the quantity of a toxic chemical manufactured, processed, or otherwise used qualifies for the "laboratory activities" exemption. Agency managers should not assume that quantities of toxic chemicals are automatically exempt from section 313 requirements because the facility has "laboratory" in its name. The listed chemical must be used directly in, or produced as a result of, a laboratory activity at the Federal facility; and the manufacture, process, or otherwise use of the listed chemical must occur under the supervision of a "technically qualified individual" as defined in 40 CFR 720.3(ee). Non-exempt activities include support activities such as the use of toxic chemicals used to clean laboratory glassware and maintain laboratory equipment. Toxic chemicals in pilot plant scale operations, laboratories that produce specialty chemicals, and activities conducted outside the laboratory (e.g., wastewater treatment, photo processing) are not exempt.

75. A laboratory (e.g., quality control, area control, etc.) is part of a Federal facility. Are the toxic chemicals associated with the laboratory activities exempt from the threshold determinations and release reporting requirements of section 313, even if the facility as a whole is not exempt from section 313 requirements?

Under authority of EPCRA section 313, EPA issued a "laboratory activities" exemption (40 CFR 372.38(d)) that applies to quantities of toxic chemicals manufactured, processed, or otherwise used in a laboratory for quality control, research and development, and other laboratory activities. The quantities of toxic chemicals associated with the laboratory activities are exempt from threshold determinations and release reporting as long as the chemicals are:

- Used directly in, or produced as a result of, a laboratory activity;
- Manufactured, processed, or otherwise used under the supervision of a "technically qualified individual" as defined under 40 CFR 720.3(ee); and
- Not part of specialty chemical production or pilot plant scale activities.

If a laboratory is part of a larger facility, only those toxic chemicals used in covered laboratory activities can be considered for the exemption. A facility must still determine if quantities of toxic chemicals used in other activities trigger any activity threshold (i.e., manufacture, process, or otherwise use).

76. A Federal facility sends samples of manufactured products containing toxic chemicals to an on-site laboratory for quality control purposes. Are the quantities of the toxic chemicals contained in the samples exempt from the facility's EPCRA section 313 threshold determinations as a result of the "laboratory activities" exemption (assuming all other "laboratory activities" exemption criteria are met)?

No. Under section 313 of EPCRA, Federal facilities are required to include in their threshold determinations any quantity of a toxic chemical that is manufactured, processed, or otherwise used. The "laboratory activities" exemption (40 CFR 372.38(d)) only applies to the toxic chemicals used within the laboratory setting, not to the on-site manufacturing, processing, or otherwise using (and associated releases) of the toxic chemical prior to the time the sample was sent to the laboratory.

77. Are the toxic chemicals used in the following marine engine testing operations exempt from threshold determinations or release reporting requirements of EPCRA section 313 under the "laboratory activities" exemption: (a) testing production engines intended for sale in specialized engine test cells; (b) testing engines for research and development purposes in specialized engine test cells; (c) testing for research and development purposes in open water bodies?

Yes. All of the noted operations are considered "product testing," and the toxic chemicals used in the "product testing" are exempt from the threshold determinations or release reporting requirements of EPCRA section 313 under the "laboratory activities" exemption.

78. A toxic chemical is used in an experiment at one Federal facility (in a manner consistent with the "laboratory activities" exemption criteria) and is moved to another, non-contiguous facility to continue the experiment. The toxic chemical used in both laboratory activities meets the criteria for claiming a "laboratory activities" exemption under EPCRA section 313. Can the toxic chemical be moved from one facility to another to continue an experiment and remain exempt under the "laboratory activities" exemption for threshold determinations and release reporting?

Yes. If a Federal facility conducts experiments using a toxic chemical, and that toxic chemical is moved from one laboratory to another laboratory at a different facility to continue the experiment, the quantity of the toxic chemical used in the experiment is exempt from threshold determinations and release reporting if both laboratories' activities qualify under the EPCRA section 313 "laboratory activities" exemption (40 CFR 372.38(d)).

79. A research laboratory at a Federal facility uses a toxic chemical in an experiment that is carried out under the supervision of a technically qualified individual. Additional quantities of the same toxic chemical are also used at the Federal facility for non-

laboratory activities. Which quantities of the toxic chemical must be included in threshold determinations and release calculations?

The Federal facility may exclude the quantity of the toxic chemical used in the exempted laboratory activity from threshold determinations and release reporting. All other quantities of the toxic chemical that are not included in the "laboratory activities" exemption and are not otherwise exempt (e.g., routine janitorial and facility grounds maintenance) must be included in threshold determinations and release calculations.

80. A Federal facility tests specific components of a machinery line. The facility's functions include testing for durability of the engines, hydraulic systems, power trains, electrical systems and transmissions; building prototypes of products; and qualitative and quantitative analytical materials testing in a chemical laboratory. Because these activities are test-, development-, and research-oriented, are the toxic chemicals used in these activities eligible for the "laboratory activities" exemption?

Yes. Equipment and component testing are the equivalent of a laboratory activity. Thus, the toxic chemicals used in these activities qualify for the "laboratory activities" exemption (40 CFR 372.38(d)) and are exempt from the threshold determinations and release reporting requirements of EPCRA section 313.

81. The "laboratory activities" exemption under EPCRA section 313 does not apply to "specialty chemical production." What is "specialty chemical production?"

"Specialty chemical production" is producing toxic chemicals in a laboratory setting and distributing these chemicals in commerce, or using them in non-laboratory activities at the same Federal facility or elsewhere. For the purposes of compliance with EO 12856, the term "distributed in commerce" includes shipping to other Federal or non-Federal facilities.

Motor Vehicle Maintenance

82. What activities related to motor vehicles are reportable under EPCRA section 313?

Chemicals used in the building or manufacture of motor vehicles are subject to section 313 requirements. The quantity of a toxic chemical used in motor vehicles that are operated by a Federal facility is exempt from threshold determinations and release calculations. This includes any product used in or on the vehicle to maintain or operate the vehicle.

83. Must a Federal facility include the quantity of toxic chemicals in vehicle exhaust emissions in annual facility release estimates under EPCRA section 313?

No. Toxic chemicals used to maintain motor vehicles operated by the facility are exempt from threshold determinations and release calculations under the "motor vehicle maintenance" exemption. The release or coincidental manufacture of toxic chemicals from an activity that meets the criteria for an exemption are themselves exempt. Therefore, vehicle exhaust

emissions should not be counted toward threshold determinations or release calculations if the vehicle is operated by the facility.

Personal Use

84. Should quantities of toxic chemicals present in office supplies and similar products be included in threshold determinations or release reporting under EPCRA section 313?

No. EPA does not require a covered Federal facility to account for quantities of toxic chemicals in office supplies (e.g., correction fluid, copier machine fluids, etc.) when the facility performs threshold determinations or release reporting. Although toxic chemicals in office supplies are not specifically exempt in the regulation, EPA interprets these items to be personal use items and the chemicals contained in them are exempt from threshold determinations and release reporting under the "personal use" exemption.

85. A printing shop within a Federal facility uses cylinders of ammonia gas in blueprint machines. The shop uses a total of 12,000 pounds per year in this operation and does not manufacture, use, or process any other quantities of ammonia. Is the quantity of ammonia used in the blueprint machines equivalent to an office supply item and exempt from the reporting requirements of EPCRA section 313 because of the "personal use" exemption?

No. Blueprint machines are not considered typical office supply items, and, therefore, the chemicals used in them do not meet the criteria for the "personal use" exemption under EPCRA section 313. (See 40 CFR 372.38(c)(3).) Because the Federal facility uses 12,000 pounds per year of ammonia, the facility exceeds the 10,000-pound "otherwise use" threshold and must report for ammonia.

86. Military bases include areas designated for private housing and barracks. Can the "personal use" exemption under EPCRA section 313 be applied to toxic chemicals used at military housing (e.g., heating oil, janitorial chemicals, pesticides)?

Toxic chemicals in products commonly used at military bases could be exempt from EPCRA section 313 requirements for various reasons. For example, a toxic chemical in heating oil used solely for employee comfort is exempt because of the "personal use" exemption (40 CFR 370.39(c)(3)). Chemicals in pesticides or fertilizers used to maintain lawns or facility grounds would be exempt under the "routine janitorial and facility grounds maintenance" exemption (40 CFR 372.38(c)(2)). Chemicals in substances used to clean or disinfect showers or restrooms could also be exempt under the "routine janitorial and facility grounds maintenance" exemption if the toxic chemical is present in a similar type or form as a consumer product.

Structural Component

87. A Federal facility purchases wood pilings treated with creosote-tar to support its piers. Gradually, the creosote, a toxic chemical, is released from the pilings into the water. For purposes of complying with EPCRA section 313, is the creosote exempt from threshold determinations and release reporting under the "structural component" exemption?

Yes. Releases of a toxic chemical from a structural component as a result of natural degradation are exempt from threshold determinations and release reporting under EPCRA section 313. Because the pilings are incorporated into the facility's structures (i.e., docks), the creosote contained in the pilings is exempt as a structural component. (See 40 CFR 372.38(c)(1).)

88. If a Federal facility builds a new structure or modifies an existing structure on-site, must the facility include toxic chemicals that are part of the new structure (e.g., the copper in copper pipes) in threshold determinations and release reporting under EPCRA section 313?

No. Toxic chemicals that are incorporated into the structural components of a Federal facility (e.g. the copper in copper pipes) or that are used to ensure or improve the structural integrity of a structure (e.g., paint) are exempt from threshold determinations and release reporting requirements because of the "structural component" exemption (40 CFR 372.38(c)(1)). As a result of the exemption, the Federal facility is also not required to report the releases of toxic chemicals that result from "passive" degradation (degradation or corrosion that occurs naturally in structural components of facilities).

89. A Federal facility operates stationary cranes at a port. When painting the cranes, volatile solvents are released to the atmosphere. Does the facility have to report these releases under EPCRA section 313, or is such an activity exempt under the "structural component" exemption?

The "structural component" exemption under EPCRA section 313 (40 CFR 372.38(c)(1)) applies to toxic chemicals that are structural components of the facility or that are used to ensure or improve the structural integrity (e.g., copper in copper pipes used for the plumbing in the facility). If the cranes are fixed, then they would be considered part of the structure of the facility. Painting conducted to maintain their physical integrity, therefore, (e.g., prevent natural degradation) is consistent with the "structural component" exemption, even though volatile solvents in the paint do not become part of the structure.

90. Does the "structural component" exemption under EPCRA section 313 apply equipment which regularly suffers abrasion, such as grinding wheels and metal-working tools? What criteria can a Federal facility use to decide which pieces of equipment are structural components and which are not?

The EPCRA section 313 "structural component" exemption (40 CFR 372.38(c)(1)) would not apply to grinding wheels and metal-working tools. Because of the nature of their use, these items are intended to wear down and to be replaced, which would be considered "active" degradation. The "structural component" exemption only applies to "passive" or natural degradation of structures and equipment such as pipes.

Routine Janitorial or Facility Grounds Maintenance Use

91. An agency entity cleans prison cells as part of its routine janitorial practices. Are the toxic chemicals used in these activities exempt from threshold determinations and release reporting requirements under the "routine janitorial or facility grounds maintenance" exemption of EPCRA section 313?

Yes. Toxic chemicals used in routine janitorial activities, such as those contained in cleaning products used when cleaning prison cells, are exempt under the "routine janitorial or facility grounds maintenance" exemption from both threshold determinations and release reporting requirements of EPCRA section 313, as long as the products are similar in type or concentration to those available to consumers.

92. Are toxic chemicals used to maintain recreational components of a Federal facility subject to EPCRA section 313 reporting requirements?

No. Toxic chemicals used to maintain a facility's recreational activities (e.g., cleaning swimming pools) are exempt from EPCRA section 313 threshold determinations and release reporting requirements under the "routine janitorial or facility grounds maintenance" exemption (40 CFR 372.38(c)(2)).

93. A Federal training facility disinfects the bathroom floors of the barracks using a cleaning solution that contains a toxic chemical. The cleaning solution is purchased in 50-gallon drums, but the concentration of the toxic chemical is exactly the same as the concentration found in a consumer product. For the purposes of EPCRA section 313, is the quantity of the toxic chemical in the solution exempt under the "routine janitorial or facility grounds maintenance" exemption, or does the size of the container negate this exemption?

A toxic chemical that is part of a cleaning solution purchased in a concentration similar to available consumer products and used in routine janitorial activities, is exempt from EPCRA section 313 reporting requirements under the "routine janitorial or facility grounds maintenance" exemption **regardless of the size of the packaging**.

94. Would all janitorial or other custodial activities performed at a Federal hospital qualify for the "routine janitorial and facility grounds maintenance" exemption? In particular, would toxic chemicals used to sterilize rooms and equipment be exempt from the threshold determinations and release reporting requirements of EPCRA section 313?

A Federal hospital that uses a product containing a toxic chemical similar in type or concentration to a consumer product may exempt the quantity of the toxic chemical from threshold determinations or release reporting if the hospital uses the product for janitorial activities (e.g., cleaning hallways and rooms). However, products containing toxic chemicals that are used at a Federal hospital to sterilize equipment **are** subject to threshold determinations and release reporting, because sterilizing equipment is considered an operational or equipment maintenance activity not a routine janitorial activity.

Water Intake/Compressed Air Use

95. Would a toxic chemical present in compressed air be exempt under the "intake water and/or air" exemption under EPCRA section 313? What if the same toxic chemical is present in process emissions?

The "intake water/air" exemption of EPCRA section 313 (40 CFR 372.38(c)(5)) exempts the use of toxic chemicals present in air used either as compressed air or as a part of combustion. The quantity of toxic chemical in the compressed air would be exempt from threshold determinations. If that same toxic chemical is present in air emissions only because it was in the compressed air fed to a piece of equipment or process, then the toxic chemical would also be exempt from release reporting requirements under EPCRA section 313.

Other

96. If a quantity of a toxic chemical meets the criteria for a reporting exemption under EPCRA section 313, should it be included on the Form R report Part II, section 4.1: Maximum Amount of the Toxic Chemical On-Site at Any Time During The Calendar Year?

No. If a Federal facility uses a toxic chemical in a manner that meets the criteria for a reporting exemption, that amount of the toxic chemical is exempt from threshold determinations and release reporting requirements. If a Form R report is required because of other, non-exempt uses, exempted quantities should not be included in calculations for Part II, section 4.1.

E. Releases of the Chemical

97. Do the reporting requirements of EPCRA section 313 overlook the possibility that a toxic chemical can lose its identity during a process that involves a chemical reaction? Is a release simply the difference between process "input and output" volumes?

No. EPA recognizes that toxic chemicals may be consumed in a process. When some or all of a toxic chemical is consumed during a process, mass balance (i.e., the use of "inputs and outputs" to calculate releases) may not be a suitable method for facilities to estimate releases. Facilities are encouraged to use available monitoring data, emissions factors, or engineering judgement — whichever is most appropriate — to calculate releases.

98. A Federal facility that produces electricity by burning coal stores the coal in an on-site stockpile that is exposed to the outside atmosphere. The facility meets one of the activity thresholds for filing a Form R report for benzene, a toxic chemical. Because the stockpiled coal contains benzene and is exposed to the outside atmosphere, must all the benzene in the coal be reported on the Form R report as an on-site release to land?

No. A Federal facility does not have to report toxic chemicals contained in an on-site stockpile as an on-site release to land if the stored material is intended for processing or use. However, any quantity of toxic chemical that escapes to the air or remains in the soil from the stockpiled material (e.g., evaporative losses to air, material leached to the ground, etc.) must be reported as an on-site release to the environment. Also, once a Federal facility meets the criteria for filing a Form R report for a toxic chemical (such as benzene), all non-exempt releases of that chemical at the facility are to be included in the Form R report. (Note: Benzene is typically present in coal below the de minimis level and if this is the case, the quantity of benzene in coal is exempt from threshold determinations and release reporting under EPCRA section 313.)

99. If a barge within a federal waterway is carrying cargo that contains a listed toxic chemical that will ultimately be used by the facility, would releases of the chemical to air or water from the barge that occur during storage or transfer operations be reportable?

Yes. Releases of the chemical to air or water from the barge must be included in release calculations at the facility if reporting thresholds for the chemical at the facility are exceeded.

100. Through natural migration, toxic chemicals released in prior years may shift between environmental media. How is the migration of a toxic chemical between environmental media considered for Form R reporting?

Natural migration between environmental media of a toxic chemical previously released to the environment are not subject to the reporting requirements of EPCRA section 313. The initial release of the toxic chemical to the environment during the reporting year is reportable on the Form R. However, the natural migration of the chemical between environmental media in subsequent reporting years is not reportable. For example, seepage of a toxic chemical from a landfill to groundwater does not have to be reported under EPCRA section 313.

101. A Federal facility has a liquid waste stream containing a reportable toxic chemical that is incinerated on-site. The incineration is 99.9 percent efficient in destroying the reportable toxic chemical. The remaining 0.1 percent of the reportable toxic chemical is released to the air as a gaseous waste stream. Does the Federal facility also need to report this gaseous waste stream in the waste treatment section of the Form R report for the reportable toxic chemical?

No. The Federal facility does not need to report the gaseous waste stream in Part II, section 7A of the Form R report, because no treatment is applied to the gaseous waste stream. However, any resulting air emissions would be reported as a release to air, and the amount of

the release would be included in Part II, section 5.2, Stack or point air emissions. If the gaseous waste stream is then treated (e.g., by secondary combustion, filtration, or scrubbing), the stream would be listed as a gaseous waste stream and the treatment method(s) would be documented in Part II, section 7A, as a separate waste stream.

102. Section 313(g)(2) of EPCRA states that the owner or operator of a facility may use readily available data for reporting releases of toxic chemicals. If a Federal facility has monitoring or emissions data for a toxic chemical that they do not believe are representative, should they still use that data to complete the release calculations on the Form R report?

No. If a Federal facility has monitoring or emissions data that are not considered "representative," the data should not be used. In such cases, a more accurate estimate based on mass balance calculations, published emission factors, engineering calculations, or best engineering judgement should be used. In such instances, a Federal facility should document why the available monitoring data were believed to be unrepresentative.

103. Tank trucks, barges, and rail cars enter a Federal facility. During loading, toxic chemicals are released. Are these releases subject to reporting requirements under EPCRA section 313?

Yes. Under EPCRA section 313, a Federal agency is responsible for reporting releases of a toxic chemical that occur during loading or unloading of a transportation vehicle while the vehicle is on property owned or operated by the Federal agency. The only releases that are exempt from these requirements are releases of a toxic chemical from a transportation vehicle that occur while the vehicle is still under "active shipping papers."

104. A facility places drummed waste on-site with no immediate intent to transfer the waste off-site or dispose of it on-site. The facility has a RCRA Part B permit to operate as a Treatment, Storage, and Disposal Facility (TSDF). Does this facility have to report this placement of drummed waste as a release to land on-site on the Form R?

Drummed wastes containing toxic chemicals that are placed on-site with no immediate intent to transfer the wastes off-site (e.g., no shipment is sent off-site during the reporting year) are to be reported in Part II, section 5.5.4 as on-site land disposal (as is explained in the *Inside the Hotline: A Compilation of 1992 Monthly Hotline Reports document* (EPA/530-R-92-014M)), regardless of whether the facility has a RCRA Part B permit to operate as a TSDF.

F. Transfers to Off-Site Locations

105. A Federal facility discharges waste containing metals that are toxic chemicals to an on-site cooling pond. The metals settle and accumulate over time. Water from the pond eventually is drained, leaving behind a heavy metal sludge. The sludge is then dredged and sent off-site for disposal. How should toxic chemicals in the sludge be reported on the Form R?

Toxic chemicals that are contained in sludge sent off-site for disposal should be reported as an off-site transfer in Part II, sections 6.2 and 8 of the Form R report.

106. Many Federal facilities send their hazardous waste containing toxic chemicals to off-site treatment, storage, and disposal facilities (TSDFs). If a Federal facility is reporting these toxic chemicals on a Form R report, what is the facility's obligation to ascertain the final, known disposition of the toxic chemical for purposes of choosing a waste management code in Part II, section 6.2.C.?

The Federal facility is required to use the best data available at the facility to identify the final, known disposition of a toxic chemical that it is reporting on a Form R report for the purpose of entering a waste management code in Part II, section 6.2.C of the Form R. While obtaining additional information from the off-site location concerning the fate of the particular toxic chemical is not required, it is certainly an option for facilities who lack a complete understanding of the final disposition of a toxic chemical in a waste sent off-site.

107. A Federal facility reporting under EPCRA section 313 discharges wastewater containing toxic chemicals to a Federally Owned Treatment Works (FOTW) facility. The FOTW is located on a separate site that is not contiguous or adjacent to the reporting facility. For purposes of Form R reporting, should releases to FOTWs be considered equivalent to discharges to Publicly Owned Treatment Works and reported in Part II, section 6.1, or should these releases be reported in Part II, section 6.2 as "wastewater treatment (excluding POTW)" (i.e., code M61)?

If a Federal facility reporting under EPCRA section 313 discharges wastewater containing toxic chemicals to a Federally Owned Treatment Works (FOTW), the facility should report the discharge to the FOTW as a discharge to a POTW (Part II, section 6.1 of Form R), because the operations performed by the FOTW are essentially equivalent to those performed by a POTW.

108. A Federal facility acts as a waste broker for other facilities within its own agency, and the facility exceeds the reporting threshold for a toxic chemical. The facility receives the same toxic chemical from the other facilities for the purpose of off-site disposal. Should the Federal facility report the quantities of toxic chemicals in waste received and transferred off-site for disposal in section 8.8, because those quantities are not related to production processes at the facility during the reporting year?

No. The quantity of toxic chemical in the facility's off-site transfers of waste received from other facilities should not be reported in section 8.8, because the shipment of the waste is not the result of a remedial action, catastrophic event, or remedial event. The Federal facility should report this quantity in sections 8.1 and 6.2 of the Form R report.

G. Source Reduction and Recycling (Part II, section 8.1-8.10 of the Form R)

109. Would clean-up of soil or groundwater contaminated from prior years' activities involving a toxic chemical be included in remedial actions reported in Part II, section 8.8 of Form R?

A toxic chemical contained in wastes generated as a result of a prior year's activities that is undergoing remediation is reported in Part II, sections 5, 6, and 8.8 of Form R only if the Federal facility exceeds an activity threshold through some other activity involving the same toxic chemical. A toxic chemical being used to remediate wastes from prior year's activities is considered "otherwise used." If that use exceeds 10,000 pounds in the reporting year, all releases and off-site transfers of that same chemical are reported in Part II, sections 5, 6, and 8.1 - 8.7 of Form R.

110. Is an accidental release from filling an ammonia tank reportable in section 8.8 or 8.1 of the Form R report?

If the accidental release of ammonia at a Federal facility is a one-time event, then it should be reported in section 8.8 of the Form R report. If the release is routine or frequent, it should be reported in section 8.1 of the Form R. For example, spills that occur as a routine part of production operations and could be reduced or eliminated by improved handling, loading, or unloading procedures are included in the quantities reported in section 8.1 through 8.7 of the Form R report, as appropriate. A total loss of containment resulting from a tank rupture caused by a tornado would be included in the quantity reported in section 8.8.

111. A Federal facility is involved in the remediation of benzene. The facility also uses benzene as a manufacturing aid in the blending of fuel additives. The amount of benzene used in the fuel blending operations exceeds the 25,000-pound processing threshold under EPCRA section 313 and the facility has more than 10 FTEs. If benzene is released to the air during remediation, does that release get reported in Part II, section 8.1 of the Form R?

No. All releases and off-site transfers of a toxic chemical resulting from remedial actions should be reported under Part II, section 8.8 (as well as in sections 5 and 6) of the Form R and are not to be reported under Part II, sections 8.1 through 8.7 of the Form R.

112. A Federal facility is submitting a Form R report for a toxic chemical. During a remediation project, the same toxic chemical is transferred from one medium to another. For example, soil excavation during groundwater remediation causes a toxic chemical to be released to the air. How should the release be reported on the Form R?

If a Federal facility exceeds reporting thresholds for the chemical in other non-exempt activities at the facility then the release of that toxic chemical from one medium to another due to remediation activities must be reported on the Form R, unlike toxic chemicals that transfer medium as a result of natural migration. Releases of toxic chemicals that occur as a result remediation activities during the reporting year are reported in section 8.8 and the appropriate sections of Part II, sections 5 and 6 of the Form R report.

113. A Federal facility voluntarily reports releases of toxic chemicals contained in motor vehicle fuel. The motor vehicles are operated by the facility and they report the combustion of the toxic chemicals that occurs in the vehicle engine as "otherwise used" and subject to the 10,000-pound threshold. Would the combustion process that occurs in the vehicle engine be considered a reportable energy recovery method (i.e., Part II, sections 7B and 8.2) for the Form R reporting?

No. The quantity of toxic chemical reported in Part II, sections 7B and 8.2 of the Form R as used for energy recovery include toxic chemicals present in **wastes**, not in **raw materials**. Therefore, the combustion of toxic chemicals contained in fuel that occurs in a motor vehicle engine is not considered a reportable energy recovery method on the Form R report.

114. How should a Federal facility determine if a toxic chemical has a heating value high enough to sustain combustion for purposes of completing Part II, sections 7B, 8.4, and 8.5 of the Form R? Is the value of 5,000 BTUs per pound that has been established as a standard for other environmental programs considered a good indicator for TRI reporting under section 313?

EPA has not established specific criteria for determining whether a specific listed chemical's heat of combustion is high enough to sustain combustion. Facilities, therefore, must make this determination using the best available information at the facility. The Toxic Chemical Release Inventory Reporting Form R and Instructions document (Appendix C, page C-6), however, provides examples of chemicals whose BTU values are not high enough to sustain combustion (e.g., metals, CFCs, and halons).

H. Certification and Submission

115. Who should sign the Form R for the Federal facility?

The senior management officer responsible for the operation of the Federal facility should sign the certification statement on Form R. For military installations, the base commander should sign the Form R.

I. Supplier Notification

116. Commercial suppliers are not required to provide supplier notification to customers outside SIC codes 20-39 according to 40 CFR 372.45. What should Federal facilities whose operations fall outside of SIC codes 20-39 do to ensure that toxic chemicals listed under EPCRA section 313 are identified by their suppliers?

Because supplier notification is not required of commercial suppliers to facilities outside of SIC codes 20-39, there currently is no regulatory mechanism to ensure that this information is received by the purchasing facility. One mechanism for ensuring that suppliers identify toxic chemicals present in mixtures and trade name products and provide concentration information

is for the Federal facilities to request this type of information from their suppliers, revise existing contracts with suppliers to require this information, or ensure this information is required to be provided in any new contracts with suppliers.

III. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW RESPONSIBILITIES (EO §3-305)

A. EPCRA Sections 302-303 (Emergency Planning)

Applicability

117. What types of facilities are required to provide the EPCRA section 302 notification?

Section 302 of EPCRA requires that any facility that has present at any time more than a threshold planning quantity (TPQ) amount of a listed extremely hazardous substance (EHS) notify the Local Emergency Planning Committee (LEPC) and State Emergency Response Commission (SERC). This notification should be made within 60 days of the time the threshold planning quantity is exceeded.

118. What is the primary purpose of EPCRA section 302 notification requirements?

Notifications required under EPCRA section 302 indicating that a facility has one or more extremely hazardous substances in excess of the threshold planning quantity (TPQ) help to identify locations within the state and local area where emergency planning activities can be initially focussed. While the substances on the extremely hazardous substances list do not represent the entire range of hazardous chemicals used in commerce, they have been designated as those substances which are, in the event of an accident, most likely to inflict serious injury or death upon a single short-term exposure. Therefore, section 302 notifications are useful in helping SERCs and LEPCs identify those areas and facilities that represent a potential for experiencing a significant hazardous material incident.

119. After the notification, what else is required from Federal facilities subject to the EPCRA section 302 requirement?

No later than August 3, 1994, Federal facilities subject to the notification requirement of Executive Order 3-305(a) (EPCRA section 302) must designate a facility coordinator to work with the LEPC to develop the LEPC's local emergency response plan. The facility coordinator is to provide any and all information necessary for the development and implementation of the LEPC's plan.

B. EPCRA Section 304 (Emergency Release Notification)

Applicability

120. What constitutes a release that is subject to reporting under section 304 of EPCRA?

Section 304 of EPCRA requires reporting a release of a chemical to the environment when the following conditions have been met: (1) the chemical is an extremely hazardous substance (EHS) or CERCLA hazardous substance, (2) the quantity of the EHS or CERCLA hazardous substance released to the environment within a 24-hour period meets or exceeds the specific reportable quantity limit.

121. What are the requirements of section 304 of EPCRA?

Under EPCRA section 304, if a Federal facility produces, uses or stores a hazardous chemical (as defined in 40 CFR 370.2), and the facility has a release of an EHS or a hazardous chemical (as defined in 40 CFR 9601(14)) at or above the reportable quantity, the facility is required to immediately notify the SERCs and LEPCs in areas likely to be affected by the release. This requirement builds upon a similar requirement to notify the National Response Center under CERCLA section 103. A written follow-up notice is also required to be submitted to the SERCs and LEPCs as soon as practicable after the release.

122. What are the exemptions to EPCRA section 304 reporting requirements?

There are several exemptions from the reporting requirements of EPCRA section 304. They include:

(1) "Federally permitted releases" as defined under CERCLA section 101(10); 4 USC 9601 (10);

(2) Releases which result in exposure to persons solely within the boundaries of the facility (EPCRA section 304(a)(4); 42 USC section 11004(a)(4));

(3) "Continuous releases" stable in quantity and rate, provided other restrictions established as defined under CERCLA section 103(f) are met - reporting would be required for initial release and statistically significant increases;

(4) Application of a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the handling or storage of such pesticide by an agricultural producer (See CERCLA section 103(e); 42 USC 9603(e));

(5) Emissions from engine exhaust of a motor vehicle, rolling stock, aircraft, or pipeline pumping station engine (CERCLA section 101(22)(B); 42 USC 9601(22)(B));

(6) Normal applications of fertilizer (CERCLA section 101(22)(D));

(7) Release of source, byproduct, or special nuclear material from a nuclear incident at a facility subject to financial protection requirements established by the Nuclear Regulatory Commission (i.e. nuclear power plants) (CERCLA section 101(22)(C); 42 USC 9601(22)(C));

(8) Releases which result in exposure to persons solely within a workplace with respect to a claim which such persons may assert against their employers (CERCLA 101(22)(A); 42 USC 9601(22)(A)); and

(9) With respect to transportation or storage incident to transportation, notice is satisfied by dialing 911, or calling the operator in the absence of an emergency telephone number (EPCRA 304(b)(1); 42 USC 11004(b)(1)).

Thresholds

123. When is an off-site release subject to EPCRA section 304 notification requirements?

A release need not result in actual exposure to persons off-site in order to be subject to release reporting requirements under section 304 of EPCRA; potential exposure is sufficient. Any release of an EHS or hazardous chemical into the environment at or above the reportable quantity may have the **potential** to result in exposure to persons off-site and therefore **should** be reported under EPCRA section 304 notification.

124. Some Federal permit programs do not include quantitative limits on the amounts of specific EHSs or CERCLA hazardous substances that can be released (i.e., no "permitted level" exists). In such a case, how should a Federal facility determine whether EPCRA notification is required?

Releases of EHSs or CERCLA hazardous substances that are subject to Federal permits are exempt from reporting requirements because they are considered a Federally permitted release. However, according to 40 CFR 302.6, if such a release exceeds the permitted limit with regard to the quantity of an EHS or CERCLA hazardous substance, it is considered a reportable release subject to notification under EPCRA section 304 when the release of the hazardous substance exceeds its reportable quantity. If there is no quantitative limit on the amount of specific hazardous substances that can be released (i.e., no explicit "permitted level" exists), EPCRA notification will be required when the characteristics of the release are not in compliance with the permit (e.g., the allowable concentration of a particular constituent has been exceeded, the release is a result of an upset or failure of a treatment system or pollution control equipment) and an RQ or more of a hazardous substance has been released.

125. What information is required as part of the initial notice under EPCRA section 304?

The notice required under this section shall include the following to the extent known at the time of the notice and so long as no delay in notice or emergency response results:

(1) The chemical name or identity of any substance involved in the release.

(2) An indication of whether the substance is an extremely hazardous substance.

(3) An estimate of the quantity of any such substance that was released into the environment.

(4) The time an duration of the release.

(5) The medium or media into which the release occurred

(6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(7) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available tot he community emergency coordinator pursuant to the emergency plan).

(8) The names and telephone numbers of the person or persons to be contacted for further information.

126. What information needs to be provided as part of the written follow-up notice of section 304?

As soon as practicable after a reportable release, the owner or operator shall provide a written follow-up notice (or notices as more information becomes available) setting forth and updating information provided in the initial notification. In addition, the notice shall include:

(1) Actions taken to respond to and contain the release,

(2) Any known or anticipated acute or chronic health risks associated with the release, and,

(3) Where appropriate, advice regarding medical attention necessary for exposed individuals.

127. How does section 4-403 of the Executive Order apply to EPCRA section 303?

Section 303 of EPCRA requires the Local Emergency Planning Committee to develop a comprehensive emergency response plan for their community. Section 4-403 of the Executive Order states that "...to the extent practicable, all Federal Agencies subject to this order shall provide technical assistance, if requested, to LEPC's in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities." The language in the Executive Order is to encourage Federal facilities subject to the Executive Order to make any technical expertise it may have available to the LEPC. For example, if persons at a facility have an expertise on conducting hazardous materials response drills, the facility may want to have these individuals volunteer to assist the LEPC.

C. EPCRA Sections 311-312 (Hazardous Chemical Inventory Reporting)

Applicability

128. What are the reporting requirements under EPCRA sections 311 and 312?

Under EPCRA section 311, if a Federal facility has on-site at any one time one or more hazardous chemicals in excess of 10,000 pounds or the facility has an extremely hazardous substance (EHS) in excess of 500 lbs or the threshold planning quantity (TPQ), whichever is less, then the facility is required to submit the MSDS for that chemical(s) (or a list of subject chemicals grouped by hazard type) to the LEPC, SERC and the local fire department by August 3, 1994.

Under EPCRA section 312, if a Federal facility has on-site at any one time an extremely hazardous substance in excess of 500 pounds or the TPQ, whichever is less, or a hazardous chemical in excess of 10,000 pounds, during a given reporting year, the facility is to submit an Emergency and Hazardous Chemical Inventory report (Tier 1) including those subject chemicals to the SERC, LEPC and the local fire department by March 1 of the following year (and annually thereafter). Most states require the Tier II report. In addition, facilities are required to include other chemicals if they are requested by the SERC or LEPC. For more information on state/local reporting requirements, facilities should contact the EPCRA hot-line.

Thresholds

129. What are the thresholds for reporting under EPCRA sections 311 and 312?

The requirements for EPCRA sections 311 and 312 apply to any facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical as defined by the Occupational Safety and Health Administration (OSHA). The chemicals that need to be reported are those hazardous chemicals which require an MSDS that a facility has present at any one time in the amount equal to or greater than 10,000 pounds. For extremely hazardous substances (EHS) which require an MSDS present at the facility, the threshold is the TPQ or 500 pounds, whichever is lower. A Federal facility is required to report under EPCRA section 311 and 312 if they have **any amount** (i.e., greater than zero) of a hazardous chemical or extremely hazardous substance when requested by an LEPC or SERC.

Chemical Lists

130. How is the term "hazardous chemical" defined for the purposes of EPCRA requirements?

40 CFR 370.2 defines a "hazardous chemical" to mean any hazardous chemical as defined under 29 CFR 1910.1200(c), except that such term does not include the following substances:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Exemptions

131. Does the Occupational Safety and Health Administration have any exemptions to its Hazard Communication Standard?

Section 1910.1200(b) of the OSHA regulations currently provides the following exemptions:

(1) Any hazardous waste as such term is defined by the Solid Waste Disposal Act as amended when subject to regulations issued under that Act;

(2) Tobacco or Tobacco products;

(3) Wood and wood products;

(4) Articles-as defined under section 1910.1200(b) as a manufactured item which is formed to a specific shape or design during manufacture; which has end use functions dependent in whole or in part upon the shape or design during end use; and, which does not release, or otherwise result in exposure to a hazardous chemical under normal conditions of use.

(5) Food, drugs, cosmetics or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

(6) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace.

(7) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers,

(8) Any drug, as that term is defined in the Federal, Food, Drug, and Cosmetic Act, when it is in solid, final form for direct administration to the patient.

If a facility has a hazardous chemical that meets one or more of these exemptions, it is not required to have a Material Safety Data Sheet (MSDS). If a facility is not required to prepare

or have available an MSDS for a hazardous chemical, that hazardous chemical is not subject to sections 311 and 312 of EPCRA.

132. EPCRA sections 311 and 312 include an "agricultural" exemption that exempts facilities from reporting on the use of fertilizers in the production of food crops. Does this exemption apply only to food crops intended for human consumption?

Section 311(e)(5) excludes retailers of fertilizers as well as substances when used in routine agricultural operations. This exemption is intended to eliminate reporting on fertilizers, pesticides, and other chemical substances when applied, administered, or otherwise used as part of routine agricultural operations. This exemption is applicable to routine agricultural operations involving all food crops, not just those intended for human consumption.

For additional questions and answers regarding EPCRA sections 302-312, refer to the guidance document *Emergency Planning and Community Right-to-Know Act of 1986; Questions and Answers*, June 1, 1989 (revised periodically).

Appendix A

DEFINING "FEDERAL AGENCY" FOR PURPOSES OF THE EXECUTIVE ORDER

5 U.S.C. §102 Military departments

The military departments are:

The Department of the Army.

The Department of the Navy.

The Department of the Air Force.

5 U.S.C. §103 Government corporation

For the purpose of this title –

(1) "Government corporation" means a corporation owned or controlled by the Government of the United States; and

(2) "Government controlled corporation" does not include a corporation owned by the Government of the United States.

5 U.S.C. §104 Independent establishment

For the purpose of this title, "independent establishment" means –

(1) an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and

(2) the General Accounting Office.

5 U.S.C. §105 Executive agency

For the purpose of this title, "Executive agency" means an Executive department, a Government corporation, and an independent establishment.

Appendix B

FEDERAL FACILITY COMPLIANCE WITH EXECUTIVE ORDER 12856 TIMELINE

December 3, 1993	**Agencies provide planning list to EPA of facilities covered by the Executive Order**
January 1994	**Facilities submit Emergency Notification of Releases of an Extremely Hazardous Substance under Section 304 of EPCRA**
March 3,1994	**Facilities submit Emergency Planning Notification to Local Emergency Planning Committee (LEPC) under Section 302 of EPCRA**
August 3, 1994	**Agencies submit pollution prevention strategies to EPA**
August 3, 1994	**Facilities submit information for the preparation of Comprehensive Emergency Response Plans under Section 303 of EPCRA**
August 3, 1994	**Facilities submit Material Safety Data Sheets under Section 311 of EPCRA**
March 1, 1995	**Facilities submit Emergency and Hazardous Chemical Inventory Form under Section 312 of EPCRA**
July 1, 1995	**Facilities submit TRI reports under Section 313 of EPCRA**
August 3, 1995	**DoD and GSA identify opportunities to revise specifications and standards**
October 1, 1995	**Agencies submit first annual progress report**
December 31, 1995	**Facilities prepare Pollution Prevention Plans**
1999	**DoD and GSA revise specifications and standards**
1999	**Agencies reduce total toxic chemicals or toxic pollutants by 50%**

Appendix C

APPLICABLE CFR CITATIONS

40 CFR 300 National Oil and Hazardous Substances Pollution Contingency Plan.

40 CFR 302 CERCLA Reporting Requirements and Applicable Reportable Quantities.

40 CFR 350 Sections 322 - 323 Reporting Requirements and Disclosure Provisions.

40 CFR 355 Sections 301 - 304 Reporting Requirements and List of Extremely Hazardous Substances with Threshold Planning Quantities.

40 CFR 370 Sections 311 - 312 Reporting Requirements.

40 CFR 372 Section 313 Reporting Requirements.

Appendix D

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Appendix E: EPA REGIONAL CONTACTS

Region	CEPP Coordinators	TRI Coordinators	33/50 Coordinators
1	**Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont**		
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