

EPCRA Section 313 Questions and Answers Addendum for Federal Facilities

Revised 1999 Version

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**Section 313 of the
Emergency Planning and
Community Right-to-Know Act**

Toxic Chemical Release Inventory

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INTRODUCTION

A. *Purpose of Document*

The Environmental Protection Agency (EPA) has prepared this revised 1999 EPCRA section 313 Questions and Answers Addendum for Federal Facilities to help clarify the reporting requirements for federal facilities under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA, or Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499). This addendum should be used with the EPCRA Section 313 Questions and Answers Revised 1998 Version, which addresses reporting requirements for all facilities. The EPCRA section 313 program is also referred to as the Toxics Release Inventory or TRI. Use this document as guidance beginning with the 1999 reporting year for reports due July 1, 2000. This manual should be used in conjunction with the statute and regulations but does not supersede them. The guidance provided in this document addresses the very specific circumstances stated in each question. Accordingly, the reader should consult other applicable documents, including: the EPCRA Section 313 Questions and Answers Revised 1998 Version, the EPCRA statute, the Code of Federal Regulations (CFR), relevant preamble language, and the current Toxic Chemical Release Inventory Reporting Forms and Instructions.

Under section 313, facilities are required to report releases and other waste management of specifically listed chemicals. They also are required to report transfers of EPCRA section 313 chemicals for waste management to off-site locations.

Reports under section 313 (EPA Form R or Form A) must be submitted annually to EPA and to designated state (or tribal) agencies. Reports are due by July 1 of each year and cover activities at the facility during the previous calendar year.

The Agency developed this document to facilitate facility reporting and to provide additional explanation of the reporting requirements. This document supplements the instructions for completing the Form R and the Alternate Threshold Certification Statement (Form A).

Copies of EPA's Form R, instructions for completing the Form, and related guidance documents are available from the National Center for Environmental Publications and Information (NCEPI), P.O. Box 42419, Cincinnati, Ohio 45242-2419. Additional information may be obtained by accessing EPA's TRI Homepage on the Internet at <http://www.epa.gov/opptintr/tri> or calling the EPCRA Hotline at (800) 424-9346. In the Washington, D.C. area call (703) 412-9810.

The questions and answers in this document are organized in sections as listed in the table of contents on the following pages. There is also an expanded keyword index at the end of this document. The terms in the index are also found in the sidebar of the document near relevant questions.

B. 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 11 reports.

Under EPCRA section 313, facilities must report to EPA and the appropriate state agency their releases and off-site transfers of listed chemicals if the facility exceeds specified thresholds for "manufacturing, processing or otherwise use" of the chemical. 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.

C. *Executive Order 13148 Background*

Executive Order (EO) 13148 requires federal agencies to comply with the provisions of the Emergency Planning and Community Right-to-Know Act (EPCRA) and the PPA of 1990. EO 13148 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 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 agency goals to reduce total releases (on-site and off-site) and transfers off-site for treatment of EPCRA section 313 chemicals by 40% by December 31, 2006 using the 2001 reporting year as a baseline.
- Development of use reduction goals for toxic chemicals, hazardous substances and other pollutants using a list of 15 priority chemicals identified by a workgroup including EPA and other federal agencies; committing to goals of 50% or greater by the 2006 reporting year using the 2001 reporting year as a baseline;
- Federal facilities to be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations.

EO 13148 requires federal agencies to comply with EPCRA. EO 13148 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

13148; 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.

**Section 1. DETERMINING WHETHER OR NOT TO REPORT:
FACILITY****A. Implementation of Executive Order 13148***EO 13148***1. When was Executive Order 13148 signed, and when was it published in the Federal Register?**

Executive Order 13148, "Greening the Government Through Leadership in Environmental Management," was signed by President Clinton on April 21, 2000. The Order was published in the Federal Register on April 26, 2000 (65 FR 24595). This Executive Order supersedes EO 12856, originally signed August 3, 1993.

*EO 13148,
EPCRA Hotline***2. What phone number can people call to receive information on EO 13148?**

To receive information on EO 13148, federal facilities can call the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-424-9346.

*EO 13148
Compliance Re-
quirements***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 13148 does not require federal facilities to comply with *state* and local right-to-know requirements that are more stringent than EPCRA requirements. However, federal facilities are encouraged to be "leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations." In addition, EO 13148 does not remove any reporting obligation for private sector facilities or federal facilities if the *state* right-to-know laws require compliance by those facilities.

*EO 13148
Compliance
Requirements***4. Can EPA fine a federal facility if the facility does not comply with EO 13148?**

No. EO 13148 does not give EPA the authority to fine federal facilities. However, section 406 authorizes EPA to conduct reviews and inspections of federal facilities as necessary to monitor compliance with TRI, pollution prevention, and community right-to-know reporting requirements as set out in Part 5. Section 406(c) requires EPA to report annually to the President on federal agency compliance with sections 501 and 504 of the Executive Order.

*Background***5. When did federal facilities begin reporting under EPCRA section 313?**

Federal facilities were required to report under EPCRA section 313 no later than the 1994 reporting year. Some federal facilities, however, began reporting voluntarily before the 1994 reporting year.

*Reporting Thresholds***6. What are the minimum criteria for a *facility* to meet that could result in the agency's having to comply with EO 13148 for that *facility*?**

A federal facility must comply with EPCRA section 313 if the total number of work hours at the *facility* meets or exceeds 20,000 in a year (roughly equal to 10 or more full time employees), and the facility meets or exceeds “*manufacture,*” “*process,*” or “*otherwise use*” thresholds for an EPCRA section 313 chemical. Federal facilities must include the activities of GOCO facilities located at the federal facility when making their threshold and other *waste management* determinations.

*B. Definition of Federal Agency**Federal Agency***7. Executive Order 13148 requires federal agencies to comply with EPCRA section 313 and section 6607 of PPA. What is a “federal agency?”**

“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 and an independent *establishment.*” Examples of federal agencies are the Department of Defense (DOD), the Department of Interior (DOI), the Tennessee Valley Authority (TVA), and the National Aeronautics and Space Administration (NASA).

*Federal Agency***8. How should a federal facility determine if it is a “federal agency,” and, therefore, subject to comply with EO 13148?**

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 Title 5 U.S.C., then the *facility* should consult its general counsel.

*C. Definition of Federal Facility**Facility***9. What is a federal “facility” for EPCRA purposes?**

EPCRA section 329(a) defines “*facility*” 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

*Facility,
Tribal Issues*

same person (or by any person which controls, is controlled by, or under common control with, such person.)”

10. If the Bureau of Indian Affairs operates a *facility* on a reservation, is the *facility* subject to EPCRA requirements as a result of Executive Order 13148?

Yes. The Bureau of Indian Affairs is part of the Department of Interior (DOI), which is a federal agency. If the *facility* meets the activity threshold requirements under EPCRA section 313, then the *facility* must report. The *facility* should submit reports both to EPA and to the *state*, unless the American Indian tribe has chosen to act independently of the *state* for the purpose of section 313 reporting. If this is the case, the *facility* should submit reports to the *tribal emergency response commission (TERC)*, or until the *TERC* is established, the Chief Executive Officer of the Indian tribe, as well as to EPA.

Facility

11. What states or territories are covered by Executive Order 13148?

Section 902(b) states that “[t]his order applies to Federal facilities in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.” In addition, the Executive Order encourages federal facilities outside these areas to “be leaders and responsible members in their communities” (section 203) by making “best efforts to comply with the goals of this order at those facilities.” (Section 902(b)).

*Contractors,
Threshold
Determination*

12. Should a *facility's* contracted and/or subcontracted work off-site at a non-federally owned or operated *facility* be included in its threshold determinations and *release* and other *waste management* calculations?

No. Work conducted for a federal agency at a non-federally owned or operated *facility* is not subject to threshold determinations and *release* and other *waste management* calculations. Federal agencies are only responsible for reporting on activities conducted by or for the federal agency at federally owned or operated sites.

*Landlord/Real
Estate Interest*

13. Are office buildings owned by the General Services Administration (GSA) or any other federal agency considered “*facilities*” under Executive Order 13148?

Yes. The General Services Administration is a federal agency as defined in EO 13148. Because any building would be considered a “*facility*” or part of a “*facility*” under EPCRA section 329(4), any *EPCRA section 313 chemicals* used in an office building owned or operated by GSA (or any other agency) could be subject to threshold determinations and *release* and other *waste management* calculations under EPCRA section 313.

Landlord/Real Estate Interest

14. 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 *EPCRA section 313 chemicals* used at the *facility*. In this example, the agency is the operator and responsible for making threshold determinations and *release* and other *waste management* calculations assuming that GSA had a “landlord or real estate interest only” in the *facility*.

Landlord/Real Estate Interest, Royalty Fees

15. A sodium salt mining facility is located on part of a Bureau of Land Management (BLM) facility. The mining facility pays BLM a leasing fee plus a royalty fee based on the amount of sodium it extracts. In addition, the mining facility provided BLM with a bonus bid for the right to locate at the BLM facility. BLM accepted the bonus bid after assessing the fair market value of the sodium salt deposits and the value of the BLM land. Does the BLM facility have more than a “real estate interest” in the sodium salt mining facility?

Yes. The collection of both royalties and bonus bids, with the requirement that BLM conduct assessments of the fair market value of the sodium salt deposits, shows that BLM has more than a real estate interest in the location of the sodium salt mining *facility* at the BLM *facility*. In addition, LM is required by federal laws to make leasing arrangements with the sodium salt mining *facility* based on the presence, or potential presence, of sodium salt deposits at the BLM *facility*.

Landlord/Real Estate Interest

16. The Resolution Trust Corporation (RTC) takes possession of an EPCRA section 313 covered facility that defaults on a loan. Is RTC subject to the reporting requirements under EPCRA section 313?

If RTC has only a “landlord or real-estate interest” in the *facility's* operation, then it is not subject to EPCRA section 313 reporting requirements (40 CFR 372.38(e)). If, however, RTC takes over the *facility's* operations, then it is subject to EPCRA section 313 reporting requirements.

Multi-Jurisdiction Reporting

17. 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.

Vessels, Facility

18. When is a vessel part of a federal facility under EO 13148?

A vessel is part of a federal *facility* when it is located within the boundaries of that facility. This would include vessels in dry dock at a federal facility.

A federal facility is **not** responsible for including *EPCRA section 313 chemicals* associated with a vessel in threshold determinations and release and other *waste management* calculations if the vessel is located in a public waterway. The use of any toxic chemicals for the maintenance of this vessel, if it is motorized, may be exempted under the motor vehicle exemption.

*Facility,
Establishment,
SIC Code*

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

Each *establishment* (“distinct and separate economic activities [e.g., separate SIC codes][that] are performed at a single location”) at a federal facility has the option of filing separately under EPCRA section 313, as long as all the *releases* and other *waste management* activities at the entire *facility* are accounted for. In addition, the threshold determinations must be made for the entire *facility*, not for each *establishment*. If a *facility* is filing separate Form Rs 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,
Establishment*

20. 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 *EPCRA section 313 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. The *establishment* would make its *release* and other *waste management* calculations and report the information on the separate Form R. If a mana-

ger 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. While the *establishment* can make separate *release* and other *waste management* calculations from the rest of the *facility*, the threshold determinations must be based on the entire *facility*.

*Facility,
Multiple
Establishments*

21. 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 13148, 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 *EPCRA section 313 chemicals* would be aggregated across the *facility* for making threshold determinations. DOD is ultimately responsible for ensuring that all non-exempt *releases* and other *waste management* activities of the reportable *EPCRA section 313 chemical* are accounted for in the individual Form R reports.

D. Multi-Agency Federal Facilities

*Multiple
Establishments,
Facility, Federal
Agency*

22. Who is responsible for EPCRA section 313 reporting when multiple federal agencies conduct reportable activities (“*manufacture*,” “*process*,” or “*otherwise use*” *EPCRA section 313 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*” *EPCRA section 313 chemicals* in excess of threshold amounts at buildings at a single location, 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 engaged in separate activities at one location. Each of these agencies would be considered an operator of a separate *facility*, and separately would make threshold determinations and *release* and other *waste management* calculations if appropriate.

*Primary Tenant,
Multiple
Establishments*

23. 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 section 313 reporting requirements for the site?

The primary tenant of the site is responsible for reporting under EPCRA section 313 if the other agencies' activities on that site are in support of the 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 section 313 reports.

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

*GOCOs,
Contractors,
EO 13148
Requirements*

24. A federal facility is fully operated by a contractor. This GOCO facility conducts activities that do not fall within the SIC codes covered under EPCRA section 313. Does Executive Order 13148 require this GOCO facility to comply with EPCRA section 313 just because federal facilities must comply without regard to SIC code?

EO 13148 does not extend compliance under EPCRA or PPA to GOCOs if they are not otherwise covered. The contractor that operates this GOCO, therefore, is not required to comply with EPCRA if it does not meet the SIC code or other threshold requirements under EPCRA section 313. However, EO 13148 requires the federal facility, when making its threshold determinations and *release* and other *waste management* calculations, to include the activities of the GOCO. The GOCO would provide the federal facility with the information necessary for the federal facility to meet its reporting obligations under EPCRA section 313.

*GOCOs,
Contractors,
EO 13148
Requirements*

25. A federal facility is operated by the government but also includes GOCO facilities within its boundaries. Does Executive Order 13148 require a federal facility to consider the activities of GOCOs that are located at the federal facility?

Yes. To meet its reporting requirements under EPCRA section 313, a federal facility must include the activities at these GOCOs when making its threshold determinations and *release and other waste management* calculations.

*GOCOs,
Contractors,
Reporting
Thresholds*

26. A contractor, which is subject to reporting under EPCRA section 313, is located at a federal facility. The GOCO manufactures 100,000 pounds of an EPCRA section 313 chemical and releases to the air 5,000 pounds. Of the 100,000 pounds the contractor manufactures, 80,000 pounds are for activities that support the operations of the federal facility while 20,000 pounds are for private business purposes. Of the 5,000 pounds the contractor releases to air, 4,000 pounds result from the activities that support the government operations while 1,000 pounds result from the private business activities. When reporting under EPCRA section 313, does the federal agency consider only the

activities at the GOCO facility that support the government operations or all the activities at the GOCO facility?

The federal agency should consider all the activities at the GOCO *facility*. The contractor is located at the federal *facility* to support the activities of the federal agency. While some of the contractor's activities may be independent of its operations to support the government, the location of the GOCO *facility* at the federal *facility* requires the federal agency to consider the GOCO *facility's* activities when making its threshold determinations under EPCRA section 313.

*GOCOs,
Contractor,
SIC Code*

27. 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 13148 makes EPCRA section 313 applicable to federal facilities without regard to SIC code. EO 13148 also requires each federal agency, when its *facilities* are meeting their EPCRA section 313 reporting responsibilities, to include the activities at the GOCO facilities when making threshold determinations and *release and other waste management* calculations.

*GOCOs,
Contractor,
Landlord/Real
Estate Interest,
Reporting
Thresholds*

28. 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 EPCRA section 313 chemicals when performing threshold determinations under EPCRA section 313?

The determination of which agency is responsible for meeting EPCRA section 313 reporting 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 *facility* owned or operated by DOE. If the contractor's operations are in a *covered SIC code*, and the contractor has 10 or more *full-time employees*, the contractor will need to perform threshold determinations and *release and other waste management* calculations if applicable.

	<p><i>F. Form R Requirements</i></p>
<i>Tribal Issues</i>	<p>29. To what entities does a federal agency's <i>facility</i> operating on tribal lands report under EPCRA section 313?</p> <p>A federal agency operating a <i>facility</i> 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 <i>state</i>, then the <i>facility</i> must submit the report to the receiving entity designated in the cooperative agreement.</p>
<i>Threshold Determination, Leadership Role, EO 13148 Requirements</i>	<p>30. What federal <i>facilities</i> are subject to EPCRA section 313 reporting under EO 13148?</p> <p>According to Executive Order 13148, EPCRA section 313 applies to each federal facility, both government-owned, government-operated and government-owned, contractor-operated, in which the total number of work hours meets or exceeds 20,000 in a year (roughly 10 or more full time employees) and meets or exceeds the “<i>manufacture</i>,” “<i>process</i>,” or “<i>otherwise use</i>” thresholds for any <i>EPCRA section 313 chemical</i>. However, federal facilities that do not meet these minimum requirements also are encouraged to submit EPCRA section 313 reports. As EO 13148 states in its preamble, “the federal government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals...at federal facilities.”</p>
<i>Threshold Determination</i>	<p>31. Is a federal facility meeting the employee hours and “<i>manufacture</i>,” “<i>process</i>,” or “<i>otherwise use</i>” thresholds required to report if it had no releases of <i>EPCRA section 313 chemicals</i> during the calendar year?</p> <p>Yes. For federal facilities, the reporting requirements under section 313 are based only on the number of employees and the quantity of an <i>EPCRA section 313 chemical</i> that was <i>manufactured</i>, <i>processed</i>, or <i>otherwise used</i> during the calendar year. The amount of chemical <i>released</i> or managed as a waste does not affect the reporting requirements (except in the case of exemptions for <i>articles</i>). The <i>facility</i> would report “zeros” or “NA” (not applicable) in the appropriate fields of Part II, Sections 5 and 6 of the Form R.</p>
<i>SIC Codes, Primary SIC Code, Primary Activity</i>	<p>32. 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?</p> <p>Federal facilities should use SIC codes that most accurately characterize the activities being performed at the <i>facility</i>. The Form R allows six different SIC codes to be reported in Part I, section 4.5. For example, a Forest Service <i>facility</i> (Department of Agriculture) includes forests and an airport</p>

to service aircraft used for fighting fires. This *facility* can enter SIC code 0851 (forestry services) and 4581 (airports, flying fields, and airport terminal services) into Part I, section 4.5 of the Form R because these SIC codes best describe the activities being performed at the *facility*. The federal *facility*, however, should indicate the primary SIC code (which SIC codes most accurately addresses the primary activity at the federal *facility*) by entering this SIC code in the first data field (Part I, section 4.5a). In this example, the Forest Service *facility* may determine that its primary function is forestry services, thus entering 0851 in Part I, section 4.5a. The *facility* would enter SIC code 4581 in Part I, section 4.5b indicating that this activity (airports, flying, and airport terminal services) also takes place at the *facility*.”

G. *Employee Threshold*

*Employee
Threshold*

33. 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 hours per year. In other words, if the total number of hours worked by all employees (i.e., federal and contractor) is 20,000 hours or more, the federal *facility* meets the “*full-time employee*” threshold.

*GOCOs,
Contractors,
Employee
Threshold,
Contractor
Employees*

34. A federal facility has a GOCO facility on-site. There are two federal employees and eight GOCO facility employees (the total hours exceed 20,000 hours). Has the facility met the full-time employee threshold for purposes of reporting under EPCRA section 313?

Yes. The *facility* must count the hours worked by the federal employees and the GOCO facility employees toward the 20,000 hour threshold. The employees of the GOCO facility are contract employees who are working in support of the operations of the federal *facility*. All contractor employee hours, with the exception of minor on-site intermittent service vendors such as vending machine servicers, must be considered when a *facility* is making its *full-time employee* determinations.

*GOCOs,
Contractors,
Off-site
Employees*

35. A federal agency's facility is operated by a contractor. There are 9 employees working at this GOCO facility. The federal agency has employees who oversee the activities of the facility, but who are not physically located at the facility. When making the full-time employee determinations, must the facility consider the hours worked by these off-site federal employees?

Yes. The hours worked by federal employees directly in support of the activities of a *facility* must be counted towards the 20,000 hour employee threshold, regardless of the location of the federal employees (i.e., at the federal *facility* or off-site).

*H. Activity Threshold Determinations**Threshold Determinations*

36. The Postal Service is prohibited from opening any of the mail that it handles. Will EPA assume that the Postal Service should have known that an *EPCRA section 313 chemical* was present at the facility? Is the Postal Service required to include in its threshold determination those quantities of an *EPCRA section 313 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 *EPCRA section 313 chemicals* that are present in the mail being handled at its facilities. The Postal Service's activities in handling any packages containing *EPCRA section 313 chemicals* are not “*manufacture*,” “*process*,” or “*otherwise use*.”

Threshold Determinations, Multiple Activities

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

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

Threshold Determinations, Import, Manufacture

38. If a federal facility manufactures 19,000 pounds of an *EPCRA section 313 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 ($[19,000 \text{ manufacturing}] + [7,000 \text{ importing}] = 26,000$) for this *EPCRA section 313 chemical*. Note that *importing* is the equivalent of *manufacturing*, and therefore the two “*manufactured*” quantities must be added for threshold determinations.

Imports, Foreign Facilities

39. A DOD facility in the U.S. obtains an *EPCRA section 313 chemical* from a DOD facility located overseas (i.e., outside of the customs territory of the U.S.). Has the U.S.-based DOD facility “*imported*” the *EPCRA section 313 chemical*?

Yes. Although the *EPCRA section 313 chemicals* was transferred between facilities of the same federal agency, the U.S.-based DOD facility “*imported*” the chemicals for purposes of *EPCRA section 313*.

Mixtures, Threshold Determinations, Multiple Years

40. In 1993, a federal facility buys 10,000 pounds of a listed chemical and uses this amount to create a mixture (for example a metal cleaning bath). The mixture is used both in 1993 and 1994. How does the facility make threshold determinations for each year?

Since the *facility* is applying the 10,000 pounds of the *EPCRA section 313 chemical* to the *mixture* for a process-related activity in 1993, the *facility* would count this amount toward its *otherwise use* threshold for the 1993 reporting year. For the 1994 reporting year, only amounts of the *EPCRA section 313 chemical* added to the bath during that year would be counted toward the section 313 “*otherwise use*” threshold determination.

*Warehouses,
Processing,
Threshold
Determinations*

41. Are on-site warehouses subject to the threshold determinations of section 313?

Warehouse operations can require threshold determinations. Reporting thresholds are based on “*manufacture,*” “*process,*” or “*otherwise use*” of an *EPCRA section 313 chemical* at the *facility*. Repackaging (e.g., pouring the contents of a 55 gallon drum into smaller containers) for distribution into commerce (e.g., shipped off-site to another federal facility within the same agency) at a warehouse is considered *processing* and the repackaged quantities of the *EPCRA section 313 chemicals* must be counted in the *facility's* “*process*” threshold determinations. Simply receiving, storing, relabeling, distributing, or reshipping pre-packaged quantities from a shipment of packages is not “*manufacture,*” “*process,*” or “*otherwise use.*”

*Remediation
Activities,
Threshold
Determinations,
Leadership Role*

42. A federal agency is remediating an *EPCRA section 313 chemical* that was *released* a number of years earlier. Must the federal facility include the *EPCRA section 313 chemical* being remediated in threshold determinations, release calculations, and reporting?

For threshold determinations, the *facility* is not required under EPCRA section 313 to consider remediation activities of an *EPCRA section 313 chemical releases* in previous years. However, the *facility* must consider any *releases* and other *waste management* of the remediated *EPCRA section 313 chemical* if the *facility* triggered a reporting threshold for the chemical elsewhere at the *facility*. In addition, the *facility* should consider the objective of EO 13148, which calls on the federal *facilities* to be leaders in the provision of information to the public about the *releases* and other *waste management* of *EPCRA section 313 chemicals*. To meet the spirit of this goal, federal *facilities* are encouraged to consider remediation activities when making their threshold calculations.

*Remediation
Activities,
Threshold
Determinations*

43. A federal facility uses an *EPCRA section 313 chemical* for de-icing runways. Some of this chemical is obtained through the remediation of soil and groundwater contaminated in previous years. When making its threshold determinations for this chemical, should the *facility* account for the amount of the recovered chemical that is used for de-icing?

Yes. De-icing runways would be considered an “*otherwise use*” activity. The *facility*, therefore, should count the amount of *EPCRA section 313 chemical* used in the de-icing toward its *otherwise use* threshold. This would include any amount of the *EPCRA section 313 chemical* recovered

from the remediation of soil and groundwater from previous years, as well as amounts obtained from purchases.

Any amount of the remediated toxic chemical that the *facility* does not use for a reportable activity (e.g., deicing runways) would not have to be counted towards the *otherwise use* threshold. However, all *releases* or other waste management of that remediated toxic chemical would be subject to reporting under EPCRA section 313 if the facility met a reporting threshold for that chemical elsewhere at the facility.

*Metals,
Threshold
Determinations,
Otherwise Use,
Processing*

44. A federal facility melts down submarines and sells or further uses the constituent metals. These constituent metals contain EPCRA section 313 chemicals. Should the facility include the EPCRA section 313 chemicals in these metals in its threshold determinations?

Yes. A federal facility that melts down submarines and sells the constituent metals that contain *EPCRA section 313 chemicals* is “*processing*” the chemicals in those metals for further distribution in commerce. If the facility further uses the constituent metals, for example tools were made from the metal for use on-site in production operations, it is “*otherwise using*” the *EPCRA section 313 chemicals*. Therefore, the facility should consider the amount of *EPCRA section 313 chemicals* when making threshold determinations and *release and other waste management* calculations.

*Recycling,
Contractors,
Threshold
Determinations*

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

Yes. A federal facility, when making threshold determinations and *release and other waste management* calculations for section 313 reporting purposes, should include the amount of *EPCRA section 313 chemicals* used in the operations of contractors under its control, even if the federal facility neither owns nor 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 *EPCRA section 313 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 amount of *EPCRA section 313 chemicals* used in the contractor's operations when making threshold determinations and *release and other waste management* calculations.

*Fuels/Bulk
Terminal
Storage,*

46. A DOD facility has a petroleum bulk terminal for storing fuel that contains EPCRA section 313 chemicals. The fuel is periodically transferred from the petroleum bulk terminal to other parts of the facility.

Threshold Determinations, Otherwise Use, Repackaging

Although this transfer is “repackaging,” the facility does not distribute the fuel in commerce. Must the facility consider the amount of EPCRA section 313 chemicals in the fuel towards its processing threshold? What about the otherwise use threshold?

Quantities of *EPCRA section 313 chemicals* that are “repackaged” but not distributed in commerce do not meet the definition of “*processed*.” However, if the fuel is used on-site in a non-exempt activity, the *EPCRA section 313 chemicals* in the fuel must be considered in the facility’s “*otherwise use*” threshold determinations. If the facility exceeds the “*otherwise use*” threshold for any *EPCRA section 313 chemicals* in the fuel, then the facility must report any *releases* or *other waste management* activities for the chemicals, such as any *releases* that occur during the “repackaging” step.

I. Source Reduction and Recycling

Remediation Activities, Release, Contaminated Soil

47. A federal facility conducts remediation activities on soils contaminated in prior years. The soils contain EPCRA section 313 chemicals. Is the facility required to report under EPCRA section 313 for these remediated chemicals?

EPCRA section 313 chemicals undergoing remediation are not included in threshold determinations because remediated chemicals are not *manufactured, processed, or otherwise used*. However, if a *covered facility* exceeds an activity threshold for a listed chemical elsewhere at the facility, any *releases* and *other waste management* activities of the listed *EPCRA section 313 chemicals* undergoing remediation must be included in the facility’s *release* and *other waste management* calculations. In that event, a *release* does not include material already in a landfill but does include any material *releases* to the *environment* (including being placed in a landfill) or transferred off-site due to the remediation activity. While federal facilities are not required to make threshold determinations for remediated *EPCRA section 313 chemicals*, they should consider the spirit of EO 13148 by providing this information to the public.

Remediation Activities, Otherwise Use, Contaminated Soil

48. A federal facility conducts remediation activities on soils contaminated in prior years. The facility is using an EPCRA section 313 chemical as part of the remediation action. Is the facility required to count the amount of EPCRA section 313 chemical used for remediation activities when making threshold determinations?

Yes. The use of *EPCRA section 313 chemicals* to remediate wastes is an *otherwise use* activity. The facility should include the *EPCRA section 313 chemicals* used when making its *otherwise use* threshold determinations and *release* and *other waste management* calculations.

J. *Other Issues*

*External
Funding
Sources,
Threshold
Determinations*

49. Many DOE facilities conduct activities that are fully or co-funded by others, such as universities and other federal agencies. Does DOE include those activities when making threshold determinations, and if appropriate, release and other waste management calculations from those activities?

Yes. The source of funding for DOE activities is irrelevant in determining if a *facility* should report under EPCRA section 313. If DOE or its contractors are conducting activities that involve the use of *EPCRA section 313 chemicals*, then those activities must be included in threshold determinations, regardless of who funds the activities.

*SIC Codes,
Contractors,
Cleaning
Activities,
Otherwise Use*

50. In addition to *manufacturing* activities operated by DOE personnel, a cleaning operation has been established at a DOE facility to clean uniforms. The industrial cleaning operations are operated by a contractor. Is DOE responsible for reporting on the use of *EPCRA section 313 chemicals* for the cleaning activities as well as *manufacturing*?

Yes. Even though the contractor is performing functions under a separate Standard Industrial Classification (SIC) Code, DOE is responsible for reporting on all of the covered activities involving *EPCRA section 313 chemicals* at the *facility*. In this case, the contractor's operations are in support of the DOE *facility's* operations and thus process-related. The *EPCRA section 313 chemicals* used at cleaning operation would be applied toward the DOE *facility's otherwise use* threshold. The contractor, however, would not be subject to EPCRA section 313 because these operations (SIC code 7218) are not in a *covered SIC code*.

*Construction
Activities,
Threshold
Determinations,
Cleaning
Solvents*

51. A waste treatment unit presently is under construction at a DOE facility where no other activities have been conducted during the reporting year. *EPCRA section 313 chemicals* are present in the construction materials used to fabricate the structure (e.g., steel) and used to aid in the construction (e.g., cleaning solvents). Is the use of *EPCRA section 313 chemicals* during construction activities exempt from reporting under EPCRA section 313?

Because the SIC code restriction under EPCRA section 313 has been waived under Executive Order 13148, federal facilities are required to consider all activities, including construction, when making threshold determinations under EPCRA section 313. *EPCRA section 313 chemicals* that are contained in materials used to fabricate process-related equipment, for instance, should be considered toward the facility's threshold determinations and release and other waste management calculations. *EPCRA section 313 chemicals* that are contained in materials used to fabricate non process-related structures (e.g., steel, paints, cement) and which are used to construct the site, however, are exempt as structural components and do not

*Otherwise Use,
Hospitals*

need to be included in threshold determinations or *release* and other *waste management* calculations.

52. Are EPCRA section 313 chemicals used (e.g., for x-ray development) at base hospitals covered by EPCRA section 313?

Yes. Maintaining the health of personnel is critical to the operations of a federal facility with a base hospital. The use of these chemicals are process-related and would be counted toward the *facility's otherwise use* threshold.

*Recycling of
Munitions,
Processing,
Storage*

53. A U.S. Army facility receives old ammunition from off site for the purpose of making new ammunition. Is the old ammunition considered “processed” since it is used for manufacturing new ammunition? What if this new ammunition is placed into storage and is not sent to another facility for years?

The use of *EPCRA section 313 chemicals* to *manufacture* ammunition is a reportable activity, regardless of the source of those chemicals. The quantity of *EPCRA section 313 chemical* should be counted toward the Army facility's *processing* threshold. *Process* is defined as “the preparation of a toxic chemical, after its *manufacture*, for distribution in commerce” (40 CFR Section 372.3). EPA interprets the activity of *processing* to be reportable when the *EPCRA section 313 chemicals* are initially prepared. The facility, therefore would count the amount of *EPCRA section 313 chemical* toward the *facility's processing* threshold determinations and *release* and other *waste management* calculations during the year that the ammunition was made.

*Fire Retardants,
Processing,
Distribution in
Commerce*

54. A BLM facility prepares fire retardants to fight fires, including fires on state and private lands. The fire retardant, which contains an EPCRA section 313 chemical, is loaded onto airplanes at an airport located at the BLM facility. The airplanes travel to the state and private lands, where they drop the fire retardant on fires. Does the BLM facility need to consider this chemical toward a reporting threshold?

The BLM facility should count the amount of *EPCRA section 313 chemical* in the fire retardant toward its *processing* threshold. *Processing* means the preparation of an *EPCRA section 313 chemical*, after its *manufacture*, for distribution in commerce (40 CFR Section 372.3). “Distribution in commerce” includes any distributive activity in which benefit is gained by the transferer, even if there is no direct monetary gain. The BLM facility also must consider any *releases* and other *waste management* of the *EPCRA section 313 chemical* prior to the transfer.

Section 2. EXEMPTIONS*A. General**Exemptions,
Leadership Role***55. Can federal facilities claim the exemptions allowed under 40 CFR 372.38?**

While EO 13148 allows federal agency *facilities* to claim the same exemptions, stating in Section 3-304 that “[a]ll other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in section 3-304(a) of this order,” taking these exemptions often is counter to the basic tenet of the Order. This is especially the case when the exempted activities at federal facilities result in substantial *releases* and other *waste management* activities of *EPCRA section 313 chemicals*. A primary goal of EO 13148, is that federal facilities shall be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations.

*B. National Security Exemption**National
Security
Exemption,
EO 13148
Compliance
Requirements***56. May a federal agency that is concerned with national security be exempted from complying with EO 13148?**

No. A federal agency may not have all of its *facilities* exempted from the requirements of EO 13148; 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.

*National
Security
Exemption***57. How long does a national security exemption last?**

A national security exemption may last up to one year.

*National
Security
Exemption,
Tier II Report***58. 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 13148 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 13148 when such an exemption is determined to be in the interest of national security. EO 13148 further states that federal facilities should

*Material Safety
Data Sheets
(MSDSs), Trade
Secret, National
Security
Exemption*

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 *facility* would not have grounds for exemption from the other portions of EPCRA.

59. 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 13148. EO 13148 does not require a federal facility to submit classified or national security information to EPA, to states, or to tribes.

*Chemical
Composition,
Physician
Requests,
National
Security
Exemption*

60. Under the authority of EPCRA section 323, a physician requests the exact 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 13148, section 801. 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.

C. Motor Vehicle Exemption

*Aircraft
Refueling,
Motor Vehicle
Exemption,
Leadership Role*

61. A federal facility uses fuels that contain EPCRA section 313 chemicals to refuel aircraft based at that facility. Would this refueling be exempt from threshold determinations and release and other waste management calculations?

The refueling of the aircraft in this situation would be exempt under the motor vehicle maintenance exemption. If the aircraft is based at another *facility*, however, the refueling would be considered a “*processing*” activity (i.e., repackaging the *toxic chemicals* for distribution into commerce) and would not be exempt. The motor vehicle maintenance exemption can be claimed only for “*otherwise use*” activities. Regardless of where the aircraft is based, EPA encourages federal facilities to consider the scale of the activity and the quantity of *EPCRA section 313 chemicals* used and consider taking the leadership option outlined in the Executive Order by not taking the motor vehicle maintenance exemption.

*Aircraft
De-icing, Motor
Vehicle
Exemption,
Leadership Role*

62. 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 this 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 *EPCRA section 313 chemicals*.

*Motor Vehicle
Exemption,
Leadership Role*

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

The motor vehicle exemption is applicable only to the “*otherwise use*” of an *EPCRA section 313 chemical*. This exemption includes *EPCRA section 313 chemicals* found in gasoline, diesel fuel, brake and transmission fluids, oils and lubricants, antifreeze, batteries, cleaning solutions, and solvents in paint used for touch up, as long as the products are used to maintain the vehicle operated by the *facility*. The motor vehicle exemption does not apply to the *manufacturing* or *processing* of *EPCRA section 313 chemicals*. *EPCRA section 313 chemicals* manufactured during the combustion of gasoline, for instance, is not an exempt activity. EPA encourages federal

Aircraft
Refueling,
Motor Vehicle
Exemption,
Processing

facilities to play a leadership role, as advocated by Executive Order 13148, by not claiming the motor vehicle exemption.

64. An Air Force facility fuels aircraft based on-site as well as aircraft based at other Air Force facilities. Can the *facility* claim the motor vehicle exemption for this activity?

The Air Force facility can claim the motor vehicle exemption for the fueling of aircraft based at that *facility*. This is an “*otherwise use*” activity. For the aircraft based at other Air Force facilities, however, the *facility* cannot claim the motor vehicle exemption. This is a “*processing*” activity, which is not covered by the motor vehicle exemption.

Motor Vehicle
Exemption,
Refueling

65. A federal facility receives motor vehicles for maintenance activities from other *facilities* that are part of the same federal agency. The *facility* disassembles the engines of these motor vehicles, and in the process removes fuels that contain *EPCRA section 313 chemicals*. After repairs, the *facility* reassembles the engines and refuels them with the previously removed fuel, as well as additional fuel. Can the *facility* claim the motor vehicle maintenance exemption for the *EPCRA section 313 chemicals* contained in this fuel?

No. The federal facility has *processed* the *EPCRA section 313 chemicals* in the fuel because these vehicles are not based at the *facility* and are going back to other *facilities*. The motor vehicle maintenance exemption applies only to the *otherwise use* of *EPCRA section 313 chemicals*. The federal facility, therefore, should count the amount of the *EPCRA section 313 chemicals* in fuels towards the *processing* threshold when making threshold determinations and *release* and other *waste management* activities for EPCRA section 313 reporting.

D. Articles Exemption

Batteries,
Articles
Exemption, Lead

66. A federal *facility* provides maintenance for vehicles based at other federal *facilities*. Part of this activity includes maintenance of batteries that contain lead. Is the lead in these batteries exempt from threshold determinations and *release* and other *waste management* calculations under the *articles* exemption?

Under 40 CFR 372.3, an “*article*” must be a *manufactured* item: (1) which is formed to a specific shape or design during *manufacture*; (2) which has end use functions dependent in whole or in part upon its shape or design; and (3) which does not *release a toxic chemical* under normal conditions of *processing* or *otherwise use* of the item at the *facility* or *establishments*. If the batteries containing lead are completely sealed while present at the *facility*, they would be considered *articles*, and thus would be exempt from EPCRA section 313 reporting. If, however, lead is *released* from the batteries into the environment, as would occur during maintenance of the batteries, the *release* would negate the *articles* exemption. If the exemp-

Articles
Exemption,
Metal Plates,
Fumes,
Grindings

tion is negated, the amount of lead and any other *EPCRA section 313 chemical* in these non-*article* batteries would be applied toward the 25,000 pound *processing* threshold to determine if the *facility* must report.

67. A federal shipyard *facility* cuts portholes 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 porthole 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 *EPCRA section 313 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.

Articles
Exemption,
Manufacturing
Article

68. Lead shielding was used to transport nuclear warheads. A federal facility is melting and reforming the lead shields into containers for radioactive waste storage. Would the lead from the shields be exempt from EPCRA section 313 reporting under the *articles* exemption?

No. Melting and reforming the lead shields to form storage containers would constitute *manufacturing* of an *article*, which negates the *article* exemption for the lead shield. Because the lead is incorporated into the radioactive waste storage containers, the lead is *otherwise used*, unless the *facility* sends the containers off-site (including to another DOE *facility*), in which case the lead is *processed*.

E. *De Minimis*

De Minimis
Exemption

69. A federal facility “*otherwise uses*” toluene, an *EPCRA section 313 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 *EPCRA section 313 chemical*, and one of those uses meets the criteria for an exemption, then the quantity of the *EPCRA section 313 chemical* that meets the criteria for the exemp-

tion is exempt from threshold determinations and *release* and other *waste management* reporting requirements. In the above example, the *facility* must file a Form R for toluene and must report all *releases* and other *waste management* of toluene that result from all **non-exempt** uses of the chemical.

F. Laboratory Exemption

*Leadership Role,
Laboratory
Exemption*

70. What are the conditions in which federal facilities can claim the laboratory activities exemption?

Federal facilities, like non-federal facilities, can claim the laboratory activities exemption for activities in which “a *toxic chemical* is *manufactured, processed, or otherwise used* in a laboratory at a *covered facility* under the supervision of a technically qualified individual, as defined in Section 720.3(ee) of this title (40 CFR Section 372.38(d)).” To claim the laboratory exemption, therefore, the activity must occur in a laboratory and must be under the supervision of a “technically qualified individual.” However, if the federal facility determines that a significant quantity of the toxic chemical is being used in an exempt activity, the *facility* should consider whether taking the exemption is consistent with the spirit of EO 13148.

*Laboratory
Exemption,
Primary Activity*

71. A laboratory is the primary activity at a federal facility. Is the entire federal facility exempt from reporting under EPCRA section 313?

No. The type of the laboratory activity and the conditions under which the activity occurs determine whether the quantity of *EPCRA section 313 chemical* “*manufactured*” “*processed,*” or “*otherwise used*” qualifies for the laboratory activities exemption. Agency managers should not assume that quantities of *EPCRA section 313 chemicals* are automatically exempt from section 313 reporting requirements because the facility has “laboratory” in its name. Non-exempt activities include support activities such as the use of *EPCRA section 313 chemicals* used to clean laboratory glassware and maintain laboratory equipment. *EPCRA section 313 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.

*Laboratory
Exemption, Part
of a Facility*

72. A laboratory is part of a federal facility. Are the EPCRA section 313 chemicals associated with the laboratory activities exempt from the threshold determinations and release and other waste management calculations, even if the facility as a whole is not exempt from section 313 requirements?

If a laboratory is part of a larger facility, only those *EPCRA section 313 chemicals* used in covered laboratory activities can be considered for the exemption. A *facility* must still determine if quantities of *EPCRA section*

Laboratory
Exemption,
Quality Control

313 chemicals used in other activities trigger any activity threshold (i.e., *manufacture, process, or otherwise use*).

73. A federal facility sends samples of *manufactured* products that contain *EPCRA section 313 chemicals* manufactured on-site to an on-site laboratory for quality control purposes. Are the quantities of the 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. Federal facilities are required to include in their threshold determinations any quantity of an *EPCRA section 313 chemical* that is *manufactured, processed, or otherwise used*. The “laboratory activities” exemption (40 CFR 372.38(d)) only applies to the *EPCRA section 313 chemicals* used within the laboratory, not to the on-site *manufacture, process, or otherwise use* (and associated *releases*) of the *EPCRA section 313 chemical* prior to the time the sample was sent to the laboratory.

Laboratory
Exemption,
Training,
Munitions

74. A DOD facility conducts training exercises in which munitions are used. Since the *facility* is using the munitions during the training exercises, are the *EPCRA section 313 chemicals* that are *manufactured* during the use of the munitions exempt under the laboratory activities exemption?

No. Training is not an activity that falls under the laboratory activities exemption.

Transfers
Between
Laboratories,
Laboratory
Exemption

75. An *EPCRA section 313 chemical* is used in an experiment in a laboratory located at a federal facility. The chemical then is sent to a laboratory at a second *facility* to continue the experiment. Both *facilities* conduct the experiments in a manner that meets the laboratory activities exemption for the *EPCRA section 313 chemical*. Can the *EPCRA section 313 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 and other waste management* activities?

Yes. The laboratory activities exemption applies “[i]f a toxic chemical is *manufactured, processed, or used* in a laboratory at a *covered facility*...(40 CFR 372.38(d)).” The fact that the *EPCRA section 313 chemical* is moved or “*processed*” to another *facility's* laboratory for further testing does not negate the exemption.

Laboratory
Exemption,
Transfers
Between
Laboratories

76. An *EPCRA section 313 chemical* is used in an experiment in a laboratory located at a federal facility (in a manner consistent with the laboratory activities exemption). The chemical then is sent to a second *facility* for use as a solvent. Does the laboratory activities exemption apply to this situation?

No. Amounts of listed *EPCRA section 313 chemicals* that are *manufactured, processed, or otherwise used* in conjunction with the preparation of such “specialty chemicals” (*EPCRA section 313 chemicals* produced in a laboratory setting that are distributed in commerce) cannot be claimed under the laboratory exemption. The use during the experiment may be exempt, but at the point that it is prepared for distribution to another *facility*, then it is undergoing a processing activity. The *facility* must include this amount in its processing threshold determinations and *release* and other *waste management* calculations.

*Laboratory
Exemption,
Threshold
Determinations*

77. A research laboratory at a federal facility uses an *EPCRA section 313 chemical* in an experiment that is carried out under the supervision of a technically qualified individual. Additional quantities of the same *EPCRA section 313 chemical* are also used at the federal facility for non-laboratory activities. Which quantities of the *EPCRA section 313 chemical* must be included in threshold determinations and *release* and other *waste management* calculations?

The federal facility may exclude the quantity of the *EPCRA section 313 chemical* used in the exempted laboratory activity from threshold determinations and *release* and other *waste management* reporting. All other quantities of the *EPCRA section 313 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* and other *waste management* calculations.

*Laboratory
Exemption,
Prototypes,
Product Testing*

78. A federal facility tests specific components of a machinery line for assembling tanks. The *facility's* functions include testing for durability of the engines, hydraulic systems, power trains, electrical systems and transmissions; building prototypes of products; and testing qualitative analytical materials in a chemical laboratory. Because these activities are test-, development-, and research-oriented, are the *EPCRA section 313 chemicals* used in these activities eligible for the laboratory activities exemption?

The answer to this question depends on where the *facility* is conducting the machinery testing. Equipment and component testing are laboratory activities if conducted in a laboratory, and thus are subject to the laboratory activity exemption as long as 1) listed *EPCRA section 313 chemicals* are being *manufactured, processed, or otherwise used* there; 2) the laboratory is located at a *covered facility*; and 3) the equipment and component testing is conducted under the supervision of a technically qualified individual.

*Contractors,
Laboratory
Exemption*

79. A contractor conducts tests on land at a BLM facility to determine if there are commercial mineral ores present. Does this testing qualify under the “activities in laboratory” exemption?

*Laboratory
Exemption*

No. The “activities in laboratory” exemption applies only to activities that occur in a laboratory.

80. Is a federal facility, which has “Laboratory” in its name, exempt from EPCRA section 313 reporting because of the laboratory activities exemption?

No. The laboratory activities exemption applies to the “*manufacture,*” “*process,*” or “*otherwise use*” of an *EPCRA section 313 chemical* in a laboratory under the supervision of a technically-qualified individual. It does not apply to the *facility* as a whole.

*Laboratory
Exemption,
“Laboratory” in
the Name*

81. A laboratory uses nitric acid throughout the laboratory for house-keeping purposes (e.g., cleaning up experiments). Over the course of the reporting year, more than 10,000 pounds of nitric acid is used. Is this amount reportable?

Yes. The amount of nitric acid is reportable because the primary use of the chemical is a support function within the laboratory, not in actual research and development, quality assurance/quality control, or analytical activities under the supervision of a technically qualified individual. Because the nitric acid is used in a non-incorporative manner, it is classified as “*otherwise use.*”

*Housekeeping,
Laboratory
Exemption*

82. A DOE facility produces a specialty chemical, which is a listed EPCRA section 313 chemical, for use in on-site experiments. The specialty chemical is not available on the market. Is the facility required to submit a Form R for this chemical?

If a *facility* produces a specialty chemical for use entirely at that *facility* in an experiment under the supervision of a technically qualified individual and is not further distributed, then it is exempt from reporting under EPCRA section 313. If, however, the specialty chemical is used in a non-experimental *manufacture, processing, or otherwise use* activity, or it is distributed outside of the DOE facility for further use, it must be counted toward the *facility's otherwise use* threshold and *release* and other *waste management* calculations.

G. Personal Use Exemption

*Office Supplies,
Personal Use
Exemption*

83. Should a facility include quantities of EPCRA section 313 chemicals present in office supplies and similar products when making threshold determinations and release and other waste management calculations under EPCRA section 313?

No. EPA does not require a covered federal facility to account for quantities of *EPCRA section 313 chemicals* in office supplies (e.g., correction fluid, copier machine fluids, etc.) when the *facility* makes threshold determinations and *release* and other *waste management* calculations. EPA

*Blueprint
Machines,
Personal Use
Exemption,
Printing Shop*

interprets these items to be personal use items and the chemicals contained in them are exempt from threshold determinations and *release* and other *waste management* calculations under the “personal use” exemption.

84. 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”, “process,” or “otherwise use” 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 Section 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.

*Wastewater
Treatment,
Personal Use
Exemption*

85. A military base treats waste that results from personnel based on-site. To treat the wastewater, the DOD facility houses a wastewater treatment facility that uses chlorine during the treatment. Can the DOD facility claim the personal use exemption for the use of the chlorine used during the wastewater treatment?

No. The personal use exemption applies to the “Personal use by employees or other persons at the *facility* of foods, drugs, cosmetics, or other personal items containing *EPCRA section 313 chemicals*, including supplies of such products within the *facility* such as in a *facility* operated cafeteria, store, or infirmary (40 CFR Section 372.38(3)).” This exemption allows *facilities* to disregard mostly small-scale products that are ancillary to the operations of the *facility*. It cannot be claimed for products that are integral to operations. For a military base, housing personnel typically is integral to its operations. Treating the resultant wastewater also would be integral to its operations. The personal use exemption does not apply.

*Personal Use
Exemption*

86. Are federal facilities eligible for the personal use exemption?

Federal facilities, like all *facilities* subject to EPCRA section 313, must consider the use of the *EPCRA section 313 chemicals* and the operations of the *facility* when assessing eligibility under the personal use exemption. This exemption is limited to *EPCRA section 313 chemicals* used in non-process-related activities. A *facility* for which providing services to the public or housing people is integral to its operations (process-related) cannot claim the personal use exemption for *EPCRA section 313 chemicals* used to support those activities. *EPCRA section 313 chemicals* used in personal items, such as “white-out,” in the administrative offices of these *facilities* are not process-related, and therefore, would be eligible for the personal use exemption.

*Structural
Component
Exemption,
Creosote*

H. Structural Component Exemption

87. A Navy facility purchases wood pilings treated with creosote-tar to support piers used for docking ships. Gradually, the creosote, an EPCRA section 313 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?

No. The structural use exemption applies only to non process-related equipment. The piers at the navy facility are process-related equipment.

EPCRA section 313 chemicals used to maintain these piers, therefore, are not exempt. The *facility* should consider the amount of creosote on the wood pilings towards the *facility's otherwise use* threshold for the year in which the *facility* received them. If the *facility* determines that it exceeds a reporting threshold for creosote, then any *releases* of the creosote must be included in the *facility's release* and other *waste management* calculations.

*Structural
Component
Exemption,
Existing
Structure*

88. If a federal facility builds a new structure or modifies an existing structure on-site, must the facility include EPCRA section 313 chemicals that are part of the new structure (e.g., the copper in copper pipes in an administrative building) when making threshold determinations and release and other waste management calculations under EPCRA section 313?

No. *EPCRA section 313 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 are exempt from threshold determinations and *release* and other *waste management* calculations because of the “structural component” exemption (40 CFR 372.38(c)(1)). If, however, these new structures or modified structures are process-related equipment, then the structural component exemption would not apply.

*Painting,
Structural
Component
Exemption,
Stationary
Crane*

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 use of paint on process-related equipment is not exempt under the structural component exemption. Amounts of *listed EPCRA section 313 chemicals* used to paint process-related equipment, including amounts *released* during the painting application, must be considered toward threshold determinations and *release* and other *waste management* calculations.

I. Routine Janitorial or Facility Grounds Maintenance Use Exemption

*Prisons,
Cleaning
Materials,
Facility
Maintenance
Exemption*

90. A U.S. government prison facility cleans the prison cells and other areas used by prisoners using cleaning materials that contain *EPCRA section 313 chemicals*. Are the chemicals used in these activities exempt from threshold determinations and *release and other waste management* calculations under the “routine janitorial or facility grounds maintenance” exemption of *EPCRA section 313*?

No. The routine janitorial or facility grounds maintenance exemption can be claimed only for those activities that are not integral to the operations of the *facility*. Only activities that are not process-related are eligible for this exemption. For a prison, housing people is a process-related activity.

Supporting this activity, such as the cleaning of the prison cells and other areas used by the prisoners, also are process-related. The *EPCRA section 313 chemicals* used in the cleaning activities, therefore, are not eligible for the routine janitorial or *facility* grounds maintenance exemption. The *facility* should count amounts of *EPCRA section 313 chemicals* used in these cleaning activities toward the *facility's otherwise use* threshold.

*Administrative
Buildings,
Cleaning
Materials,
Facility
Maintenance
Exemption*

91. Administrative buildings at a military base are cleaned daily using cleaning materials that contain *EPCRA section 313 chemicals*. Can the *facility* claim the routine janitorial or *facility* grounds maintenance exemption for *EPCRA section 313 chemicals* used in these activities?

The routine janitorial or *facility* grounds maintenance exemption is applicable to non-process-related activities. Cleaning administrative offices is a non-process-related activity. The *EPCRA section 313 chemicals* used to clean the administrative offices at the federal facility are exempt from threshold determinations and *release and other waste management* calculations under the routine janitorial or *facility* grounds maintenance exemption.

*Hospitals,
Cleaning
Materials,
Facility
Maintenance
Exemption*

92. Would *EPCRA section 313 chemicals* used to sterilize rooms and equipment at a federal hospital be exempt from threshold determinations and *release and other waste management* calculations under the routine janitorial or *facility* grounds maintenance exemption?

A federal hospital that uses a product containing an *EPCRA section 313 chemical* for sterilizing rooms and equipment would not be eligible for the routine janitorial or *facility* grounds maintenance exemption. Keeping hospital rooms and equipment clean is integral to the operations of the hospital and therefore is process-related. A *facility* cannot claim this exemption for process-related activities. While the hospital cannot claim the routine janitorial or *facility* grounds maintenance exemption for *EPCRA section 313 chemicals* used in products to keep rooms and equipment sterile, the hospital can claim the exemption for *EPCRA section 313 chemicals* used in products to clean administrative offices at the hospital.

Waste Oil,
Roads, Facility
Maintenance
Exemption, Dust
Control

93. A BLM facility has unpaved roads that provide access to its land. The BLM facility allows a company to apply waste oil containing an EPCRA section 313 chemical on the unpaved roads to control dust. Can the facility claim the facility grounds maintenance exemption for this activity?

No. The *facility* grounds maintenance activity is intended to cover janitorial and other custodial or plant grounds maintenance activities using such substances as bathroom cleaners, or fertilizers and pesticides used to maintain lawns (40 CFR Section 372.38(c)(2)). The exemption does not cover activities that are central to the operations of a *facility*. In this instance, the roads at the BLM facility are integral to the activities of the *facility* – providing access to the BLM land. The *facility* would consider the amount of EPCRA section 313 chemicals in the waste oil towards its *otherwise use* threshold.

J. *Water Intake/Compressed Air Use Exemption*

Compressed Air,
Intake Water
Exemption

94. Would an EPCRA section 313 chemical present in compressed air be exempt under the “intake water and/or air” exemption under EPCRA section 313? What if the same 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 EPCRA section 313 chemicals present in air used either as compressed air or as a part of combustion. The quantity of EPCRA section 313 chemical present in the compressed air drawn from the *environment* would be exempt from threshold determinations. If that same chemical is present in air emissions only because it was in the compressed air fed to a piece of equipment or process, then it would also be exempt from *release* and other *waste management* calculations under EPCRA section 313.

K. *Other Issues*

Maximum
Amount

95. If a quantity of an EPCRA section 313 chemical meets the criteria for a reporting exemption, 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 an EPCRA section 313 chemical in a manner that meets the criteria for a reporting exemption, that amount of the EPCRA section 313 chemical is exempt from threshold determinations and *release* and other *waste management* calculations. 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.

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**Section 3. DETERMINING WHETHER OR NOT TO REPORT:
LISTED TOXIC CHEMICALS**

*Toxic Chemicals
List*

96. Will chemicals be added to or subtracted from the *EPCRA section 313 chemical substance list*?

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 most recent instruction booklet for completing the Form R contains the updated chemical list. To obtain information on the latest additions or deletions from the list of *EPCRA section 313 chemicals* contact the EPCRA Hotline at 1-800-424-9346.

*Toxic Chemicals
List*

97. How does a federal facility determine what *EPCRA section 313 chemicals* it has on-site?

There are many ways a federal facility can identify the *EPCRA section 313 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; (5) look at chemical composition sheets provided by suppliers; and (6) utilize professional knowledge.

*Persistent,
Bioaccumulative
and Toxic
Chemicals*

98. On October 29, 1999, EPA published a final rule on Persistent, Bioaccumulative and Toxic (PBT) chemicals. Does this rule affect federal facilities?

Yes. Executive Order 13148 section 501(a) states that "Each agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable EPA guidance." This PBT rule includes several actions to ensure public access to information about PBT chemicals, including: setting criteria for persistence and bioaccumulation; establishing lower reporting thresholds for PBT chemicals; and designating certain chemicals as EPCRA section 313 PBTs.

*Non-listed
Chemicals, 50%
Reduction Goal*

99. Other than those chemicals on the *EPCRA section 313 list*, for what chemicals do federal facilities have to report?

For purposes of EPCRA section 313, there is no requirement to report for chemicals not on the EPCRA section 313 list of chemicals. Reporting on any non-listed chemical is voluntary. A federal agency may decide to require its facilities to report for other hazardous substances or pollutants.

*Non-listed
Chemicals*

100. Should a federal facility submit a Form R report for a non-listed chemical other than one on the EPCRA section 313 list if it would like the additional chemicals included in the agency's use reduction goal?

A federal facility may submit a Form R report for chemicals other than those listed under EPCRA section 313, such as hazardous substances and other pollutants targeted under its use reduction goal (section 503). However, the Executive Order does not require the agency to file a Form R for these non-listed chemicals.

*Form R Report,
Chemical
Identities, Non-
listed Chemicals*

101. If a federal facility voluntarily submits a Form R report for a non-listed toxic chemical, 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*, the *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. The *facility* should not use trade names.

*PCBs Removal
and Storage,
Threshold
Determination*

102. PCBs are removed and stored while the transformer undergoes routine maintenance, and then put back into the transformer. Should the facility consider the amount of PCBs returned into the transformer when making its threshold determinations?

The *facility* must consider any amount of PCBs added to a transformer towards its *otherwise use* threshold for that chemical if the transformer is to be used on-site or towards the *processing* threshold if the transformer is to be sent off-site to another facility. The facility is not required to consider the amount of PCBs that are removed then returned to a transformer towards a reporting threshold. Any *releases* or other waste management of the PCBs during this activity must be reported on the Form R if the facility meets any reporting threshold for PCBs.

*Mixture,
Compound*

103. What is the difference between a *mixture* and a *compound*?

When a compound is formed, the identities of the reactant chemicals are lost, but in a *mixture*, the individual components retain their own identity and could be separated again. For example, polyethylene is a compound, not a *mixture* (and is not subject to reporting under section 313). Commercial xylene, however, is a *mixture* that contains different xylene isomers and ethyl benzene (all listed chemicals).

Section 4. COMPLETING THE FORM R: RELEASES AND WASTE MANAGEMENT CALCULATIONS**A. General**

*Fuel, Active
Shipping Papers*

104. Do federal facilities have to account for releases and other waste management activities of EPCRA section 313 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 *EPCRA section 313 chemicals*. This includes *EPCRA section 313 chemicals* stored incident to transportation (EPCRA section 327).

*Threshold
Determinations*

105. How should a federal facility, which has not previously reported under EPCRA section 313, begin efforts to make threshold determinations and release and other waste management calculations for activities at the facility?

Federal facilities should utilize the best readily available information needed to make threshold determinations and *release* and other *waste management* calculations. 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 transfers off-site for further *waste management*, annual or biannual RCRA reports provide an excellent source of information. These reports refer to specific hazardous waste manifests. From the manifests, it may be possible to estimate the amounts of *EPCRA section 313 chemicals* in the waste transferred off-site. Invoices and shipping receipts are essential if a reportable *EPCRA section 313 chemical* that is not a RCRA waste, is sent off-site for recycling or *disposal*. In addition, the EPA has produced estimation guidance manuals for specific industries and for specific chemicals. Information about how to obtain these guidance manuals is available on the EPA website: <http://www.epa.gov/opptintr/tri>.

*Imports,
Manufacturing,
Threshold
Determinations*

106. If a federal facility's supply system imports an EPCRA section 313 chemical in excess of a threshold amount, is the facility required to report for releases and other waste management of that 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 an *EPCRA section 313 chemical* to be *imported*, it has exceeded the “*manufacture*” threshold and must make *release* and other *waste management* calculations for that

EPCRA section 313 chemical. A facility would “cause” an EPCRA section 313 chemical to be imported by specifically requesting a product (containing the EPCRA section 313 chemical) from a foreign source or requesting a product known to be only available from a foreign source.

B. Releases

*Coal, Storage,
Release to Land,
Stockpiles*

107. 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, an EPCRA section 313 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 *EPCRA section 313 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 *EPCRA section 313 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* if the facility meets a reporting threshold for the *EPCRA section 313 chemical* elsewhere at the facility. Once a federal facility meets the criteria for filing a Form R report for an *EPCRA section 313 chemical* (such as benzene), all non-exempt *releases* and other *waste management* activities of that chemical at the facility are to be included in the Form R report. (Note: Benzene typically is 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* and other *waste management* calculations under EPCRA section 313.)

Barges

108. A non-motorized barge is brought into dry-dock for maintenance at a federal facility. While in dry-dock, there are releases of a toxic chemical from the barge. Would the releases of this toxic chemical be reportable?

Yes. *Releases* of toxic chemicals from the barge while in dry-dock on facility grounds must be included in *release* and other *waste management* calculations if reporting thresholds for those toxic chemicals are exceeded by the facility.

*Incineration of
Liquid Wastes,
Air Emissions,
Waste Treatment*

109. A federal facility has determined that it meets the reporting threshold for an EPCRA section 313 chemical. The chemical, which ends up in the facility’s liquid waste stream, is incinerated. The incineration is 99.9 percent efficient in destroying the EPCRA section 313 chemical. The remaining 0.1 percent of the chemical is released to the air as a gaseous waste stream. There is no further treatment of the gaseous waste stream. Would the federal facility need to report this gaseous waste stream in the waste treatment section of the Form R report for the EPCRA section 313 chemical?

Monitoring,
Emissions Data

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, the amount of the *EPCRA section 313 chemical* in the gaseous waste stream would be reported as a *release* to air and in Part II, section 5.2, Stack or Point Air Emissions.

110. 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 an *EPCRA section 313 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 need 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.

Loading of
Vehicles, Active
Shipping Papers

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

Yes. Under EPCRA section 313, a federal facility that meets a reporting threshold for a toxic chemical is responsible for reporting *releases* of that chemical that occur during loading or unloading of a transportation vehicle while the vehicle is on property owned or operated by the federal facility. The only *releases* that are exempt from these requirements are *releases* of an *EPCRA section 313 chemical* from a transportation vehicle that occur while the vehicle is still under “active shipping papers.”

TSDFs,
Spent Munitions

112. A facility places spent munitions 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 spent munitions as a *release* to land on-site on the Form R?

Yes. Spent munitions containing *EPCRA section 313 chemicals* that are placed on-site, with no immediate intent to transfer the waste off-site, must be reported as a *release* to land if the facility meets a reporting threshold for that chemical elsewhere at the facility. An immediate intent to transfer the wastes off-site may be demonstrated if (1) spent munitions containing the *EPCRA section 313 chemicals* have been routinely sent off-site during the reporting year; or (2) the facility has a contract in place to transfer spent munitions containing the *EPCRA section 313 chemicals* off-site before the end of the reporting year, and actually transfers the spent munitions before the year’s report was submitted or by July 1, whichever comes first.

C. *Transfers to Off-Site Locations*

*Sludges,
Recycling,
Metals Cooling
Pond, Waste
Management
Activities*

113. During the reporting year, a federal facility discharges waste containing listed EPCRA section 313 metals to an on-site cooling pond. The metals accumulate and settle, and the water is then drained from the cooling pond, leaving a heavy metal sludge. The sludge is then dredged and sent off-site to a recycler. How should the EPCRA section 313 chemicals left in the pond, after the sludge has been removed for recycling, be reported?

Listed *EPCRA section 313 chemicals* remaining in the pond after the sludge has been removed should be reported as “*released to land.*” Listed *EPCRA section 313 chemicals* left in the pond water, which have been drained off, should be reported according to their disposition: either discharged to a stream (back into the cooling pond), discharged to a POTW, transferred to other off-site locations, treated on-site, or recycled on-site.

*TSDFs, Waste
Management
Activities, Final
Disposition*

114. Many federal facilities send their hazardous waste containing EPCRA section 313 chemicals to off-site 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 EPCRA section 313 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 an *EPCRA section 313 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 *EPCRA section 313 chemical* is not required, it is certainly an option for *facilities* who lack a complete understanding of the final disposition of an *EPCRA section 313 chemical* in a waste sent off-site.

*FOTW,
Wastewater
Treatment*

115. A federal facility reporting under EPCRA section 313 discharges wastewater containing EPCRA section 313 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 discharges 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 *EPCRA section 313 chemicals* to a 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

Waste Broker,
Waste
Management
Activities

116. A federal facility, which exceeds a reporting threshold for an EPCRA section 313 chemical, sends waste containing the EPCRA section 313 chemical off-site for disposal. Besides its own waste, the federal facility acts as a waste broker for the same EPCRA section 313 chemical for another federal facility within the same parent federal agency. How should the federal facility report for this chemical?

The federal facility should report for the amount of the EPCRA section 313 chemical that it sent off-site for disposal, as well as the amount received from the other federal facility. The total amount should be entered in Part II, section 6.2.A, under “transfers to other off-site locations.” The method of disposal by the off-site location should be entered in Part II, section 6.2.C.

Munitions,
Otherwise Use,
Waste
Management
Activities

117. A DOD facility receives old munitions, which contain EPCRA section 313 chemicals, from other DOD facilities for destruction (treatment). The method of destruction (treatment) is open burning. How should the DOD facility report for this activity?

The receiving DOD facility would have to count the amount of EPCRA section 313 chemicals in the munitions toward its otherwise use threshold. The definition of “otherwise use” includes the disposal, stabilization and treatment of an EPCRA section 313 chemical received from off-site for the purposes of further waste management. For those EPCRA section 313 chemicals meeting the otherwise use threshold, and which are not destroyed during the treatment process, the facility would have to make release and other waste management calculations. As an example, metals are not destroyed during treatment activities; and the facility would have to make release and other waste management calculations for the metals, provided they meet the reporting threshold.

Starting January 1, 1998, facilities must count the amount of an EPCRA section 313 chemical manufactured during the destruction of waste received from off-site toward its 10,000 pound otherwise use threshold if the facility subsequently stabilizes or disposes the EPCRA section 313 chemical on-site. The receiving DOD facility should determine the amount of EPCRA section 313 chemicals “manufactured” as a result of the destruction process. In addition, the facility must count the amount of a manufactured EPCRA section 313 chemical toward the facility’s 25,000 pound manufacturing threshold for that chemical.

D. Source Reduction and Recycling

*Remediation
Activities,
Part II Section
8.8*

118. 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 other *waste management* of an *EPCRA section 313 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.

*Remediation
Activities, Part
II Section 8.8*

119. A federal facility is submitting a Form R report for an *EPCRA section 313 chemical*. During a remediation project, the same chemical is transferred from one medium to another. For example, soil excavation during groundwater remediation causes an *EPCRA section 313 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 *EPCRA section 313 chemical* from one medium to another due to remediation activities must be reported on the Form R, unlike *EPCRA section 313 chemicals* that transfer to another medium as a result of natural migration. *Releases* of *EPCRA section 313 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.

*Combustion,
Energy Recovery*

120. A federal facility voluntarily reports *releases* of *EPCRA section 313 chemicals* contained in motor vehicle fuel. The motor vehicles are operated by the *facility* and they report the combustion of the *EPCRA section 313 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 *EPCRA section 313 chemical* reported in Part II, sections 7B and 8.2 of the Form R as used for energy recovery include *EPCRA section 313 chemicals* present in **wastes**, not in **raw materials**. Therefore, the combustion of *EPCRA section 313 chemicals* contained in fuel that occurs in a motor vehicle engine is not considered a reportable energy recovery method on the Form R report.

E. *Other Issues*

Multi-Establishment Reporting, Threshold Determinations

121. A DOE facility has three *establishments* (“distinct and separate economic activities [e.g., separate SIC codes][that] are performed at a single location”). The three *establishments* are considered one *facility* for threshold determinations, but are submitting separate Form R reports to report their *releases* and other *waste management* activities. A waste containing tetrachloroethylene (TCE) is produced at *Establishment A* and transferred to *Establishment B* for waste treatment in a TSCA incinerator. *Establishment A* has only air *releases* of TCE. Except for the amount received from *Establishment A*, *Establishment B* does not use TCE. How should the tetrachloroethylene be reported if two Form Rs are submitted?

Establishment A should report all *releases* and other *waste management* of the TCE up to the point at which the waste TCE was transferred to *Establishment B*. It would not, however, report the transfer of the TCE to *Establishment B*. Since there are only air *releases* of TCE from *Establishment A*, this *establishment* would report the amount of air *releases* in Part II, Section 5 and 8.1 of the Form R. *Establishment B* should report all *releases* and other *waste management* (including incineration) once the TCE is received from *Establishment A*. *Establishment B* would report any *releases* or other *waste management* in Part II, Sections 5, 6 and 8 of the Form R. The on-site incineration would be reported in Part II, Section 8.6 of *Establishment B*'s Form R.

Multi-Establishment Reporting, Waste Management Activities

122. Each *establishment* of a multi-*establishment* federal facility files its own Form R for an EPCRA section 313 chemical. The waste that this multi-operation site ships off-site for further *waste management* is inventoried on an entire *facility* basis. To report this waste, does each *establishment* estimate their percentage of the total waste or can one operation report the entire waste?

If individual *establishments* report separately for one chemical, they must report separately all *releases* of that chemical. Therefore, in the case cited above, one *establishment* cannot report the amount transferred off-site for further *waste management* from the entire *facility*. Each operation would have to report their percentage of the amount transferred off-site.

Storm Water, Legacy Wastes

123. Because you are required to report the amount of a listed EPCRA section 313 chemical in storm water, how do you know if the chemical is associated with current *releases* from that year's production or is from legacy waste?

There is no definite way to determine if a chemical in storm water is associated with that year's production or is from legacy wastes. A *facility* should use its best available information, based on available monitoring data and knowledge of conditions at the *facility*, to estimate the amount of a listed EPCRA section 313 chemical in storm water resulting from that year's

*Firing Ranges,
Fugitive
Releases,
Lead Bullets*

production. In the absence of documentation, *listed EPCRA section 313 chemicals* found in storm water should be reported as current *releases*.

124. DOE sites have firing ranges for their security personnel. The bullets used by the security personnel are made out of lead. During firing, they release trace amounts of lead, and often disintegrate upon impact with the target. How would lead released from the use of bullets in a firing range be reported on the Form R?

Releases from the firing of the bullets would be reported as fugitive *releases* to air – Part II, Section 5.1 of Form R. Lead in unrecovered bullets would be reported as *releases* to land: other *disposal* -- Part II, Section 5.5.4 of Form R. Lead in bullets that are recovered and sent off-site for *disposal* or recycling would be reported in the appropriate sections of the Form R. According to the EPA document, *Compilation of Air Emission Factors (AP.42)*, approximately 1.2 pounds of lead is *released* as fugitive air emission for every 2,000 pounds of lead bullets fired. (See Chapter 11, Section 3: Explosives Detonation).

Activity Ratio

125. A reportable chemical is used to clean machinery once a month, every month. Activity involving this chemical would not appear to change from year to year if this is the only activity for which the chemical is used. Is it possible to have an activity ratio of 1?

Yes. It is possible that the activity ratio for a chemical equal 1 if the frequency of the activity for which it is used does not change. The activity index is the measure of an operation at a *facility*, a production index is the measure of the plant's actual productivity in relation to chemical usage.

GOCOs,
Multiple
Reports,
TRIS Database,
Contractors

Section 5. FORM A AND FORM R SUBMISSIONS

126. Executive Order 13148 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 an EPCRA section 313 chemical -- one from the federal agency and the other from the government contractor operating at the federal facility. How does EPA avoid double-counting these releases when the data are entered into the TRIS data base?

EPA enters into the TRIS database only the EPCRA section 313 reports submitted by the federal agency's facility. EPCRA section 313 reports submitted by a contractor at a federal facility are superseded by EPCRA section 313 reports from the federal agency's facility. This ensures that there is no double counting of the TRI data. While EPA does not enter the contractor's EPCRA section 313 reports into the TRIS database, contractors must, by law, continue to comply with EPCRA section 313 if it meets the reporting requirements.

To help ensure that federal facility 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.

Facility Name

127. 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

*Acronyms,
Federal Agency
Name*

128. 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.

*Address,
Physical
Location*

129. 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 4.1.

*Accidental
Releases*

130. A federal facility exceeds the reporting threshold for an EPCRA section 313 chemical. How are accidental releases from filling tanks with this chemical reportable in Section 8 of the Form R report?

If the accidental *release* of the *EPCRA section 313 chemical* 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.

*Certification
Statement***131. 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.

*Multi-
Establishment
Reporting,
Facility***132. A DOE facility is divided into three distinct operations that are administratively managed and operated separately. Can the DOE facility be divided into multiple sites for the purpose of TRI reporting?**

No. While the DOE facility contains three operations that are administratively managed separately and are not located in close proximity to each other, they are considered one *facility* under EPCRA because the operations are located on contiguous and adjacent properties owned by DOE. These operations, if they are “distinct and separate economic activities [e.g., separate SIC codes][that] are performed at a single location” are *establishments* under EPCRA section 313. Each *establishment* may file separate Form R reports as long as the threshold determinations are made based on the entire *facility*. If separate Form R reports are filed, the total *releases* and further *waste management* activities on these Form R reports must equal the aggregate for the entire *facility*. For the *multi-establishment facilities*, DOE must ensure that all *EPCRA section 313 chemicals* are covered and avoid multiple reporting on chemicals involved in intra-site transfers. For example, if *Establishment A* transferred an *EPCRA section 313 chemical* to *Establishment B* for on-site *disposal*, only *Establishment B* would report on the *disposal* of the *EPCRA section 313 chemical*. *Establishment A* would not report the on-site transfer of that *EPCRA section 313 chemical* to *Establishment B*.

*Latitude and
Longitude***133. When a large federal facility is determining its latitude and longitude coordinates, should it use the center of the entire facility or the location of the majority of the facility’s operations and activities?**

The *facility* should report the latitude and longitude for a location central to the operations for which you are reporting. For a large *facility*, with several major points of activity, the *facility* should chose a location equidistant from all of the major activity points to determine the latitude and longitude. Appendix E of U.S. EPA’s *Toxic Chemical Release Inventory Reporting Form R and Instructions: Revised 1998 Version* provides specific guidance on determining the latitude and longitude coordinates of a site.

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*Supplier
Identification,
SIC Codes*

Section 6. SUPPLIER NOTIFICATION

134. Commercial suppliers are required to provide supplier notification to customers in covered SIC codes according to 40 CFR 372.45. What should federal facilities whose operations fall outside of covered SIC codes do to ensure that toxic chemicals listed under EPCRA section 313 are identified by their suppliers?

Supplier notification is required of commercial suppliers who supply customers whose primary SIC code are covered under the TRI program. If a federal facility's primary SIC code is not among the covered SIC codes, there currently is no regulatory mechanism to ensure that this information is received by the purchasing *facility*. One mechanism for ensuring that suppliers identify *EPCRA section 313 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.

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APPENDIX A. GLOSSARY

Article - the term in 40 CFR Section 372.3, is defined as a *manufactured* item: (1) which is formed to a specific shape or design during *manufacture*; (2) which has end use functions dependent in whole or in part upon shape or design; and (3) which does not *release* an *EPCRA section 313 chemical* under normal conditions of *processing* or use of that item at the *facility* or *establishments*.

Covered Facility - a *facility*, as defined in 40 CFR Section 372.3, that has 10 or more *full-time employees*, is in a *covered SIC code* (see below), and meets the activity threshold for *manufacturing, processing, or otherwise using an EPCRA section 313 chemical* (see below).

Covered SIC Code - prior to January 1, 1998, means SIC codes 20 through 39 (manufacturing *facilities*). Beginning January 1, 1998, a covered SIC code means SIC codes in major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20-39; industry codes 4911, 4931, or 4939 (limited to *facilities* that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to *facilities* regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. Section 6921 et seq.) or 5169, or 5171, or 7389 (limited to *facilities* primarily engaged in solvent recovery services on a contract or fee basis).

Customs Territory - the 50 *states*, the District of Columbia, and Puerto Rico (40 CFR Section 372.3).

Disposal - any underground injection, placement in landfills/surface impoundments, land treatment, or other intentional land disposal (40 CFR Section 372.3).

Environment - includes water, air, and land and the interrelationship which exists among and between water, air and land and all living things (EPCRA Section 329(2)).

EPCRA section 313 chemical - (see Toxic chemical below) - a chemical or chemical category listed in 40 CFR Section 372.65 (40 CFR Section 372.3).

Establishment - an economic unit, generally at a single physical location, where business is conducted, or where services or industrial operations are performed (40 CFR Section 372.3).

Facility - 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). A *facility* may contain more than one *establishment* (40 CFR Section 372.3).

Full-time Employee - a person who works 2,000 hours per year of full-time equivalent employment. A *facility* would calculate the number of *full-time employees* by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing the total by 2,000 hours (40 CFR Section 372.3).

Import - to cause a chemical to be *imported* into the *customs territory* of the United States. For purposes of the definition, to cause means to intend that the chemical be *imported* and to control

the identity of the *imported* chemical and the amount of the *imported* chemical (40 CFR Section 372.3).

Manufacture - to produce, prepare, *import*, or compound an *EPCRA section 313 chemical*. *Manufacture* also applies to an *EPCRA section 313 chemical* that is produced coincidentally during the *manufacture, processing, use, or disposal* of another chemical or *mixture* of chemicals, including an *EPCRA section 313 chemical* that is separated from that other chemical or *mixture* of chemicals as a byproduct, and an *EPCRA section 313 chemical* that remains in that other chemical or *mixture* of chemicals as an impurity (40 CFR Section 372.3).

Material Safety Data Sheet (MSDS) - the form required to be developed under 29 CFR Section 1910.1200(g), as that section may be amended from time to time (EPCRA Section 329(6)).

Mixture - any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction. However, if the combination was produced by a chemical reaction, but could have been produced without a chemical reaction, it is also treated as a *mixture*. A *mixture* also includes any combination which consists of a chemical and associated impurities (40 CFR Section 372.3). A waste is not considered a *mixture* for EPCRA section 313 reporting purposes.

Otherwise use - any use of an *EPCRA section 313 chemical* that is not covered by the terms *manufacture* or *process*, and includes use of an *EPCRA section 313 chemical* contained in a *mixtures* or *trade name product*. Relabeling or redistributing a container of an *EPCRA section 313 chemical* where no repackaging of the chemical occurs does not constitute use or *processing* of the *EPCRA section 313 chemical*.

Beginning in the 1998 reporting year (as of January 1, 1998), the definition of *otherwise use* was modified to read:

Otherwise use - any use of a *EPCRA section 313 chemical*, including an *EPCRA section 313 chemical* contained in a *mixture* or other *trade name product* or waste, that is not covered by the terms *manufacture* or *process*. *Otherwise use* of an *EPCRA section 313 chemical* does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:

(1) the *EPCRA section 313 chemical* that was disposed, stabilized or treated for destruction was received from off-site for the purposes of further *waste management*; or

(2) the *EPCRA section 313 chemical* that was disposed, stabilized, or treated for destruction was manufactured as a result of *waste management* activities on materials received from off-site for the purposes of further *waste management* activities. Relabeling or redistributing of the *EPCRA section 313 chemical* where no repackaging of the chemical occurs does not constitute *otherwise use* or *processing* of the *EPCRA section 313 chemical* (40 CFR Section 372.3).

Process - the term *process* means the preparation of an *EPCRA section 313 chemical*, after its *manufacture* for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance; or (2) as part of an *article* containing the *EPCRA section 313 chemical*. *Process*

also applies to the *processing* of an *EPCRA section 313 chemical* contained in a *mixture* or *trade name product* (40 CFR Section 372.3).

Release - any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any *EPCRA section 313 chemicals* (40 CFR Section 372.3).

State - any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction (40 CFR Section 372.3).

Toxic chemical - a chemical or chemical category listed in 40 CFR Section 372.65 (40 CFR Section 372.3).

Trade name product - a chemical or *mixture* of chemicals that is distributed to other persons and that incorporates an *EPCRA section 313 chemical* compound that is not identified by the applicable chemical name or Chemical Abstract Service Registry number list in 40 CFR Section 372.65 (40 CFR Section 372.3).

Tribal Emergency Response Commission or TERC - the commission responsible for carrying out the provisions of EPCRA in the same manner as a State Emergency Response Commission (SERC) on federally recognized tribal lands.

Waste management - EPA interprets *waste management* to include the following activities: recycling, combustion for energy recovery, treatment for destruction, waste stabilization, and *release*, including disposal. *Waste management* does not include the storage, container transfer, or tank transfer if no recycling, combustion for energy, treatment for destruction, waste stabilization, or *release* of the chemical occurs at the *facility* (See 62 FR 23834; 23850; May 1, 1997).

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APPENDIX B. EPA REGIONAL CONTACTS**Region 1**

Assistance and Pollution Prevention Office

USEPA Region 1 (SPT),

JFK Federal Building

Boston, MA 02203

(617) 918-1829

Fax: (617) 918-1810

Email: peavey.dwight@epa.gov

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region 2

Pesticides and Toxics Branch

USEPA Region 2 (MS-105)

2890 Woodbridge Avenue

Building 10

Edison, NJ 08837-3679

(732) 906-6890

Fax: (732) 321-6788

Email: lopez.nora@epa.gov

New Jersey, New York, Puerto Rico, Virgin Islands

Region 3

Toxics Programs and Enforcement Branch

USEPA Region 3 (3WC33)

1650 Arch Street

Philadelphia, PA 19103-2029

(215) 814-2072

Fax: (215) 814-3114

Email: reilly.william@epa.gov

Delaware, District of Columbia, Maryland,

Pennsylvania, Virginia, West Virginia

Region 4

EPCRA Enforcement Section

USEPA Region 4

Atlanta Federal Center

61 Forsyth Street, S.W.

Atlanta, GA 30303

(404) 562-9191

Fax: (404) 562-9163

Email: velez.ezequiel@epa.gov

Alabama, Florida, Georgia, Kentucky, Mississippi,

North Carolina, South Carolina, Tennessee

Region 5

Pesticides and Toxics Branch
USEPA Region 5 (DT-8J)
77 West Jackson Boulevard
Chicago, IL 60604
(312) 886-6219
Fax: (312) 353-4788
Email: codina.thelma@epa.gov
Illinois, Indiana, Michigan, Minnesota, Ohio,
Wisconsin

Region 6

Pesticides and Toxics Substances Branch
USEPA Region 6 (6PDT)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
(214) 665-8013
Fax: (214) 665-6762
Email: layne.warren@epa.gov
Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region 7

Air, RCRA and Toxics Division
USEPA Region 7 (ARTD/CRIB)
726 Minnesota Avenue
Kansas City, KS 66101
(913) 551-7472
Fax: (913) 551-7065
Email: hirtz.james@epa.gov
Iowa, Kansas, Missouri, Nebraska

Region 8

Office of Pollution Prevention, Pesticides and Toxics
USEPA Region 8 (8P-P3T)
999 18th Street, Suite 500
Denver, CO 80202
(303) 312-6447
Fax: (303) 312-6044
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Colorado, Montana, North Dakota, South Dakota,
Utah, Wyoming

Region 9

Pesticides and Toxics Branch
USEPA Region 9 (CMD-4-2)

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San Francisco, CA 94105

(415) 744-1121

Fax: (415) 744-1073

Email: browning.adam@epa.gov

Arizona, California, Hawaii, Nevada, American Samoa, Guam, Commonwealth of the Northern Mariana Islands

Region 10

Office of Waste & Chemicals Management

USEPA Region 10 (WCM-128)

1200 Sixth Avenue

Seattle, WA 98101

(206) 553-4016

Fax: (206) 553-8509

Email: colt.christina@epa.gov

Alaska, Idaho, Oregon, Washington

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APPENDIX C. EXECUTIVE ORDER 13148

Executive Order 13148 - Greening the Government Through Leadership in
Environmental Management

Federal Register
Vol. 58, No. 150
Wednesday, April 26, 2000
Presidential Documents

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Presidential Documents

Title 3—

Executive Order 13148 of April 21, 2000

The President

Greening the Government Through Leadership in Environmental Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (EPCRA), the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (PPA), the Clean Air Act (42 U.S.C. 7401–7671q) (CAA), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

Section 101. *Federal Environmental Leadership.* The head of each Federal agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decision-making and long-term planning processes, across all agency missions, activities, and functions. Consequently, environmental management considerations must be a fundamental and integral component of Federal Government policies, operations, planning, and management. The head of each Federal agency is responsible for meeting the goals and requirements of this order.

PART 2—GOALS

Sec. 201. *Environmental Management.* Through development and implementation of environmental management systems, each agency shall ensure that strategies are established to support environmental leadership programs, policies, and procedures and that agency senior level managers explicitly and actively endorse these strategies.

Sec. 202. *Environmental Compliance.* Each agency shall comply with environmental regulations by establishing and implementing environmental compliance audit programs and policies that emphasize pollution prevention as a means to both achieve and maintain environmental compliance.

Sec. 203. *Right-to-Know and Pollution Prevention.* Through timely planning and reporting under the EPCRA, Federal facilities shall be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations. Each agency shall strive to reduce or eliminate harm to human health and the environment from releases of pollutants to the environment. Each agency shall advance the national policy that, whenever feasible and cost-effective, pollution should be prevented or reduced at the source. Funding for regulatory compliance programs shall emphasize pollution prevention as a means to address environmental compliance.

Sec. 204. *Release Reduction: Toxic Chemicals.* Through innovative pollution prevention, effective facility management, and sound acquisition and procurement practices, each agency shall reduce its reported Toxic Release Inventory (TRI) releases and off-site transfers of toxic chemicals for treatment and disposal by 10 percent annually, or by 40 percent overall by December 31, 2006.

Sec. 205. *Use Reduction: Toxic Chemicals and Hazardous Substances and Other Pollutants.* Through identification of proven substitutes and established facility management practices, including pollution prevention, each agency shall reduce its use of selected toxic chemicals, hazardous substances, and pollutants, or its generation of hazardous and radioactive waste types at its facilities by 50 percent by December 31, 2006. If an agency is unable

to reduce the use of selected chemicals, that agency will reduce the use of selected hazardous substances or its generation of other pollutants, such as hazardous and radioactive waste types, at its facilities by 50 percent by December 31, 2006.

Sec. 206. *Reductions in Ozone-Depleting Substances.* Through evaluating present and future uses of ozone-depleting substances and maximizing the purchase and the use of safe, cost effective, and environmentally preferable alternatives, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all nonexcepted uses by December 31, 2010.

Sec. 207. *Environmentally and Economically Beneficial Landscaping.* Each agency shall strive to promote the sustainable management of Federal facility lands through the implementation of cost-effective, environmentally sound landscaping practices, and programs to reduce adverse impacts to the natural environment.

PART 3—PLANNING AND ACCOUNTABILITY

Sec. 301. *Annual Budget Submission.* Federal agencies shall place high priority on obtaining funding and resources needed for implementation of the Greening the Government Executive Orders, including funding to address findings and recommendations from environmental management system audits or facility compliance audits conducted under sections 401 and 402 of this order. Federal agencies shall make such requests as required in Office of Management and Budget (OMB) Circular A-11.

Sec. 302. *Application of Life Cycle Assessment Concepts.* Each agency with facilities shall establish a pilot program to apply life cycle assessment and environmental cost accounting principles. To the maximum extent feasible and cost-effective, agencies shall apply those principles elsewhere in the agency to meet the goals and requirements of this order. Such analysis shall be considered in the process established in the OMB Capital Programming Guide and OMB Circular A-11. The Environmental Protection Agency (EPA), in coordination with the Workgroup established in section 306 of this order, shall, to the extent feasible, assist agencies in identifying, applying, and developing tools that reflect life cycle assessment and environmental cost accounting principles and provide technical assistance to agencies in developing life cycle assessments and environmental cost accounting assessments under this Part.

Sec. 303. *Pollution Prevention to Address Compliance.* Each agency shall ensure that its environmental regulatory compliance funding policies promote the use of pollution prevention to achieve and maintain environmental compliance at the agency's facilities. Agencies shall adopt a policy to preferentially use pollution prevention projects and activities to correct and prevent noncompliance with environmental regulatory requirements. Agency funding requests for facility compliance with Federal, State, and local environmental regulatory requirements shall emphasize pollution prevention through source reduction as the means of first choice to ensure compliance, with reuse and recycling alternatives having second priority as a means of compliance.

Sec. 304. *Pollution Prevention Return-on-Investment Programs.* Each agency shall develop and implement a pollution prevention program at its facilities that compares the life cycle costs of treatment and/or disposal of waste and pollutant streams to the life cycle costs of alternatives that eliminate or reduce toxic chemicals or pollutants at the source. Each agency shall implement those projects that are life-cycle cost-effective, or otherwise offer substantial environmental or economic benefits.

Sec. 305. *Policies, Strategies, and Plans.*

(a) Within 12 months of the date of this order, each agency shall ensure that the goals and requirements of this order are incorporated into existing agency environmental directives, policies, and documents affected by the requirements and goals of this order. Where such directives and policies

do not already exist, each agency shall, within 12 months of the date of this order, prepare and endorse a written agency environmental management strategy to achieve the requirements and goals of this order. Agency preparation of directives, policies, and documents shall reflect the nature, scale, and environmental impacts of the agency's activities, products, or services. Agencies are encouraged to include elements of relevant agency policies or strategies developed under this part in agency planning documents prepared under the Government Performance and Results Act of 1993, Public Law 103-62.

(b) By March 31, 2002, each agency shall ensure that its facilities develop a written plan that sets forth the facility's contribution to the goals and requirements established in this order. The plan should reflect the size and complexity of the facility. Where pollution prevention plans or other formal environmental planning instruments have been prepared for agency facilities, an agency may elect to update those plans to meet the requirements and goals of this section.

(c) The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order. Once the appropriate FAR clauses have been published, agencies shall use them in all applicable contracts. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, or concessioners, each agency shall take practical steps to obtain the information needed to comply with this order from such contractors or concessioners.

Sec. 306. *Interagency Environmental Leadership Workgroup.* Within 4 months of the date of this order, EPA shall convene and chair an Interagency Environmental Leadership Workgroup (the Workgroup) with senior-level representatives from all executive agencies and other interested independent Government agencies affected by this order. The Workgroup shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies. Workgroup members shall coordinate with their Agency Environmental Executive (AEE) designated under section 301(d) of Executive Order 13101 and may request the assistance of their AEE in resolving issues that may arise among members in developing policies and guidance related to this order. If the AEEs are unable to resolve the issues, they may request the assistance of the Chair of the Council on Environmental Quality (CEQ).

Sec. 307. *Annual Reports.* Each agency shall submit an annual progress report to the Administrator on implementation of this order. The reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including, but not limited to, progress in achieving the reduction goals in sections 502, 503, and 505 of this order. Each agency may prepare and submit the annual report in electronic format. A copy of the report shall be submitted to the Federal Environmental Executive (FEE) by EPA for use in the biennial Greening the Government Report to the President prepared in accordance with Executive Order 13101. Within 9 months of the date of this order, EPA, in coordination with the Workgroup established under section 306 of this order, shall prepare guidance regarding the information and timing for the annual report. The Workgroup shall coordinate with those agencies responsible for Federal agency reporting guidance under the Greening the Government Executive orders to streamline reporting requirements and reduce agency and facility-level reporting burdens. The first annual report shall cover calendar year 2000 activities.

PART 4—PROMOTING ENVIRONMENTAL MANAGEMENT AND LEADERSHIP

Sec. 401. *Agency and Facility Environmental Management Systems.* To attain the goals of section 201 of this order:

(a) Within 18 months of the date of this order, each agency shall conduct an agency-level environmental management system self assessment based

on the Code of Environmental Management Principles for Federal Agencies developed by the EPA (61 Fed. Reg. 54062) and/or another appropriate environmental management system framework. Each assessment shall include a review of agency environmental leadership goals, objectives, and targets. Where appropriate, the assessments may be conducted at the service, bureau, or other comparable level.

(b) Within 24 months of the date of this order, each agency shall implement environmental management systems through pilot projects at selected agency facilities based on the Code of Environmental Management Principles for Federal Agencies and/or another appropriate environmental management system framework. By December 31, 2005, each agency shall implement an environmental management system at all appropriate agency facilities based on facility size, complexity, and the environmental aspects of facility operations. The facility environmental management system shall include measurable environmental goals, objectives, and targets that are reviewed and updated annually. Once established, environmental management system performance measures shall be incorporated in agency facility audit protocols.

Sec. 402. Facility Compliance Audits. To attain the goals of section 202 of this order:

(a) Within 12 months of the date of this order, each agency that does not have an established regulatory environmental compliance audit program shall develop and implement a program to conduct facility environmental compliance audits and begin auditing at its facilities within 6 months of the development of that program.

(b) An agency with an established regulatory environmental compliance audit program may elect to conduct environmental management system audits in lieu of regulatory environmental compliance audits at selected facilities.

(c) Facility environmental audits shall be conducted periodically. Each agency is encouraged to conduct audits not less than every 3 years from the date of the initial or previous audit. The scope and frequency of audits shall be based on facility size, complexity, and the environmental aspects of facility operations. As appropriate, each agency shall include tenant, contractor, and concessioner activities in facility audits.

(d) Each agency shall conduct internal reviews and audits and shall take such other steps, as may be necessary, to monitor its facilities' compliance with sections 501 and 504 of this order.

(e) Each agency shall consider findings from the assessments or audits conducted under Part 4 in program planning under section 301 of this order and in the preparation and revisions to facility plans prepared under section 305 of this order.

(f) Upon request and to the extent practicable, the EPA shall provide technical assistance in meeting the requirements of Part 4 by conducting environmental management reviews at Federal facilities and developing policies and guidance for conducting environmental compliance audits and implementing environmental management systems at Federal facilities.

Sec. 403. Environmental Leadership and Agency Awards Programs.

(a) Within 12 months of the date of this order, the Administrator shall establish a Federal Government environmental leadership program to promote and recognize outstanding environmental management performance in agencies and facilities.

(b) Each agency shall develop an internal agency-wide awards program to reward and highlight innovative programs and individuals showing outstanding environmental leadership in implementing this order. In addition, based upon criteria developed by the EPA in coordination with the Workgroup established in section 306 of this order, Federal employees who demonstrate outstanding leadership in implementation of this order may be considered for recognition under the White House awards program set forth in section 803 of Executive Order 13101 of September 14, 1998.

Sec. 404. Management Leadership and Performance Evaluations.

(a) To ensure awareness of and support for the environmental requirements of this order, each agency shall include training on the provisions of the Greening the Government Executive orders in standard senior level management training as well as training for program managers, contracting personnel, procurement and acquisition personnel, facility managers, contractors, concessioners, and other personnel as appropriate. In coordination with the Workgroup established under section 306 of this order, the EPA shall prepare guidance on implementation of this section.

(b) To recognize and reinforce the responsibilities of facility and senior headquarters program managers, regional environmental coordinators and officers, their superiors, and, to the extent practicable and appropriate, others vital to the implementation of this order, each agency shall include successful implementation of pollution prevention, community awareness, and environmental management into its position descriptions and performance evaluations for those positions.

Sec. 405. *Compliance Assistance.*

(a) Upon request and to the extent practicable, the EPA shall provide technical advice and assistance to agencies to foster full compliance with environmental regulations and all aspects of this order.

(b) Within 12 months of the date of this order, the EPA shall develop a compliance assistance center to provide technical assistance for Federal facility compliance with environmental regulations and all aspects of this order.

(c) To enhance landscaping options and awareness, the United States Department of Agriculture (USDA) shall provide information on the suitability, propagation, and the use of native plants for landscaping to all agencies and the general public by USDA in conjunction with the center under subsection (b) of this section. In implementing Part 6 of this order, agencies are encouraged to develop model demonstration programs in coordination with the USDA.

Sec. 406. *Compliance Assurance.*

(a) In consultation with other agencies, the EPA may conduct such reviews and inspections as may be necessary to monitor compliance with sections 501 and 504 of this order. Each agency is encouraged to cooperate fully with the efforts of the EPA to ensure compliance with those sections.

(b) Whenever the Administrator notifies an agency that it is not in compliance with section 501 or 504 of this order, the agency shall provide the EPA a detailed plan for achieving compliance as promptly as practicable.

(c) The Administrator shall report annually to the President and the public on agency compliance with the provisions of sections 501 and 504 of this order.

Sec. 407. *Improving Environmental Management.* To ensure that government-wide goals for pollution prevention are advanced, each agency is encouraged to incorporate its environmental leadership goals into its Strategic and Annual Performance Plans required by the Government Performance and Results Act of 1993, Public Law 103-62, starting with performance plans accompanying the FY 2002 budget.

PART 5—EMERGENCY PLANNING, COMMUNITY RIGHT-TO-KNOW, AND POLLUTION PREVENTION

Sec. 501. *Toxics Release Inventory/Pollution Prevention Act Reporting.* To attain the goals of section 203 of this order:

(a) Each agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable EPA guidance.

(b) Each agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) delineations. Except as described in subsection (d) of this section, all other existing statutory or regulatory limitations or

exemptions on the application of EPCRA section 313 to specific activities at specific agency facilities apply to the reporting requirements set forth in subsection (a) of this section.

(c) Each agency required to report under subsection (a) of this section shall do so using electronic reporting as provided in EPA's EPCRA section 313 guidance.

(d) Within 12 months of the date of this order, the Administrator shall review the impact on reporting of existing regulatory exemptions on the application of EPCRA section 313 at Federal facilities. Where feasible, this review shall include pilot studies at Federal facilities. If the review indicates that application of existing exemptions to Federal Government reporting under this section precludes public reporting of substantial amounts of toxic chemicals under subsection 501(a), the EPA shall prepare guidance, in coordination with the Workgroup established under section 306 of this order, clarifying application of the exemptions at Federal facilities. In developing the guidance, the EPA should consider similar application of such regulatory limitations and exemptions by the private sector. To the extent feasible, the guidance developed by the EPA shall be consistent with the reasonable application of such regulatory limitations and exemptions in the private sector. The guidance shall ensure reporting consistent with the goal of public access to information under section 313 of EPCRA and section 6607 of PPA. The guidance shall be submitted to the AEEs established under section 301(d) of Executive Order 13101 for review and endorsement. Each agency shall apply any guidance to reporting at its facilities as soon as practicable but no later than for reporting for the next calendar year following release of the guidance.

(e) The EPA shall coordinate with other interested Federal agencies to carry out pilot projects to collect and disseminate information about the release and other waste management of chemicals associated with the environmental response and restoration at their facilities and sites. The pilot projects will focus on releases and other waste management of chemicals associated with environmental response and restoration at facilities and sites where the activities generating wastes do not otherwise meet EPCRA section 313 thresholds for manufacture, process, or other use. Each agency is encouraged to identify applicable facilities and voluntarily report under subsection (a) of this section the releases and other waste management of toxic chemicals managed during environmental response and restoration, regardless of whether the facility otherwise would report under subsection (a). The releases and other waste management of chemicals associated with environmental response and restoration voluntarily reported under this subsection will not be included in the accounting established under sections 503(a) and (c) of this order.

Sec. 502. Release Reduction: Toxic Chemicals. To attain the goals of section 204 of this order:

(a) Beginning with reporting for calendar year 2001 activities, each agency reporting under section 501 of this order shall adopt a goal of reducing, where cost effective, the agency's total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal by at least 10 percent annually, or by 40 percent overall by December 31, 2006. Beginning with activities for calendar year 2001, the baseline for measuring progress in meeting the reduction goal will be the aggregate of all such releases and off-site transfers of such chemicals for treatment and disposal as reported by all of the agency's facilities under section 501 of this order. The list of toxic chemicals applicable to this goal is the EPCRA section 313 list as of December 1, 2000. If an agency achieves the 40 percent reduction goal prior to December 31, 2006, that agency shall establish a new baseline and reduction goal based on agency priorities.

(b) Where an agency is unable to pursue the reduction goal established in subsection (a) for certain chemicals that are mission critical and/or needed to protect human health and the environment or where agency off-site transfer

of toxic chemicals for treatment is directly associated with environmental restoration activities, that agency may request a waiver from the EPA for all or part of the requirement in subsection (a) of this section. As appropriate, waiver requests must provide: (1) an explanation of the mission critical use of the chemical; (2) an explanation of the nature of the need for the chemical to protect human health; (3) a description of efforts to identify a less harmful substitute chemical or alternative processes to reduce the release and transfer of the chemical in question; and (4) a description of the off-site transfers of toxic chemicals for treatment directly associated with environmental restoration activities. The EPA shall respond to the waiver request within 90 days and may grant such a waiver for no longer than 2 years. An agency may resubmit a request for waiver at the end of that period. The waiver under this section shall not alter requirements to report under section 501 of this order.

(c) Where a specific component (e.g., bureau, service, or command) within an agency achieves a 75 percent reduction in its 1999 reporting year publicly reported total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal, based on the 1994 baseline established in Executive Order 12856, that agency may independently elect to establish a reduction goal for that component lower than the 40 percent target established in subsection (a) of this section. The agency shall formally notify the Workgroup established in section 306 of this order of the elected reduction target.

Sec. 503. Use Reduction: Toxic Chemicals, Hazardous Substances, and Other Pollutants. To attain the goals of section 205 of this order:

(a) Within 18 months of the date of this order, each agency with facilities shall develop and support goals to reduce the use at such agencies' facilities of the priority chemicals on the list under subsection (b) of this section for identified applications and purposes, or alternative chemicals and pollutants the agency identifies under subsection (c) of this section, by at least 50 percent by December 31, 2006.

(b) Within 9 months of the date of this order the Administrator, in coordination with the Workgroup established in section 306 of this order, shall develop a list of not less than 15 priority chemicals used by the Federal Government that may result in significant harm to human health or the environment and that have known, readily available, less harmful substitutes for identified applications and purposes. In addition to identifying the applications and purposes to which such reductions apply, the Administrator, in coordination with the Workgroup shall identify a usage threshold below which this section shall not apply. The chemicals will be selected from listed EPCRA section 313 toxic chemicals and, where appropriate, other regulated hazardous substances or pollutants. In developing the list, the Administrator, in coordination with the Workgroup shall consider: (1) environmental factors including toxicity, persistence, and bio-accumulation; (2) availability of known, less environmentally harmful substitute chemicals that can be used in place of the priority chemical for identified applications and purposes; (3) availability of known, less environmentally harmful processes that can be used in place of the priority chemical for identified applications and purposes; (4) relative costs of alternative chemicals or processes; and (5) potential risk and environmental and human exposure based upon applications and uses of the chemicals by Federal agencies and facilities. In identifying alternatives, the Administrator should take into consideration the guidance issued under section 503 of Executive Order 13101.

(c) If an agency, which has facilities required to report under EPCRA, uses at its facilities less than five of the priority chemicals on the list developed in subsection (b) of this section for the identified applications and purposes, the agency shall develop, within 12 months of the date of this order, a list of not less than five chemicals that may include priority chemicals under subsection (b) of this section or other toxic chemicals, hazardous substances, and/or other pollutants the agency uses or generates,

the release, transfer or waste management of which may result in significant harm to human health or the environment.

(d) In lieu of requirements under subsection (a) of this section, an agency may, upon concurrence with the Workgroup established under section 306 of this order, develop within 12 months of the date of this order, a list of not less than five priority hazardous or radioactive waste types generated by its facilities. Within 18 months of the date of this order, the agency shall develop and support goals to reduce the agency's generation of these wastes by at least 50 percent by December 31, 2006. To the maximum extent possible, such reductions shall be achieved by implementing source reduction practices.

(e) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal in subsections (a) and (d) of this section for each agency is the first calendar year following the development of the list of priority chemicals under subsection (b) of this section.

(f) Each agency shall undertake pilot projects at selected facilities to gather and make publicly available materials accounting data related to the toxic chemicals, hazardous substances, and/or other pollutants identified under subsections (b), (c), or (d) of this section.

(g) Within 12 months of the date of this order, the Administrator shall develop guidance on implementing this section in coordination with the Workgroup. The EPA shall develop technical assistance materials to assist agencies in meeting the 50 percent reduction goal of this section.

(h) Where an agency can demonstrate to the Workgroup that it has previously reduced the use of a priority chemical identified in subsection 503(b) by 50 percent, then the agency may elect to waive the 50 percent reduction goal for that chemical.

Sec. 504. *Emergency Planning and Reporting Responsibilities.* Each agency shall comply with the provisions set forth in sections 301 through 312 of the EPCRA, all implementing regulations, and any future amendments to these authorities, in light of any applicable guidance as provided by the EPA.

Sec. 505. *Reductions in Ozone-Depleting Substances.* To attain the goals of section 206 of this order:

(a) Each agency shall ensure that its facilities: (1) maximize the use of safe alternatives to ozone-depleting substances, as approved by the EPA's Significant New Alternatives Policy (SNAP) program; (2) consistent with subsection (b) of this section, evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials, and evaluate use of, and plans for recycling, refrigerants, and halons; and (3) exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

(b) Within 12 months of the date of this order, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all nonexcepted uses by December 31, 2010. Plans should target cost effective reduction of environmental risk by phasing out Class I ozone depleting substance applications as the equipment using those substances reaches its expected service life. Exceptions to this requirement include all exceptions found in current or future applicable law, treaty, regulation, or Executive order.

(c) Each agency shall amend its personal property management policies and procedures to preclude disposal of ozone depleting substances removed or reclaimed from its facilities or equipment, including disposal as part of a contract, trade, or donation, without prior coordination with the Department of Defense (DoD). Where the recovered ozone-depleting substance is a critical requirement for DoD missions, the agency shall transfer the materials to the DoD. The DoD will bear the costs of such transfer.

PART 6—LANDSCAPING MANAGEMENT PRACTICES**Sec. 601. Implementation.**

(a) Within 12 months from the date of this order, each agency shall incorporate the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 Fed. Reg. 40837) developed by the FEE into landscaping programs, policies, and practices.

(b) Within 12 months of the date of this order, the FEE shall form a workgroup of appropriate Federal agency representatives to review and update the guidance in subsection (a) of this section, as appropriate.

(c) Each agency providing funding for nonfederal projects involving landscaping projects shall furnish funding recipients with information on environmentally and economically beneficial landscaping practices and work with the recipients to support and encourage application of such practices on Federally funded projects.

Sec. 602. Technical Assistance and Outreach. The EPA, the General Services Administration (GSA), and the USDA shall provide technical assistance in accordance with their respective authorities on environmentally and economically beneficial landscaping practices to agencies and their facilities.

PART 7—ACQUISITION AND PROCUREMENT**Sec. 701. Limiting Procurement of Toxic Chemicals, Hazardous Substances, and Other Pollutants.**

(a) Within 12 months of the date of this order, each agency shall implement training programs to ensure that agency procurement officials and acquisition program managers are aware of the requirements of this order and its applicability to those individuals.

(b) Within 24 months of the date of this order, each agency shall determine the feasibility of implementing centralized procurement and distribution (e.g., “pharmacy”) programs at its facilities for tracking, distribution, and management of toxic or hazardous materials and, where appropriate, implement such programs.

(c) Under established schedules for review of standardized documents, DoD and GSA, and other agencies, as appropriate, shall review their standardized documents and identify opportunities to eliminate or reduce their use of chemicals included on the list of priority chemicals developed by the EPA under subsection 503(b) of this order, and make revisions as appropriate.

(d) Each agency shall follow the policies and procedures for toxic chemical release reporting in accordance with FAR section 23.9 effective as of the date of this order and policies and procedures on Federal compliance with right-to-know laws and pollution prevention requirements in accordance with FAR section 23.10 effective as of the date of this order.

Sec. 702. Environmentally Benign Adhesives. Within 12 months after environmentally benign pressure sensitive adhesives for paper products become commercially available, each agency shall revise its specifications for paper products using adhesives and direct the purchase of paper products using those adhesives, whenever technically practicable and cost effective. Each agency should consider products using the environmentally benign pressure sensitive adhesives approved by the U.S. Postal Service (USPS) and listed on the USPS Qualified Products List for pressure sensitive recyclable adhesives.

Sec. 703. Ozone-Depleting Substances. Each agency shall follow the policies and procedures for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances in accordance with FAR section 23.8 and other applicable FAR provisions.

Sec. 704. *Environmentally and Economically Beneficial Landscaping Practices.*

(a) Within 18 months of the date of this order, each agency shall have in place acquisition and procurement practices, including provision of landscaping services that conform to the guidance referred to in section 601 of this order, for the use of environmentally and economically beneficial landscaping practices. At a minimum, such practices shall be consistent with the policies in the guidance referred to in section 601 of this order.

(b) In implementing landscaping policies, each agency shall purchase environmentally preferable and recycled content products, including EPA-designated items such as compost and mulch, that contribute to environmentally and economically beneficial practices.

PART 8—EXEMPTIONS

Sec. 801. *National Security Exemptions.* Subject to subsection 902(c) of this order and except as otherwise required by applicable law, in the interest of national security, the head of any agency may request from the President an exemption from complying with the provisions of any or all provisions of this order for particular agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed, with the following exceptions: (a) an exemption issued under this section will be for a specified period of time that may exceed 1 year; (b) notice of any exemption granted under this section for provisions not otherwise required by law is only required to the Director of OMB, the Chair of the CEQ, and the Director of the National Security Council; and (c) an exemption under this section may be issued due to lack of appropriations, provided that the head of the agency requesting the exemption shows that necessary funds were requested by the agency in its budget submission and agency plan under Executive Order 12088 of October 13, 1978, and were not contained in the President's budget request or the Congress failed to make available the requested appropriation. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order. Nothing in this order affects limitations on the dissemination of classified information pursuant to law, regulation, or Executive order.

Sec. 802. *Compliance.* After January 1, 2002, OMB, in consultation with the Chair of the Workgroup established by section 306 of this order, may modify the compliance requirements for an agency under this order, if the agency is unable to comply with the requirements of the order. An agency requesting modification must show that it has made substantial good faith efforts to comply with the order. The cost-effectiveness of implementation of the order can be a factor in OMB's decision to modify the requirements for that agency's compliance with the order.

PART 9—GENERAL PROVISIONS

Sec. 901. *Revocation.* Executive Order 12843 of April 21, 1993, Executive Order 12856 of August 3, 1993, the Executive Memorandum on Environmentally Beneficial Landscaping of April 26, 1994, Executive Order 12969 of August 8, 1995, and section 1–4. "Pollution Control Plan" of Executive Order 12088 of October 13, 1978, are revoked.

Sec. 902. *Limitations.*

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to Federal facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Each agency with facilities outside of these areas, however,

is encouraged to make best efforts to comply with the goals of this order for those facilities.

(c) Nothing in this order alters the obligations under EPCRA, PPA, and CAA independent of this order for Government-owned, contractor-operated facilities and Government corporations owning or operating facilities or subjects such facilities to EPCRA, PPA, or CAA if they are otherwise excluded. However, each agency shall include the releases and other waste management of chemicals for all such facilities to meet the agency's reporting responsibilities under section 501 of this order.

(d) Nothing in this order shall be construed to make the provisions of CAA sections 304 and EPCRA sections 325 and 326 applicable to any agency or facility, except to the extent that an agency or facility would independently be subject to such provisions.

Sec. 903. *Community Outreach.* Each agency is encouraged to establish a process for local community advice and outreach for its facilities relevant to aspects of this and other related Greening the Government Executive orders. All strategies and plans developed under this order shall be made available to the public upon request.

PART 10—DEFINITIONS

For purposes of this order:

Sec. 1001. *General.* Terms that are not defined in this part but that are defined in Executive Orders 13101 and 13123 have the meaning given in those Executive orders. For the purposes of Part 5 of this order all definitions in EPCRA and PPA and implementing regulations at 40 CFR Parts 370 and 372 apply.

Sec. 1002. “Administrator” means the Administrator of the EPA.

Sec. 1003. “Environmental cost accounting” means the modification of cost attribution systems and financial analysis practices specifically to directly track environmental costs that are traditionally hidden in overhead accounts to the responsible products, processes, facilities or activities.

Sec. 1004. “Facility” means any building, installation, structure, land, and other property owned or operated by, or constructed or manufactured and leased to, the Federal Government, where the Federal Government is formally accountable for compliance under environmental regulation (e.g., permits, reports/records and/or planning requirements) with requirements pertaining to discharge, emission, release, spill, or management of any waste, contaminant, hazardous chemical, or pollutant. This term includes a group of facilities at a single location managed as an integrated operation, as well as government owned contractor operated facilities.

Sec. 1005. “Environmentally benign pressure sensitive adhesives” means adhesives for stamps, labels, and other paper products that can be easily treated and removed during the paper recycling process.

Sec. 1006. “Ozone-depleting substance” means any substance designated as a Class I or Class II substance by EPA in 40 CFR Part 82.

Sec. 1007. “Pollution prevention” means “source reduction,” as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

Sec. 1008. “Greening the Government Executive orders” means this order and the series of orders on greening the government including Executive Order 13101 of September 14, 1998, Executive Order 13123 of June 3, 1999, Executive Order 13134 of August 12, 1999, and other future orders as appropriate.

Sec. 1009. “Environmental aspects” means the elements of an organization’s activities, products, or services that can interact with the environment.



THE WHITE HOUSE,
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