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Guidance for Implementing Executive Order 12856:

Federal Compliance with Right-to-Know Laws and
Pollution Prevention Requirements - March 28, 1995



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GUIDANCE FOR IMPLEMENTING EXECUTIVE ORDER 12856
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INTRODUCTION: This document has been prepared to facilitate Federal government compliance with Executive Order 12856, "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements." This document has been developed by EPA to serve as voluntary interpretive guidance for Federal agencies covered under Executive Order 12856 and is not intended to be binding EPA regulation or rulemaking. The guidance and recommendations in this document are based primarily upon EPA's experience in implementing the regulatory requirements of the Emergency Planning and Community Right-to-Know Act and Pollution Prevention Act. Additionally, the document reflects relevant experience with pollution prevention efforts at both private and Federal facilities.

In preparing this document EPA focused upon two fundamental elements of the Executive Order: 1) the Executive Order directive that Federal agencies must comply with all provisions of the Emergency Planning and Community Right-to-Know Act and Pollution Prevention Act and implementing regulations, and; 2) the Executive Order mandate for Federal government leadership both in the prevention of pollution at Federal facilities and in providing information to the public concerning the manufacture, process, use and release or transfer of toxic chemicals and pollutants at Federal facilities. Based on these factors, this document provides explanations of current EPCRA and PPA requirements and practices and offers suggestions to support Federal government leadership initiatives. Additional documents on the broader topic of pollution prevention in the Federal Government either have been prepared or are being drafted and can be obtained from EPA's Pollution Prevention Information Center at 202-260-1023.

INTERPRETIVE GUIDANCE: Interpretation of the extent and scope of Federal government compliance with EPCRA and PPA at Federal facilities must reflect the current regulations and practices applicable to private entities covered under those laws. For the purposes of community right-to-know and emergency preparedness, it is essential that Federal facilities comply with the regulations, at least to the same extent as privately owned and/or operated facilities. This level of compliance by Federal facilities allows the public a more forthright and thorough appraisal of the presence and release of hazardous and toxic chemicals which may adversely affect their community and provides a planning mechanism to protect communities in the event of emergency releases of those chemicals. For the purposes of Toxics Release Inventory and Pollution Prevention Act reporting, the Executive Order expands facility coverage to all Federal facilities regardless of SIC codes. This has necessitated interpretation in the guidance to address activities not normally associated with "manufacturing" facilities.

With regard to many of the pollution prevention aspects of the Executive Order, compliance with the Order reflects more than simple adherence to current regulatory guidelines or practices; it reflects an additional commitment to uniform and consistent interpretation of the Order on the part of the Federal government where regulatory guidelines or practices do not already exist. Therefore, to achieve the goals of the Executive Order, affected Federal agencies must consistently and uniformly apply similar interpretations of the pollution prevention policies and standards set out in the Executive Order.

To address both of these aspects of compliance with the Executive Order, this document provides guidance entitled "**INTERPRETIVE GUIDANCE**" in the section-by-section portion of the document. Where regulatory requirements exist, the guidance reflects those requirements. Where explicit requirements are set out in the Executive Order, but no regulatory practice exists, the guidance provides consistent interpretation of the language of the Executive Order. Appendices to the document also provide further explanation and discussion of the regulatory practices unique to compliance with community right-to-know regulations.

EXECUTIVE ORDER 12856

Section 1. Applicability.

Section 1 - 102.

"Except as otherwise noted, this order is applicable to all Federal agencies that either own or operate a 'facility' as that term is defined in section 329(4) of EPCRA, if such facility meets the threshold requirements set forth in EPCRA for compliance as modified by section 3-304(b) of this order ("covered facilities"). Except as provided in section 1-103 and section 1-104 below, each Federal agency must apply all of the provisions of this order to each of its covered facilities, including those facilities which are subject, independent of this order, to the provisions of EPCRA and PPA (e.g., certain Government-owned/contractor-operated facilities (GOCO's), for chemicals meeting EPCRA thresholds)."

INTERPRETIVE GUIDANCE: A "Federal agency" is equivalent to an "executive agency" as defined in 5 U.S.C. 105 -- executive department, government corporation, or an independent establishment (see Executive Order section 2-202). Section 2-201 of the Executive Order changes, for the purposes of this Order only, the term "person" as defined in section 329(7) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), to also include Federal agencies. (All other definitions found in EPCRA and PPA and implementing regulations are incorporated into the Executive Order by reference.)

"Facility" is defined according to section 329(4) of EPCRA as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For the purposes of section 11004 of this title [EPCRA §304], the term includes motor vehicles, rolling stock, and aircraft."

The term "covered facilities" in section 1-102 of the Executive Order includes all Federal facilities which meet one or more of the threshold reporting requirements of EPCRA, i.e.:

- ◆ EPCRA section 302: Presence of Extremely Hazardous Substances (EHS) at or above Threshold Planning Quantity (TPQ).
- ◆ EPCRA section 304: Release of an EHS or Hazardous Substance at or above a reportable quantity.
- ◆ EPCRA sections 311 - 312: Presence of 10,000 pounds of listed chemical - unless EHS, then 500 pounds or TPQ, whichever is lower.

◆ EPCRA section 313: 25,000 lbs/yr manufacturing, importing, or processing, or 10,000 lbs/yr otherwise using one or more listed toxic chemical (40 CFR 372.22 and 372.25) and 10 or more full time employees or the equivalent.

Note that for section 313 of EPCRA, import is the equivalent of manufacture. See EPCRA section 313(b)(1)(C)(i) and 40 CFR 372.3.

(See section 304(b) of the Executive Order)

Section 1-102 (continued)

"This order does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad."

INTERPRETIVE GUIDANCE: "Customs territory" is defined at 40 CFR 372.3 to include, "the 50 States, the District of Columbia, and Puerto Rico." Facilities outside of this area are not required to comply with the Executive Order.

Section 1-103.

"Nothing in this order alters the obligations which GOCO's and Government corporation facilities have under EPCRA and PPA independent of this order or subjects such facilities to EPCRA or PPA if they are otherwise excluded. However, consistent with section 1-104 below, each Federal agency shall include the releases and transfers from all such facilities when meeting all of the Federal agency's responsibilities under this order."

INTERPRETIVE GUIDANCE: Currently, private contract operators at Federal facilities are legally required to comply with all provisions of EPCRA and PPA to the extent their operations meet requirements of these statutes and implementing regulations. Executive Order 12856 does not impose additional legal obligations upon such contractors. Private contract operators at Federal facilities should continue to meet any independent legal reporting and planning obligations they have under EPCRA and PPA.

For Toxics Release Inventory (TRI) purposes, if applicable thresholds are met, under the Executive Order all required data from a Federal facility, including both contractor-operated portions and elements operated by the agency, are reportable by the Federal agency "owner" of the facility. While a private-contract operator may not be legally obligated to provide the Federal agency with such information, Federal agencies should make every reasonable effort to obtain necessary information from contractors operating at Federal facilities in order to comply with EPCRA, PPA, and this Executive Order (see section 1-104

of the Executive Order). Work conducted for a Federal agency (by a contractor/subcontractor), including work related to grants and/or cooperative agreements, at a non-Federally-owned facility is not covered by the Executive Order.

Section 1-104.

"To facilitate compliance with this order, each Federal agency shall provide, in all future contracts between the agency and its relevant contractors, for the contractor to supply to the Federal agency all information the Federal agency deems necessary for it to comply with this order. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, Federal agencies shall take practical steps to obtain the information needed to comply with this order from such contractors."

INTERPRETIVE GUIDANCE: This section directs Federal agencies to include language in, or otherwise revise, all future contracts between an agency and its contractors in order to facilitate agency compliance with information collection, reporting and pollution prevention provisions of the Executive Order. Where such provisions already exist in Federal contracts, contractors should provide "all information the Federal agency deems necessary for it to comply with this order." This could include information needed to meet the 50 percent reduction goal in section 3-302 of the Executive Order and develop Federal agency pollution prevention policies, strategies and opportunity assessments, as well as information needed to complete facility plans and acquisition/procurement programs (see sections 3-301 through 3-303).

In addition to any requirements established in future contracts, the Executive Order requires agencies to take "practical steps" to obtain necessary information from existing contracts.

Section 2-2. Definitions.

Section 2-201.

"All definitions found in EPCRA and PPA and implementing regulations are incorporated in this order by reference, with the following exception: for the purposes of this order, the term `person', as defined in section 329(7) of EPCRA, also includes Federal agencies."

INTERPRETIVE GUIDANCE: See discussion for section 1-102 and discussion in Part II regarding regulatory exemptions.

Section 2-202. Federal agency

"Federal agency" means an Executive agency, as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense."

INTERPRETIVE GUIDANCE: See discussion for section 1-102.

Section 2-203. Pollution Prevention.

"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."

INTERPRETIVE GUIDANCE: According to section 6603(5)(A) of the Pollution Prevention Act the term "source reduction" means any practice which:

- (i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal; and
- (ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedures modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

Section 6603(5)(B) states, "'source reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service."

Section 2-204

"GOCO' means a Government-owned/contractor-operated facility which is owned by the Federal Government but all or portions of which are operated by private contractors."

INTERPRETIVE GUIDANCE: Self-explanatory.

Section 2-205.

"`Administrator' means the Administrator of the EPA."

INTERPRETIVE GUIDANCE: Self-explanatory.

Section 2-206.

"`Toxic Chemical' means a substance on the list described in section 313(c) of EPCRA."

INTERPRETIVE GUIDANCE: Self-explanatory. For copies of this list, contact the EPCRA Hotline at (800) 535-0202.

Section 2-207. Toxic Pollutants.

"For the purposes of section 3-302(a) of this order, the term `toxic pollutants' shall include, ... "

INTERPRETIVE GUIDANCE: The Executive Order contains a typographical error in this section. The term "toxic pollutants" is not used in section 3-302(a), but in section 3-302(c). Section 2-207 should read

"For the purposes of section 3-302(c) of this order, the term 'toxic pollutants' shall include, ...

Section 2-207. Toxic Pollutants. (continued)

" ... the term `toxic pollutants' shall include, but is not necessarily limited to, those chemicals at a Federal facility subject to the provisions of section 313 of EPCRA as of December 1, 1993. Federal agencies may also choose to include releases and transfers of other chemicals, such as `extremely hazardous chemicals' as defined in section 329(3) of EPCRA, hazardous wastes as defined under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6986)(RCRA), or hazardous air pollutants under the Clean Air Act Amendments (42 U.S.C. 7403-7626); however, for the purposes of establishing the agency's baseline under 3-302(c), such `other chemicals' are in addition to (not instead of) the section 313 chemicals. ..."

INTERPRETIVE GUIDANCE: Agencies electing to base their 50 percent reduction goal on toxic pollutants under section 3-302(c), shall include, at a minimum, the EPCRA section 313 toxic chemicals in effect on December 1, 1993.

Agencies electing to base their a 50 percent reduction on releases of toxic chemicals, shall include those EPCRA section 313 toxic chemicals in effect the first baseline year of reporting as described in section 3-302(b) of the Executive Order. For most Federal agencies, the first baseline year of reporting will be 1994 and will include EPCRA section 313 toxic chemicals listed

and in effect on January 1, 1994, including those 34 chemicals added to section 313 in 1993. The baseline year will not include those additional chemicals proposed for listing by EPA in January of 1994. However, chemicals added to the TRI list after December 1, 1993 will be subject to TRI reporting requirements described in section 3-304(a) of the Executive Order.

Section 2-207. Toxic Pollutants. (continued)

"...The term 'toxic pollutants' does not include hazardous waste subject to remedial action generated prior to the date of this order."

INTERPRETIVE GUIDANCE: Hazardous wastes generated or released prior to August 3, 1993, may not be included when determining the agency 50 percent reduction goal baseline for toxic pollutants under section 3-302(c) of this Executive Order. Obviously these wastes have already been generated and thus cannot be affected by "source reduction". Therefore, quantities of listed toxic chemicals or pollutants released or transferred as a result of remedial actions should not be factored into a facility or Agency baseline quantity for the purpose of measuring progress toward a 50% reduction goal.

Section 3-3: Implementation

Section 3-301. Federal Agency Strategy.

"Within 12 months of the date of this order, the head of each Federal agency must develop a written pollution prevention strategy to achieve the requirements specified in sections 3-302 through 3-305 of this order for that agency. A copy thereof shall be provided to the Administrator."

INTERPRETIVE GUIDANCE: All Federal agencies with "covered facilities" as defined in section 1-102 were required to submit an agency pollution prevention strategy to EPA by August, 1994. At the time of the issuance of this document, this deadline for Agency strategies has passed. EPA has prepared a document, "Pollution Prevention in the Federal Government: Guide for Developing Federal Agency Pollution Prevention Strategies for Executive Order 12856 and Beyond," document number EPA 300-B-94-007, for use as an aid in the development of agency pollution prevention strategies and which is available from the EPA Pollution Prevention Information Clearinghouse at 202-260-1023.

Section 3-301. Federal Agency Strategy. (continued)

"Federal agencies are encouraged to involve the public in developing the required strategies under this order and in monitoring their subsequent progress in meeting the requirements of this order."

Section 3-301(a). Federal Agency Strategy. (continued)

"The strategy shall include, but shall not be limited to the following elements: (a) A pollution prevention policy statement, developed by each Federal agency, designating principal responsibilities for development, implementation and evaluation of the strategy. The statement shall reflect the Federal agency's commitment to incorporate pollution prevention through source reduction in facility management and acquisition, and it shall identify an individual responsible for coordinating the Federal agency's efforts in this area."

INTERPRETIVE GUIDANCE: Each pollution prevention strategy shall include a separate pollution prevention statement which reflects the Administration policies, concepts and approaches emphasized in the introductory portions of Executive Order 12856. Strategies should recognize the environmental protection hierarchy outlined in the Pollution Prevention Act and in the preamble to the Executive Order, to

"[E]nsure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any waste stream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated or disposed of in a manner protective of public health and the environment."

In addition, policy statements provide an opportunity to demonstrate the Federal leadership called for in the Executive Order which states that "the Federal Government should become a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies."

Agency strategies should also indicate which organization within each agency has responsibility for implementing various aspects of the strategy and evaluating its effectiveness. To the extent practicable, agencies should link responsibilities to specific requirements in the Executive Order. In addition to assigning organizational responsibilities, the strategy shall identify an individual responsible for coordinating the agency's pollution prevention program and overseeing agency compliance with the Executive Order.

In order to best implement source reduction efforts, Federal agencies should follow the management policy established in section 6602(b) of the PPA:

- Pollution should be prevented or reduced at the source, whenever feasible;
- pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible;

- pollution that cannot be prevented or recycled, should be treated in an environmentally safe manner, whenever feasible; and,
- disposal or other controlled release into the environment should be employed only as a last recourse and should be conducted in an environmentally safe manner.

See also section 3-301(b).

Section 3-301(b). Federal Agency Strategy.

"A commitment to utilize pollution prevention through source reduction, where practicable, as the primary means of achieving and maintaining compliance with all applicable Federal, State, and local environmental requirements."

INTERPRETIVE GUIDANCE: Federal agency strategies should advance pollution prevention through source reduction as the principal approach for ensuring Federal facility compliance with Federal, state and local environmental laws, regulations and requirements. Federal facilities should put in place policies and practices which emphasize pollution prevention as the alternative of "first choice" in how the facilities achieve compliance with new regulations and requirements, ensure compliance with existing regulations and requirements, and return to compliance when violations are identified.

Section 3-302(a). Toxic Chemical Reduction Goals.

"The head of each Federal agency subject to this order shall ensure that the agency develops voluntary goals to reduce the agency's total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal from facilities covered by this order by 50 percent by December 31, 1999. To the maximum extent practicable, such reductions shall be achieved by implementation of source reduction practices."

INTERPRETIVE GUIDANCE: This section calls for the development of voluntary goals to reduce a Federal agency's total releases and off-site transfers of Toxic Release Inventory (TRI) chemicals by 50 percent by December 31, 1999. The 50 percent reduction goal is to be applied on an agency-wide basis, thus allowing for variations in reductions achieved at individual agency facilities. The term "voluntary" goal as used in this Executive Order was included to emphasize that the 50 percent reduction is a Presidential "goal" rather than an absolute "requirement," like the EPCRA reporting requirements. However, each agency shall establish a 50 percent reduction goal as part of the agency pollution prevention strategy and should make every effort to achieve these reductions by the end of 1999.

This section also directs agencies to achieve these reductions through the use of source reduction techniques and practices to the maximum extent practicable. Agency strategies should reflect this emphasis on source reduction when outlining plans for achieving the 50 percent reduction goal.

Section 3-302(b). Toxic Chemical Reduction Goals.

"The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal for each Federal agency shall be the first year in which releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic chemicals reported in the baseline year for all of that Federal agency's facilities meeting the threshold applicability requirements set forth in section 1-102 of this order. In no event shall the baseline be later than the 1994 reporting year."

INTERPRETIVE GUIDANCE: The baseline for measuring each agency's progress in achieving the 50 percent reduction goal is the first year in which all of an agency's covered facilities have publicly reported releases and transfers of TRI toxic chemicals. In most cases, the baseline will be calendar year 1994, although some Federal facilities may have voluntarily begun reporting earlier. In no case shall the baseline for reporting be later than 1994. These facilities may choose to highlight this TRI reporting and related reductions in the individual facility pollution prevention plans required by section 3-302(d) of this Executive Order. However, such reductions will not be counted in the agency-wide reduction goal measurements unless **all** of that agency's covered facilities began publicly reporting TRI releases prior to 1994. Additionally, reductions at facilities not included in the baseline should not be included in measurements of progress towards the reduction goal.

This section, as well as section 3-302(a), states that the 50 percent reduction goal is not to be applied on a facility-specific basis but is measured as the "aggregate amount" of toxic chemicals reported for all of the agency's covered facilities reporting releases or transfers of those chemicals. The reduction is to be measured on an agency-wide basis, thus allowing agencies flexibility in achieving reductions in toxic releases. In addition, the 50 percent reduction is not chemical or release specific but is to be applied to each agency's total of all releases and off-site transfers of toxic chemicals for disposal and waste treatment to allow for maximum agency flexibility in meeting the President's goal.

Each agency will have the flexibility to make its own determination of what constitutes "agency" planning, reporting and reductions. For example, the Department of Interior may report progress in reducing the release of toxic chemicals on a department-wide basis or choose to measure progress separately for the Bureau of Land Management, National Park Service, Fish and Wildlife Service, etc. It is recommended that Federal agencies consider the size and complexity of their agency and amount of toxic chemical/pollutants being reported when making

such determinations.

Section 3-302 (c). Toxic Chemical Reduction Goals.

"Alternatively, a Federal agency may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the Federal agency shall delineate the scope of its reduction program in the written pollution prevention strategy that is required by section 3-301 of this order. The baseline for measuring reductions for purposes of achieving the 50 percent reduction requirement for each Federal agency shall be the first year in which releases of toxic pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that Federal agency's facilities encompassed by section 3-301. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the agency in the baseline year. For any toxic pollutants included by the agency in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the agency shall report on such toxic pollutants annually under the provisions of section 3-304 of this order, if practicable, or through an agency report that is made available to public."

INTERPRETIVE GUIDANCE: This section allows Federal agencies the option of expanding their baseline of EPCRA section 313 toxic chemicals to include additional "toxic pollutants" as defined in section 2-207 of Executive Order 12856. As explained in section 2-207, these additional toxic pollutants may include, but are not limited to the following: "extremely hazardous chemicals" as defined in section 329(3) of EPCRA, hazardous wastes (except those generated or released prior to August 3, 1993) as defined under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6986) (RCRA), or hazardous air pollutants under the Clean Air Act Amendments (42 U.S.C. 7403-7626). For the purposes of establishing the agency's baseline under 3-302(c), such "other chemicals" are in addition to (not instead of) the section 313 chemicals.

Where practicable, releases or off-site transfers of toxic pollutants included in an agency's 50 percent reduction goal baseline under this section, shall be reported under the provisions set forth in section 3-304 of this Executive Order. Alternatively releases or off-site transfers of toxic pollutants may be reported through some other public reporting mechanism. The reporting should be chemical specific. For example, if an agency chooses to report a RCRA waste, it should not report on the entire waste stream, but only the individual chemicals in the waste stream. Any toxic pollutants added to the agency's baseline should be delineated as specific chemical substances in the agency's pollution prevention strategy required by section 3-301 of this Executive Order. The baseline year for reporting such toxic pollutants is the first year of agency-wide public reporting but no later than calendar year 1994.

Section 3-302 (d). Toxic Chemical Reduction Goals.

"The head of each Federal agency shall ensure that each of its covered facilities develops a written pollution prevention plan no later than the end of 1995, which sets forth the facility's contribution to the goal established in section 3-302(a) of this order. Federal agencies shall conduct assessments of their facilities as necessary to ensure development of such plans and of facilities' pollution prevention programs."

INTERPRETIVE GUIDANCE: Written pollution prevention plans must be completed for each of a Federal agency's "covered facilities" (as outlined in section 1-102) by the end of calendar year 1995. Some Federal facilities may only meet EPCRA reporting thresholds other than those in section 313 and thus may not be able to specifically contribute to their agency's reduction goal for TRI toxic chemicals. Nonetheless, these facilities should prepare pollution prevention plans which outline other facility specific pollution prevention efforts. The Executive Order does not require submission of each covered facility's plans to EPA or state agencies, but they should be made available if requested during facility inspections or through written request.

Once facility plans are completed and approved, they must be available to the public upon request. Section 5-508 of this Executive Order directs that the public have "ready access" to all "strategies, plans and reports" prepared by Federal agencies under this Executive Order.

Section 302(d) also directs agencies to conduct pollution prevention opportunity assessments of their facilities as necessary to help them in developing pollution prevention plans and programs required by the Executive Order. EPA has developed guidance on conducting pollution prevention opportunity assessments in the "Facility Pollution Prevention Guide," document # EPA/600/R-92/088. Copies may be obtained by contacting EPA's Pollution Prevention Information Clearinghouse at (202) 260-1023. In addition, EPA has developed a Federal Facilities Pollution Prevention Planning Guide to assist Federal facilities in developing the pollution prevention plans required by this Executive Order (document # EPA-300-B-94-013). This document is also available through the Pollution Prevention Information Clearinghouse.

3-303(a). Acquisition and Procurement Goals.

"Each Federal agency shall establish a plan and goals for eliminating or reducing the unnecessary acquisition by that agency of products containing extremely hazardous substances or toxic chemicals. Similarly, each Federal agency shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. Priorities shall be developed by Federal agencies, in coordination with EPA, for implementing this section."

INTERPRETIVE GUIDANCE: Federal agencies with covered facilities should review what they are acquiring, purchasing, buying, and manufacturing, processing or using and determine if

there are less-or non-toxic or hazardous products or processes that accomplish the same results. Affected agencies should establish strategies to identify alternative products, services or processes that achieve the basic purpose or performance requirements of current products, processes or services but do not require, or require only limited use of extremely hazardous substances and toxic chemicals.

Section 3-303(a) requires Federal agencies to establish a plan and goals for eliminating or reducing the unnecessary acquisition and procurement of products containing extremely hazardous substances or toxic chemicals. Section 3-303 specifically states, "Priorities shall be developed by Federal agencies, in coordination with EPA, for implementing this section."

3-303(b). Acquisition and Procurement Goals.

"Within 24 months of the date of this order, the Department of Defense (DOD) and the General Services Administration (GSA), and other agencies, as appropriate, shall review their agency's standardized documents, including specifications and standards, and identify opportunities to eliminate or reduce the use by their agency of extremely hazardous substances and toxic chemicals, consistent with the safety and reliability requirements of their agency mission. The EPA shall assist agencies in meeting the requirements of this section, including identifying substitutes and setting priorities for these reviews. By 1999, DOD, GSA and other affected agencies shall make all appropriate revisions to these specifications and standards."

INTERPRETIVE GUIDANCE: As appropriate, each Federal agency that uses standardized documents for processes, procedures, maintenance, equipment operation, etc., that require the use of extremely hazardous substances or toxic chemicals, shall investigate opportunities to reduce or eliminate those requirements wherever it is technically and economically feasible.

Federal agencies should establish their own priorities for elimination or reduction of extremely hazardous substances or toxic chemicals as called for in this section of the Executive Order. Priorities could be based on factors such as, but not limited to, toxicity, exposure, volume, risk and safety, as well as cost and availability of substitutes, and ability of alternatives or substitutes to meet performance requirements.

3-303(c). Acquisition and Procurement Goals.

"Any revisions to the Federal Acquisition Regulation (FAR) necessary to implement this order shall be made within 24 months of the date of this order."

INTERPRETIVE GUIDANCE: The FAR has been cited as a possible barrier to agencies seeking environmental performance from contractors. Section 3-303(c) prompts agencies to provide proposed environmental improvements to the FAR. Agencies should take this

opportunity to identify any FAR clauses that are barriers to meeting the requirements of the Executive Order.

3-303(d). Acquisition and Procurement Goals.

"Federal agencies are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, Government laboratories, academia, and others to assess and deploy innovative environmental technologies for domestic use and for markets abroad."

INTERPRETIVE GUIDANCE: The Executive Order preamble states that Federal agencies should work to "[H]elp encourage markets for clean technologies and safe alternatives to extremely hazardous substances or toxic chemicals through revisions to specifications and standards, the acquisition and procurement process, and the testing of innovative pollution prevention technologies at Federal facilities or in acquisitions."

3-304(a). Toxics Release Inventory/Pollution Prevention Reporting.

"The head of each Federal 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 guidance as provided by EPA."

INTERPRETIVE GUIDANCE: The purpose of this provision is to ensure that Federal agencies collect and make available to the affected public, information about use, processing, manufacture, transfer and release of toxic chemicals. Under this Executive Order, Federal facilities with 10 or more full time employees that manufacture, import, or process 25,000 pounds or otherwise use 10,000 pounds of an EPCRA section 313 listed toxic chemical are required to report annually. A "full-time employee," for the purpose of EPCRA section 313 reporting, is defined at 40 CFR 372.3 as 2,000 work hours per year. If the total number of hours worked by all employees at a facility is 20,000 hours or more, the Federal facility meets the ten employee threshold. For EPCRA section 313 reporting, if the Federal entity is in a simple landlord role and receives no service or benefit from lessees, other than rent or a fee, then the Federal landlord is not required to account for the lessee's activities at that facility under EPCRA section 313 (40 CFR 372.38(e)).

Further, EPCRA section 313(g)(2) states that covered facilities need not conduct monitoring or other activities beyond that required by other statutory or regulatory requirements. Without measurement or monitoring data, or other readily available data, the Federal facility is required to make reasonable estimates. Federal agencies should be aware that if activities at a facility use toxic chemicals in threshold quantities, additional quantities of those chemicals generated during other facility activities including treatment or remediation processes should be reported under both EPCRA section 313 and section 6607 of PPA. Part 2 provides additional guidance on reporting of releases associated with remedial actions.

Facilities submit their reports on EPA Form R to EPA and to the appropriate state or Tribal government on or before July 1, each year for the previous calendar year. One report per chemical is required. Facilities need to account for any release or off-site transfer and pollution prevention activities that involved that chemical. In those reports, the facility must report how much, if any, of the chemical was released. If the facility meets the manufacture, import, process or use thresholds, but releases nothing, the facility must still submit a report. EPA will enter the reports into a computer database called the Toxics Release Inventory System which will be accessible to the general public.

For more specific information on the reporting requirements under EPCRA section 313, contact the EPCRA Information Hotline at 1-800-535-0202.

3-304(b). Toxics Release Inventory/Pollution Prevention Reporting.

"The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases, transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in sections 3-304(a) of this order."

INTERPRETIVE GUIDANCE: This section of the Executive Order requires Federal agencies to comply with reporting requirements of PPA section 6607 and EPCRA section 313, regardless of SIC codes. All current exemptions and regulatory reporting requirements apply to Federal agency compliance with the section of the Executive Order. See Part 2 for additional information on reportable activities and exemptions.

3-304(c). Toxics Release Inventory/Pollution Prevention Reporting.

"The first year of compliance shall be no later than for the 1994 calendar year with reports due on or before July 1, 1995."

INTERPRETIVE GUIDANCE: The first reporting year for most agencies will be calendar year 1994, with data collection beginning January 1, 1994, and ending December 31, 1994. Reports for 1994 will be based on the EPCRA section 313 list of toxic chemicals effective January 1 of 1994 and will include those chemicals published by EPA in December, 1993 (58 FR 63496 and 63500, December 1, 1993) as amended by Administrative stay on August

15, 1994 (59 FR 43048). Reports for 1994 are due to EPA and the appropriate state or Tribal entity no later than July 1, 1995.

3-305(a). Emergency Planning and Community Right-to-Know Reporting Responsibilities.

"The head of each Federal agency shall comply with the provisions set forth in sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities in light of any applicable guidance as provided by EPA. Effective dates for compliance shall be: (a) With respect to the provisions of section 302 of EPCRA emergency planning notification shall be made no later than 7 months after the date of this order."

INTERPRETIVE GUIDANCE: No later than March 3, 1994, all Federal facilities having an extremely hazardous substance (EHS) at or above the threshold planning quantity (TPQ) shall notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) of the presence of the EHS. If thresholds are exceeded after that date, facilities should notify the SERC and LEPC. For more information, contact EPA's Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202.

3-305(b). Emergency Planning and Community Right-to-Know Reporting Responsibilities.

"With respect to the provisions of section 303 of EPCRA all information necessary for the applicable Local Emergency Planning Committee (LEPC's) to prepare or revise local Emergency Response Plans shall be provided no later than 1 year after the date of this order."

INTERPRETIVE GUIDANCE: No later than August 3, 1994, Federal facilities subject to the notification requirement of Executive Order section 3-305(a) (EPCRA section 302) must designate a facility coordinator to work with the LEPC to develop the LEPC's local Emergency Response Plan as required under EPCRA section 303. The facility coordinator is to provide all information necessary for the development and implementation of the LEPC's plan. For more information, contact EPA's Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202.

3-305(c). Emergency Planning and Community Right-to-Know Act Reporting Requirements.

"To the extent that a facility is required to maintain Material Safety Data Sheets under any provisions of law or Executive order, information required under section 311 of EPCRA shall be submitted no later than 1 year after the date of this order, and the first year of compliance with section 312 shall be no later than the 1994 calendar year, with reports due on or before March 1, 1995."

INTERPRETIVE GUIDANCE: If a Federal facility is required to maintain a Material Safety Data Sheet (MSDS) for a hazardous chemical, and the facility has that chemical at or above the threshold for reporting, the facility is required to submit the MSDS for that chemical (or a list of subject chemicals grouped by hazard type) to the LEPC, SERC and the local fire department by August 3, 1994. The threshold for reporting is 10,000 pounds for any hazardous chemical unless it is also an EHS, whereby the threshold drops to 500 pounds or the TPQ (whichever is less). All

MSDS's are to be made available to the SERC or LEPC upon request.

If, during calendar year 1994, a Federal facility has a subject chemical, the facility is to submit an Emergency and Hazardous Chemical Inventory report (Tier I or Tier II) including those subject chemicals to the SERC, LEPC and local fire department by March 1, 1995 (and annually thereafter). Most states require the Tier II report, and facilities are required to include other chemicals, additional information, or report on different forms if they are requested by the SERC or LEPC. For more information, contact EPA's Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202.

3-305(d). Emergency Planning and Community Right-to-Know Reporting Requirements.

"The provisions of section 304 of EPCRA shall be effective beginning January 1, 1994."

INTERPRETIVE GUIDANCE: Starting January 1, 1994, Federal agencies must comply with the accident notification requirements in section 304 of EPCRA. If a Federal facility produces, uses or stores a hazardous chemical (as defined by OSHA) and the facility has a release of an extremely hazardous substance or a CERCLA hazardous substance at or above the reportable quantity, the facility is required to immediately notify the SERC's and LEPC's for the areas likely to be affected by the release. This requirement builds upon a similar requirement to notify the National Response Center under CERCLA section 103. A written follow-up notice is also required to be submitted to the SERC's and LEPC's as soon as practicable after the release. For more information, contact EPA's Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202.

Section 4-4. Agency Coordination.

Section 4-401.

"By February 1, 1994, the Administrator shall convene an interagency Task Force composed of the Administrator, the Secretaries of Commerce, Defense, and Energy, the Administrator of General Services, the Administrator of the Office of Procurement Policy in the Office of Management and Budget, and such other agency officials as deemed appropriate based upon lists of potential participants submitted to the Administrator pursuant to this section by the agency head. Each agency head may designate other senior agency officials to act in his/her stead, where appropriate. The Task Force will assist the agency heads in the implementation of the activities required under this order."

INTERPRETIVE GUIDANCE: At its first meeting, the Task Force directed that a staff level Pollution Prevention Planning Workgroup of Task Force agency representatives be formed to address issues regarding implementation of the Executive Order. The Task Force has also invited other agencies which have "covered facilities" under the Executive Order to join the Task Force.

Section 4-402.

"Federal agencies subject to the requirements of this order shall submit annual progress reports to the Administrator beginning on October 1, 1995. These reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including the pollution reductions requirements. This reporting requirement shall expire after the report due on October 1, 2001."

INTERPRETIVE GUIDANCE: Each Federal agency must submit an annual progress report to EPA. These reports will likely be combined by EPA with TRI reporting information to prepare the annual progress report to the President (section 5-507). In order to provide a summary of "progress made in complying with all aspects of this order," the reports are likely to include: the status of the Federal agency pollution prevention strategy, including efforts to involve the public (sections 3-301 and 5-508); the status of facility pollution prevention plans (section 3-302(d)); progress towards the 50 percent reduction goal (section 3-302)(reduction progress data will not be available until after the baseline year is established), including examples of how the reductions were achieved; progress towards the acquisition and procurement goals (section 3-303), including examples of how the reductions were achieved; progress in reviewing and revising standardized documents (section 3-303(b)); suggested revisions to the FAR (section 3-303(c)); a sampling of new and innovative pollution prevention technologies developed and tested (section 3-303(d)); and total of TRI chemicals reported by the agency for the previous year (section 3-304). Finally, if there are any changes to the facilities covered by this Executive Order during the reporting year, those changes could be included in this report. EPA will work to provide guidance on the annual agency report required by this section of the Executive Order.

Section 4-403. Technical Advice.

"Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to foster full compliance with this order."

INTERPRETIVE GUIDANCE: Federal Agencies may request technical advice and/or assistance from EPA. Federal agencies should submit requests for technical advice and/or assistance to EPA's Federal Facilities Enforcement Office which will act as EPA's clearinghouse for such requests. As requested and practicable, EPA will assist and advise Federal agencies regarding technical aspects of the Executive Order. Appendix 1 provides points of contacts for each of these programs in each EPA Region.

In the area of EPCRA reporting, EPA offers workshops and training programs that are available to Federal agencies upon request. In addition, EPA can provide train-the-trainer workshops that can be developed in cooperation with Federal agencies. Access to the Toxic Release Inventory System (TRIS), a database and information repository, can also be provided. This information will help agencies analyze and measure progress in identifying and reducing toxic

chemical releases.

In the area of pollution prevention, EPA can offer technical guidance under the Design for the Environment (DfE) program. The DfE program focusses on integrating environmental concerns into the design of products and processes so that risks from toxic chemicals are reduced or eliminated. The Office of Pollution Prevention and Toxics (OPPT) has developed a framework for systematically incorporating DfE principles into environmental management. The analytical framework encompasses a streamlined comparative risk assessment for substitutes and identifies pollution prevention alternatives. EPA is prepared to provide guidance to the Federal agencies and work cooperatively on specific application of this analytical framework. For further information on the Design for the Environment program or on pollution prevention, contact the Pollution Prevention Information Clearinghouse, (202) 260-1023 and the Pollution Prevention Information Exchange (703) 821-4800. For information on EPCRA, contact the EPCRA information hotline at 1-800-535-0202.

Section 4-403. Technical Advice (Continued)

"In addition, to the extent practicable, all Federal agencies subject to this order shall provide technical assistance, if requested, to LEPC's in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities."

INTERPRETIVE GUIDANCE: Federal facilities should assist Local Emergency Planning Committees (LEPC's), as requested and as practicable.

Section 4-404.

"Federal agencies shall place high priority on obtaining funding and resources needed for implementing all aspects of this order, including the pollution prevention strategies, plans, and assessments required by this order, by identifying, requesting, and allocating funds through line-item or direct funding requests. Federal agencies shall make such requests as required in the Federal Agency Pollution Prevention and Abatement Planning Process and through agency budget requests as outlined in Office of Management and Budget (OMB) Circulars A-106 and A-11, respectively. Federal agencies should apply to the maximum extent practicable, life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this order."

INTERPRETIVE GUIDANCE: This section of the Executive Order directs Federal agencies to specifically request all funds necessary to implement Executive Order 12856 if they are not otherwise available in existing agency budgets. The section references two OMB circulars to assist in meeting this requirement; A-11 and A-106. OMB Circular A-11 describes the procedures that Federal agencies are to follow in making their annual agency budget submissions to the President through OMB. Federal agency environmental program officials should work with

their agency budget officers to ensure that agency budget requests are adequate to meet all requirements of Executive Order 12856.

OMB Circular A-11 specifically requires that "estimates for ... environmental projects will be submitted only after consultation with EPA as provided for under the A-106 process." OMB Circular A-106 requires Federal agencies to submit annual environmental plans, detailing proposed projects and estimated costs, to OMB through the EPA. The purpose of the A-106 process is to establish funding priorities for agency environmental projects and reporting all related budget needs to OMB. Executive Order 12856 places a "High" priority for agency funding and agencies should indicate this "High" priority for Executive Order 12856 projects in their A-106 plans.

In addition, the Interagency A-106 Advisory Subcommittee on Pollution Prevention has recommended a number of changes to the A-106 process to ensure that Federal agency pollution prevention projects satisfying requirements of this Executive Order are designated as "High" priority for funding in the A-106 prioritization scheme. These recommendations have been being incorporated into the revised A-106 Guidance Document which was issued by EPA in early 1995.

The final provision in this section calls for Federal agencies to utilize life cycle analysis and total cost accounting principles for all Executive Order 12856 related projects. This is consistent with Policy Letter 92-4 on "Procurement of Environmentally-Sound and Energy-Efficient Products and Services," issued to all Federal agencies by OMB's Office of Federal Procurement Policy on November 2, 1992. Applying life-cycle costing techniques to projects needed to satisfy compliance requirements can assist Federal facilities in meeting their pollution prevention objectives as well. Many Federal agencies have issued agency-specific guidance on life-cycle analysis and, as discussed below, EPA is developing a guide to help Federal facility environmental program managers better understand and apply these types of costing and accounting techniques.

Section 4-405. Federal Government Environmental Challenge Program.

"The Administrator shall establish a `Federal Government Environmental Challenge Program' to recognize outstanding environmental management performance in Federal agencies and facilities. The program shall consist of two components that challenge Federal agencies; (a) to agree to a code of environmental principles to be developed by EPA, in cooperation with other agencies, that emphasizes pollution prevention, sustainable development and state-of-the-art environmental management programs, and (b) to submit applications to EPA for individual Federal agency facilities for recognition as `Model

Installations.' The program shall also include a means for recognizing individual Federal employees who demonstrate outstanding leadership in pollution prevention."

INTERPRETIVE GUIDANCE: EPA will establish an "Environmental Challenge Program" which acknowledges the unique circumstances and opportunities encountered by Federal agencies to incorporate pollution prevention strategies into all aspects of agency operation and management. In designing the program, EPA will consider ways to encourage and recognize environmental leadership efforts both in terms of agency policy development and implementation such as integration of environmental goals into agency mission statements and in terms of more tangible agency activities such as design, construction and management of environmentally sensitive facilities. EPA will also strive to reflect the variety of missions inherent in the Federal community by ensuring that the environmental challenge program supports efforts at Federal agencies with non-industrial operations such as land management agencies as well as agencies which have primarily Federal policy responsibilities such as economic development. Finally, the environmental challenge program will ensure that smaller agencies and facilities have an opportunity to embrace the environmental challenge and that these efforts are appropriately recognized.

EPA's schedule for developing the Federal Government Environmental Challenge Program is to complete the Code of Environmental Principles in early calendar year 1995 and implement the "model installation" and individual employee awards program components by mid-year 1995.

Section 5-5. Compliance.

Section 5-501.

"By December 31, 1993, the head of each Federal agency shall provide the Administrator with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and this order."

INTERPRETIVE GUIDANCE: Federal agencies have already submitted a preliminary list of all the facilities they estimate will meet the reporting requirements of EPCRA, PPA, and this Executive Order. These lists should include any facility that meets any threshold in EPCRA - sections 302 through 313. This list is a "living document" and will change as additional data is collected and analyzed. Further changes to the list may be submitted to EPA at any time. The list will be sorted by state for ease of distribution and will be made available to the public and States.

Section 5-502.

"The head of each Federal agency is responsible for ensuring that such agency take all necessary actions to prevent pollution in accordance with this order, and for that agency's compliance with the provisions of EPCRA and PPA. Compliance with EPCRA and PPA means compliance with the same substantive, procedural, and other statutory and

regulatory requirements that would apply to a private person."

INTERPRETIVE GUIDANCE: The head of each Federal agency must ensure that his or her agency fully complies with EPCRA, PPA, and pollution prevention aspects of the Executive Order. Federal agencies are responsible for compliance with EPCRA and PPA to at least the same extent as the private sector.

Section 5-502. (continued)

"Nothing in this order shall be construed as making the provisions of section 325 and 326 of EPCRA applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provisions. EPA shall consult with Federal agencies, if requested, to determine the applicability of this order to particularly agency facilities."

INTERPRETIVE GUIDANCE: The Executive Order clearly states that Federal agencies are not subject to sections 325 and 326 of EPCRA (the enforcement and penalty provisions). This means that EPA and States may not issue formal enforcement or civil actions or penalties to Federal facilities for failure to comply with applicable sections of EPCRA. Where questions arise regarding the applicability of current regulations and policy to particular agency facilities, EPA, if requested, will consult with the affected Federal agency in determining responsibilities under the Executive Order.

Section 5-503.

"Each Federal agency subject to this order shall conduct internal reviews and audits, and take such other steps, as may be necessary to monitor compliance with sections 3-304 and 3-305 of this order."

INTERPRETIVE GUIDANCE: This section directs Federal agencies to incorporate self monitoring into their agency environmental management and auditing programs to ensure compliance with the requirements of sections 3-304 and 3-305 of the Executive Order.

Section 5-504.

"The Administrator, in consultation with the heads of Federal agencies, may conduct such reviews and inspections as may be necessary to monitor compliance with sections 3-304 and 3-305 of this order. Except as excluded under section 6-601 of this order, all Federal agencies are encouraged to cooperate fully with the efforts of the Administrator to ensure compliance with sections 3-304 and 3-305 of this order."

INTERPRETIVE GUIDANCE: In consultation with Federal agencies and in accordance with exemptions or exclusions provided for in section 6-601, EPA is granted the authority to conduct

reviews and inspections to monitor agency and Federal facility compliance with the TRI/PPA and EPCRA sections 302-312 reporting responsibilities established in this Executive Order. Likewise, and in accordance with exemptions or exclusions provided for in section 6-601, Federal agencies are encouraged to cooperate fully with EPA efforts at compliance assistance.

Section 5-505.

"Federal agencies are further encouraged to comply with all state and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated."

INTERPRETIVE GUIDANCE: See Part II.

Section 5-506.

"Whenever the Administrator notifies a Federal agency that it is not in compliance with an applicable provision of this order, the Federal agency shall achieve compliance as promptly as is practicable."

INTERPRETIVE GUIDANCE: This section provides the EPA Administrator and delegated officials authority to notify a Federal agency or covered facility, in writing, if that agency or facility is not in compliance with an applicable provision of Executive Order 12856. This includes not only community right-to-know reporting requirements but also pollution prevention planning and reporting requirements of the Executive Order. As stated in this section, once agencies or facilities receive this written notification, agencies shall achieve compliance as promptly as practicable.

Section 5-507.

"The EPA shall report annually to the President on Federal agency compliance with the provisions of section 3-304 of this order."

INTERPRETIVE GUIDANCE: After the Federal agencies have submitted annual TRI reports (section 3-304), EPA will summarize Federal agency information and prepare a report on Federal agency compliance with section 313 reporting requirements. Progress of all agencies as outlined in reports prepared under section 4-402 may be combined with the TRI information and submitted as a single report to the President. The report will specifically state the overall TRI releases and off-site transfers for the entire Federal government.

Section 5-508.

"To the extent permitted by law and unless such documentation is withheld pursuant to section 6-601 of this order, the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under this order by the agency preparing the strategy, plan, or report. When the reports are submitted to EPA, EPA shall compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public."

INTERPRETIVE GUIDANCE: Except for information withheld in accordance with section 6-601 of the executive Order, Federal agencies and facilities shall make available to the public all completed plans, strategies and reports prepared in compliance with the Executive Order. EPA likewise is responsible for ensuring the information submitted to EPA in compliance with the Executive Order is made available to the public.

Section 6-6. Exemption.

Section 6-601.

"In the interest of national security, the head of a Federal agency may request from the President an exemption from complying with the provisions of any or all aspects of this order for particular Federal 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. To the maximum extent practicable, and without compromising national security, all Federal agencies shall strive to comply with the purposes, goals, and implementation steps set forth in this order."

INTERPRETIVE GUIDANCE: Self explanatory.

Section 7-7. General Provisions.

Section 7-701.

"Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

INTERPRETIVE GUIDANCE: The Executive Order does not create additional rights or

benefits for private parties. Specifically, the Executive Order does not allow for private rights of action to ensure agency compliance. The Executive Order provides other mechanisms for compliance, but the right to sue is not one of them.

PART II
EXECUTIVE ORDER 12856
Federal Compliance with Right-to-Know Laws and
Pollution Prevention Requirements

EPCRA REPORTING REQUIREMENTS

Sections 3-304 and 3-305 of Executive Order 12856 require Federal agencies to join private industry in compliance with the reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act of 1990 (PPA). As stated in the Executive Order, any Federal agency which owns or operates one or more facilities that meet(s) the threshold conditions of EPCRA sections 302, 304, 311, 312 or 313 is subject to the provisions of the Executive Order, including compliance with the reporting requirements of EPCRA and PPA. Each Federal agency should examine the activities at its various facilities to determine whether EPCRA and PPA reporting requirements have been met.

The following guidance regarding EPCRA/PPA reporting is intended to assist Federal agencies and facilities in determining how they should apply the requirements of the Executive Order. The discussions reflect current application of the law and regulations. See EPA leadership recommendations regarding EPCRA provisions in Part III. This discussion attempts to highlight some compliance concerns that may be unique to federal Agency operations. This is not intended as a comprehensive discussion of all aspects of EPCRA reporting requirements. Federal facilities should refer to current reporting instructions and other compliance documents for additional details. To obtain such documents and compliance assistance, contact the EPCRA Information Hotline at 800-535-0202.

A General Word About Exemptions:

Regulations implementing various sections of EPCRA exempt certain uses of chemicals from reporting requirements. The exemptions pertain to distinct sections of EPCRA and must be applied accordingly; a given exemption may be applicable to only one section of the law and not to others. Further, exemptions are to be applied to specific uses of listed chemicals and do not create an exemption for an entire facility. While facility use of a chemical for certain activities may be exempt, other uses may not be exempt and should therefore be considered for threshold purposes and reporting.

The accounting and reporting requirements for EPCRA sections 302, 304, 311 and 312 currently apply to both manufacturing and non-manufacturing facilities in the private sector; Standard Industrial Classification (SIC) code classifications do not alter reporting responsibilities under these sections. For the purposes of compliance with Executive Order 12856, therefore, exemptions under these sections may readily be applied to Federal facilities.

As discussed later in this document, the application of exemptions within rules that implement EPCRA Section 313 may be somewhat more problematic. This is because many of these exemptions were developed primarily with manufacturing facilities (SIC codes 20 - 39) in mind.

Who is Responsible for Reporting:

- For the purposes of EPCRA sections 302-312, both landlord and tenant are responsible for compliance: in practice, the tenant is regarded as having primary responsibility for compliance. For EPCRA section 313, the agency that owns or operates a Federal facility is responsible for complying with the Executive Order. However, a Federal agency is not considered responsible for compliance if it has only a real estate interest in the facility (see 40 CFR 372.38(e)).

EPCRA SECTION 302 - Extremely Hazardous Substances

- EPCRA Section 302 - requires reporting if extremely hazardous substances are present at the facility in quantities in excess of the threshold planning quantity.

EPCRA Section 302 Exemptions

None

EPCRA SECTION 304

- EPCRA Section 304 - requires emergency reporting of releases of extremely hazardous substances or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substances, in quantities equal to or greater than their reportable quantity.

EPCRA Section 304 Exemptions: Releases

The statute provides several exemptions from notification. They are:

- "Federally permitted release" as defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 section 101(10), 42 U.S.C. 9601(10);
- releases which result in exposure to persons solely within the site or sites on which the facility is located;
- "continuous releases" as defined under CERCLA section 103((F)(2) except for initial reporting of the release and statistically significant releases;

- application of a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registered pesticide, as defined under CERCLA section 103(e) in accordance with its intended purpose;
- emissions from engine exhaust of a motor vehicle, rolling stock, aircraft, or pipeline pumping station;
- normal application of fertilizer, and;
- release of source, byproduct, or special nuclear material from a nuclear incident at a facility subject to requirements of the Price-Anderson Act (i.e. nuclear power plants).

EPCRA SECTIONS 311 and 312 - Hazardous Substance Inventory

- EPCRA sections 311 and 312 - requires reporting where a facility is required to maintain a Material Safety Data Sheet (MSDS) for a hazardous chemical and has that chemical at or above the threshold.
- Requirements for reporting under EPCRA sections 311 and 312 of EPCRA apply to any facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical as defined by the Occupational Safety and Health Administration (OSHA). Under EPCRA sections 311 and 312, the chemicals that need to be reported are those hazardous chemicals which require an MSDS that a facility has present at any one time in the amount equal to or greater than 10,000 pounds and for extremely hazardous substances (EHS) which require an MSDS present at the facility in an amount greater than or equal to 500 pounds or Threshold Planning Quantity (TPQ), whichever is lower. The minimum threshold for reporting in response to requests from a SERC or LEPC for submission under EPCRA sections 311 and 312 is zero.
- Under EPCRA section 312, if a Federal facility has a subject chemical during calendar year 1994, the facility is to submit an Emergency and Hazardous Chemical Inventory report (Tier I) including those subject chemicals to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and the local fire department by March 1, 1995 (and annually thereafter). Most states require the Tier II report, and facilities are required to include other chemicals if they are requested by the SERC or LEPC. Submission of Tier II reporting is considered compliance with EPCRA not an independent state requirement. For more information on state/local reporting requirements, facilities should contact the EPCRA Information Hotline at 1-800-535-0202.

EPCRA Sections 311 and 312: Hazardous Chemicals Exemption

Besides exemptions from the requirement to have or maintain Material Safety Data Sheets (MSDSs) as defined by the Occupational Safety and Health Administration, section 311(e) of

EPCRA also exempts the following chemicals from being considered hazardous chemicals under EPCRA sections 311 and 312:

- any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
- any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
- any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;
- any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and
- any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

EPCRA SECTION 313 - TRI (TOXICS RELEASE INVENTORY)

Under EPCRA section 313, owners or operators of certain facilities are required to submit reports each year on the releases and transfers of listed toxic chemicals. The list of chemicals for reporting year 1994 is included in the appendices of this document. The purpose of this reporting requirement is to inform government officials and the public about releases of toxic chemicals into the environment. EPCRA section 313 and the Pollution Prevention Act require facilities to report releases to air and water, disposal on land and by underground injection wells, transfers to publicly owned treatment works (POTWs), and the amount of the chemical recycled and treated both on-site and off-site. The facility must also report source reduction techniques implemented during the reporting year. The reports must be sent to the U.S. EPA and to designated state agencies. Reports are due on or before July 1 each year for activities occurring in the previous calendar year.

A federal facility must report if it meets all the following criteria:

- It has 10 or more full-time employees (or the equivalent of 20,000 hours per year); and,
- It annually manufactures or processes more than 25,000 pounds, or otherwise uses over 10,000 pounds of any of the listed toxic chemicals.

Manufacture - means to produce, prepare, import, or compound one of the toxic chemicals. Manufacture also includes coincidental production of a toxic chemical (e.g. formaldehyde generated as a byproduct of a waste treatment process).

Process - means the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce. Distribution in commerce includes sending the toxic chemical to another facility for further processing or use, regardless of whether funds were exchanged as part of the transaction. In general, processing is the incorporation of a toxic chemical into a material or product and includes making mixtures, repackaging, or using a chemical as a feedstock, raw material, or starting materials for making another chemical.

Otherwise Use - applies to any use of a toxic chemical at a covered facility that is not covered by the terms "manufacture" or "process". "Otherwise use" is generally a non-incorporative activity (e.g. use of chlorine to treat waste water). "Otherwise use" is likely to be the predominant activity for federal facilities.

The definitions of these terms can be found in the regulations implementing section 313 at 40 CFR 372.3.

Chemical coverage:

- Chemicals are added to or taken off the EPCRA section 313 list through rulemaking. Any EPCRA section 313 chemical added or deleted must be taken into consideration by Federal agencies for the purposes of meeting annual EPCRA section 313 reporting required by the Executive Order. A Federal Agency does not have to modify its 50 percent reduction baseline in response to additions to the Section 313 list. For deletions of chemicals from the list, a Federal Agency can take one of two approaches. The agency could normalize the 50 percent reduction goal to account for the deleted chemical(s) in subsequent years. Alternatively, the agency could continue to report the deleted chemical as a toxic pollutant and continue to count volumes reduced from the original reduction goal.

Threshold determinations:

- The requirements for reporting under EPCRA section 313 are based only on the number of employees and the quantity of a toxic chemical that was manufactured, processed, or otherwise used during the calendar year. This is not a release-based reporting requirement. If a facility has the equivalent of 10 or more employees and exceeds a chemical threshold, it must file an EPCRA section 313 reporting form (Form R) regardless of whether any releases of the chemical occurred. If no releases have occurred, the facility would report, as appropriate, zeros or "NA" (not applicable) in the release estimate sections of Form R.

- If a facility is only storing toxic chemicals, those chemicals are not included in EPCRA section 313 threshold determinations, because thresholds are based on manufacturing, processing, or otherwise use of the toxic chemical. Repackaging (e.g., pouring the contents of a 55 gallon drum into smaller containers) for further distribution is considered processing, and the quantities of the toxic chemicals repackaged would have to be applied to the processing threshold. However, simply relabeling or removing and distributing prepackaged quantities from a shrink-wrapped shipment of such packages is not considered processing.
- For the purposes of section 313 of EPCRA, amounts of toxic chemical stockpiled for the purpose of use at the facility are not applied to any chemical activity threshold. This is because stockpiling does not constitute manufacture, process or otherwise use of a chemical. However, if a facility exceeds an activity threshold for a chemical because of other activities involving the chemical, any amounts of that chemical that escape to air or remain in the soil from the stockpiled material (e.g., evaporative losses to air, material leached to the ground, etc.) must be reported as released to the environment on-site.
- For the purposes of section 313 of EPCRA, amounts of toxic chemical which are only treated or disposed at the facility are not applied to any chemical activity threshold. This is because EPA's current interpretation is that such treatment or disposal of a chemical does not constitute the manufacture, process, or otherwise use of that chemical. However, if a facility exceeds an activity threshold for a chemical because of other activities involving the chemical, any amounts of that chemical which are only treated or disposed at the facility must be reported on the facility's Form R, even though those amounts were not applied to an activity threshold. For example, a facility processes 25,000 pounds of benzene. The facility also receives from another facility 5,000 pounds of benzene, which it disposes on-site. The 5,000 pounds of benzene received from another location would not be applied towards the facility's activity thresholds. However, because the facility exceeds the processing threshold for benzene, a Form R is required, and the 5,000 pounds of benzene which were received from the other facility and disposed must be included in that report.

Remedial actions:

As with treatment and disposal, amounts of toxic chemicals contained in material which is undergoing remediation are not applied to any activity threshold. This is because remediation of material contaminated with a toxic chemical currently is not considered manufacture, process or otherwise use of that chemical. However, a toxic chemical that is used to aid a remediation process must be counted toward the otherwise use threshold. Also, if a listed toxic chemical is coincidentally manufactured as a result of a remedial action, that amount must be applied to the manufacturing threshold.

Although the amount of toxic chemical undergoing remediation is not applied to threshold determinations, the amount of that chemical released, transferred or managed as waste as a result of the remedial action must be included on the facility's Form R if the facility exceeds an activity

threshold for other activities involving the toxic chemical. For example, a facility processes more than 25,000 pounds of lead. This facility also undertakes a remediation activity on-site to clean up soil which has become contaminated with lead. The amounts of lead in this soil are not applied to any activity threshold. However, because the facility exceeds the processing threshold for lead, the facility must file a Form R, and any amounts of lead disposed as a result of the remedial activity must be included in the Form R.

A facility may recover a listed toxic chemical from a remedial action site. If the toxic chemical recovered as a result of the remedial activity is simply treated, disposed, or transferred off-site for treatment or disposal, this recovery does not constitute processing, and the amounts recovered are not applied to any activity threshold. However, if the recovered toxic chemical is further processed on-site or is distributed in commerce, the amount recovered must be applied to the processing threshold. Also, if the toxic chemical is recovered for use on-site, the amount recovered and subsequently used must be applied to the otherwise use threshold.

Reductions goal:

- EPCRA Section 313 reported releases and off-site transfers for treatment or disposal are likely to be the predominant quantities that form both the baseline against which reductions goals are applied and the measure of future progress.
- For Federal agencies, the baseline year for the 50 percent reduction goal is the first year for which all of the agency's covered facilities publicly reported, but no later than 1994. [The Executive Order does not affect Government Owned, Contractor Operated facilities (GOCO's) previous reporting or reductions.] The Federal agency baseline amount will be the aggregate amount of all releases and transfers for treatment and/or disposal reported by the agency's facilities.
- Federal facilities that reported and reduced releases prior to the baseline year should highlight and feature those reductions in their facility pollution prevention plans and other public documents related to the Executive Order.
- Quantities of listed toxic chemicals released or transferred as a result of remediation of hazardous wastes generated prior to August 3, 1993 cannot be included in the baseline quantity for the purpose of measuring progress toward a 50 percent reduction goal. This is because the definition of "toxic pollutant" provided in Section 2-207 of this Executive Order does not include hazardous waste generated prior to the date of the Executive Order.

EPCRA Section 313 Exemptions

EPA, by regulation, has exempted certain uses of toxic chemicals by facilities in SIC codes 20-39 from the EPCRA section 313 threshold determinations and reporting. Section 3-304(b) of the Executive Order applies these regulatory exemptions to the Federal agencies. The exemptions were created to provide a certain degree of reporting burden relief for covered manufacturing facilities by exempting small and ancillary uses of listed chemicals from the reporting requirements. To date, EPA regulations and guidance regarding EPCRA section 313 reflect circumstances related to manufacturers' activities in SIC Codes 20-39 and, as such, have not taken into account Federal facility compliance with the EPCRA and PPA reporting requirements as set forth in the Executive Order.

The regulations at 40 CFR 372.38(c) promulgated pursuant to EPCRA include the following use exemptions: structural component use exemption, routine janitorial/facility grounds maintenance use exemption, personal use exemption, motor vehicle maintenance use exemption, and intake water/air use exemption. The regulation for the laboratory activities exemption can be found at 40 CFR 372.38(d) (see appendix for CFR provisions). Other exemptions relating to de minimis quantities in mixtures and an exemption for toxic chemicals present in articles are also outlined in Section 372.38. The preamble to the final rule codifying these regulations (53 FR 4500, February 16, 1988) discusses the rationale for these exemptions.

In general, these exemptions were included as a further burden reducing measure for the manufacturing facility. The use exemptions relate to activities that, in the manufacturing sector, do not generally occur at a large scale or that are ancillary to the operations of manufacturing facilities. Federal facilities may apply these exemptions to their operations. However, EPA recommends that Federal facilities consider the scale of the activity as part of their overall threshold determination process. For example, the Department of Defense has given guidance to their facilities to include in their threshold and release determinations certain large-scale maintenance of motor vehicles at their facilities.

1.) EPCRA Section 313: Motor Vehicle Maintenance Use Exemption

Amounts of listed toxic chemicals in products used to maintain motor vehicles operated by the facility do not have to be factored into threshold and release determinations. The term "motor vehicles" could include, but it is not limited to: cars, trucks, planes, watercraft, missiles, spacecraft, military vehicles (e.g., tanks), and motorized vehicles such as cranes and forklifts.

This exemption, provided by rule, was designed to relieve manufacturing facilities from tracking small quantities of listed toxic chemicals (e.g., ethylene glycol in antifreeze) associated with maintaining vehicles operated by the facility. Generally in manufacturing facilities such vehicle operation is an ancillary administrative use (e.g. vans for moving employees around the facility), not a use of such scale as to generally involve significant quantities of a listed chemical.

Not all uses of a toxic chemical in activities involving motor vehicles are exempt. Because the exemption applies only to chemicals used to maintain a motor vehicle, it does not apply to the manufacturing of motor vehicles. Amounts of toxic chemicals manufactured, processed or used in the manufacturing or rebuilding of motor vehicles must be counted toward the applicable thresholds. Also, the exemption applied only to chemicals used to maintain vehicles operated by the facility. Amounts of toxic chemicals used at a facility to maintain vehicles operated by other facilities would not be exempt. For example, a central maintenance or repair facility would have to include in its threshold and release determinations amounts of chemicals used in the maintenance and repair of vehicles operated by other facilities.

2.) EPCRA Section 313: Laboratory Activity Exemption

Under the laboratory activity exemption (40 CFR 372.38(d)), listed toxic chemicals that are manufactured, processed, or otherwise used in laboratory activities at a covered facility under the direct supervision of a technically qualified individual do not have to be considered for threshold and release determinations. "Technically qualified individual" is defined by the Toxic Substances Control Act regulations (40 CFR 720.3(ee)). The exemption applies to quality control, research and development, equipment and component testing, and other laboratory activities.

The laboratory activity exemption was intended to reduce the chemical tracking burden of manufacturing facilities that also conduct laboratory activities. The regulations are intended to exempt the facility from tracking small or diffuse quantities of listed chemicals used for quality control, experimental, or certain information-generating purposes, (see 53 FR 4503 (February 16, 1988)).

The laboratory activity exemption is not intended as a blanket exemption for any facility which is a laboratory or has the title "laboratory" in its name. Likewise, the absence of "laboratory" in the name of a facility does not necessarily mean that a facility's activities do not qualify for the laboratory activity exemption. The characteristic of the activity and conditions under which it occurs determine whether the manufacture, process, or otherwise use of a listed toxic chemical qualifies for the exemption. As with the other exemptions, each facility must carefully consider the nature of its activities in determining whether the laboratory activities exemption applies.

This exemption does not apply in the following cases:

- (1) Specialty chemical production.
- (2) Manufacture, processing, or use of toxic chemicals in pilot plant scale operations.
- (3) Activities conducted outside the laboratory.

"Specialty chemical production" refers to chemicals produced in a laboratory setting that are distributed in commerce or for use other than in laboratory activities at the facility or elsewhere. Listed chemicals manufactured, processed, or otherwise used in a pilot-scale plant operation must also be accounted for because the scale is of sufficient magnitude that the burden of tracking and reporting is presumed to be reasonable (unlike, for example, in bench-scale operations).

Activities that do not directly support research and development, sampling and analysis, or quality assurance or control are not exempt from EPCRA section 313 reporting as laboratory activities. For example, listed chemicals used to develop film exposed during an experiment or used to sterilize instruments in a hospital are not exempt from reporting under this exemption.

If a chemical was produced or used in a laboratory activity, any portion of it which is subsequently used in a non-laboratory activity would no longer be exempt from reporting. Also, a quantity of listed toxic chemical in materials which are sampled from processing operations and are subsequently sent to a laboratory for quality control purposes may not be subtracted from the total amount of the chemical factored into the facility's threshold determinations.

3.) EPCRA Section 313: Structural Component Use Exemption

The structural component use exemption (40 CFR 372.38(c)(1)) exempts from threshold and release determinations toxic chemicals that are structural components of the facility or that are used to ensure or improve the facility's structural integrity. This exemption applies to listed chemicals in materials that are part of the facility's structure, such as copper in pipes used for the plumbing in the facility. Listed chemicals contained in paints applied to maintain the physical integrity of the facility are exempt under the structural component use exemption, even though volatile solvents in the paint do not become part of the structure.

Under this exemption, the facility does not have to account for releases that occur due to passive degradation which occurs naturally in structural components of a facility. However, the exemption does not apply to toxic chemicals in items which are intended to wear down and to be replaced because of the nature of their use, such as grinding wheels.

EPCRA Section 313: Routine Janitorial/Facility Grounds Maintenance Use Exemption

Toxic chemicals contained in products used for routine janitorial and facility grounds maintenance are exempt from EPCRA section 313 reporting (40 CFR 372.38(c)(2)). To qualify for the exemption, the materials or products (e.g., bathroom cleaners, fertilizers, or pesticides) must contain listed toxic chemicals in the same form and concentration as products commonly distributed to consumers. Chemicals which are used for routine janitorial or facility grounds

maintenance but which are not in the same form and concentration commonly distributed to consumers are not exempt.

Facility equipment maintenance is not considered a routine janitorial or grounds maintenance activity, and therefore is not exempt under this exemption. Chemicals used for cleaning or maintenance activities which are integral to the production processes of the facility are not exempt. For example, chemicals used to sterilize equipment at a hospital would not be exempt from threshold and release calculations. Application of a pesticide to maintain the appearance of an ornamental pond would be exempt, while application of a pesticide to assist in timber production would not be exempt.

4.) EPCRA Section 313: Personal Use Exemption

The personal use exemption (40 CFR 372.38(c)(3)) exempts from required reporting the personal use of listed toxic chemicals in products by employees or other persons at the facility. This exemption covers the personal use of toxic chemicals in, for example, a facility-operated cafeteria, commissary, exchange, infirmary, or in activities associated with morale, welfare and recreation. Types of products that are used for "personal use" include, for example, foods, drugs, cosmetics, office supplies, or other personal items.

The personal use exemption covers toxic chemicals used for reasons of personal comfort, necessity, or other such purposes. If a toxic chemical is used for both personal and non-personal purposes, only the amount used for non-personal purposes should be applied to threshold determinations. If these amounts cannot be distinguished, then the facility should apply the total amount to threshold determinations. Note that while infirmary scale use of personal items such as drugs is covered by this exemption, hospital activities other than the personal use of drugs must be reported if threshold levels are reached at the facility.

5.) EPCRA Section 313: Intake Water/Air Use Exemption

For water use, the intake water/air use exemption exempts the use of toxic chemicals present in process water or non-contact cooling water, as drawn from the environment or from municipal sources. For air use, the intake water/air use exemption exempts toxic chemicals present in air used either as compressed air or for combustion (40 CFR 372.38(c)(5)). If the air or water qualifies for this exemption, this quantity of the listed chemical remains exempt even though the toxic chemical may be returned with its medium to the environment.

6.) EPCRA Section 313: Article Exemption

Quantities of a listed toxic chemical present in an article do not have to be factored into threshold or release determinations when that article is processed or otherwise used at a facility. An article is defined as a manufactured item that is formed to a specific shape or design during manufacture, that has end-use functions dependent in whole or in part upon its shape or design

during end-use, and that does not release a toxic chemical under normal conditions of the processing or otherwise use of that item at the facility.

The article exemption applies to the normal processing or otherwise use of an article. It does not apply to the manufacture of an article. Toxic chemicals present in articles manufactured at a facility must be factored into threshold and release determinations.

7.) EPCRA Section 313: De Minimis Exemption

A listed toxic chemical present in a mixture at a concentration below a specified de minimis level may be exempt from threshold determinations and reporting requirements. The de minimis level is less than 1.0%, or 0.1% if the toxic chemical meets the Occupational Safety and Health Administration's carcinogen standard. The EPCRA Form R instructions document lists the de minimis level for each toxic chemical and provides further guidance for determining when the de minimis exemption is applicable. For mixtures that contain more than one member of a listed toxic chemical category the de minimis level applies to the aggregate concentration of all such members and not to each individually.

8.) Property Owners

If the Federal entity is in a simple landlord role and receives no service or benefit from lessees, other than rent or a fee, then the Federal landlord is not required to account for the lessee's activities at that facility under EPCRA section 313 (40 CFR 372.38(e)). The operator of that establishment, however, may be subject to the reporting requirements. For example, GSA leases a building to EPA and has no other interest in the site. EPA, not GSA, would be responsible for reporting on activities conducted at the site.

PART III
EXECUTIVE ORDER 12856
Federal Compliance with Right-to-Know Laws and
Pollution Prevention Requirements

LEADERSHIP OPTIONS

These options are not requirements of the Executive Order.

Due to the current absence of Federal agency experience in implementing provisions of EPCRA and the unique nature of many Federal facility operations, the Federal community has an opportunity to consider initiatives that have benefit beyond the goals of the Executive Order. Where resources and time allow, Federal agencies and facilities should consider pursuit of leadership activities which reflect the goals expressed in the Executive Order.

To assist Federal agencies in this review, options for reporting certain release pathways that are not currently addressed in the regulatory framework but which may contribute to toxic chemical releases, are provided in the following discussions. Where examples of ongoing activities were available, these examples have been included. In large part, these options reflect continuing efforts to improve the effectiveness of EPCRA and PPA and incorporate activities currently under consideration for inclusion in the regulatory framework. These recommendations are not binding upon Federal agencies or facilities and should not be considered as such by any party.

Section 1. Applicability.

Section 1 - 102.

"Except as otherwise noted, this order is applicable to all Federal agencies that either own or operate a 'facility' as that term is defined in section 329(4) of EPCRA, if such facility meets the threshold requirements set forth in EPCRA for compliance as modified by section 3-304(b) of this order ('covered facilities'). Except as provided in section 1-103 and section 1-104 below, each Federal agency must apply all of the provisions of this order to each of its covered facilities, including those facilities which are subject, independent of this order, to the provisions of EPCRA and PPA (e.g., certain Government-owned/contractor-operated facilities (GOCO's), for chemicals meeting EPCRA thresholds)."

LEADERSHIP OPTIONS: While the Executive Order is not applicable to Federal entities other than Federal agencies as defined above, all Federal entities should nevertheless consider implementation of appropriate sections of the Executive Order where feasible and practicable. Likewise, Federal agencies that have no facilities meeting the thresholds for "covered" facilities are encouraged to comply with both the community right-to-know and pollution prevention aspects of the Executive Order. EPA will work with Federal entities to assist in these efforts.

Section 1-102 (continued)

"This order does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad."

LEADERSHIP OPTIONS: Section 2-201 of the Executive Order incorporates all definitions in EPCRA and its implementing regulations; this includes the definition of "customs territory of the United States" at 40 CFR 372.3: "the 50 States, the District of Columbia, and Puerto Rico." Notwithstanding the definition of "customs territory of the United States," EPA recommends that Federal facilities comply with the Executive Order if they are located in a State as defined in section 329(a) of EPCRA: "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." It should be noted that the Department of Defense has encouraged its facilities outside of the customs territory or within other sovereign nations to abide by the spirit of the Executive Order.

Further, while specific requirements of Executive Order 12856 are not applicable to Federal facilities located outside the customs territory of the United States, Federal facilities in these locations are encouraged to: (1) plan for prevention of potential harm to the public

through chemical releases; (2) provide information to the public on toxic chemical releases and transfers; (3) follow the hierarchy in the Pollution Prevention Act -- source reduction, recycling,

treatment, and disposal and; (4) incorporate pollution prevention into facility management and acquisition activities.

Section 1-104.

"To facilitate compliance with this order, each Federal agency shall provide in all future contracts between the agency and its relevant contractors, for the contractor to supply to the Federal agency all information the Federal agency deems necessary for it to comply with this order. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, Federal agencies shall take practical steps to obtain the information needed to comply with this order from such contractors."

LEADERSHIP OPTIONS: GOCO's and other contractors are encouraged to provide necessary information to Federal agencies even when current contracts do not legally obligate them to do so.

Section 2-2. Definitions.

Section 2-203. Pollution Prevention.

"'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."

LEADERSHIP OPTIONS: It should be recognized that increased efficiency in the use of raw materials, energy, water, or other resources as well as conservation of natural resources results in the reduction or elimination of: (1) pollution associated with the initial production of materials; (2) pollution generated by the use or processing of the raw material, and; (3) adverse impacts to natural resources caused by pollution releases into the environment as well as disposal.

Federal agency pollution prevention approaches and practices that contribute to the protection and conservation of natural resources and may contribute to the toxic chemical reductions goals of the Executive Order could include:

- reduction in the use of water and chemical inputs;
- use of less environmentally harmful pesticides or adoption of less damaging pest control practices;

- use of alternative, less environmentally damaging fuels;

- increased use of energy efficient equipment; and
- design changes that reduce demand for chemical pollutants and/or energy.

Section 3-3: Implementation

Section 3-301. Federal Agency Strategy.

"Within 12 months of the date of this order, the head of each Federal agency must develop a written pollution prevention strategy to achieve the requirements specified in sections 3-302 through 3-305 of this order for that agency. A copy thereof shall be provided to the Administrator."

LEADERSHIP OPTIONS: Federal agencies that do not have "covered facilities" which meet the reporting thresholds set out in sections 3-302, 3-304, or 3-305 are nonetheless encouraged to develop a pollution prevention strategy to achieve the goals set forth in the Executive Order. See also discussion for section 1-102.

Section 3-301. Federal Agency Strategy. (continued)

"Federal agencies are encouraged to involve the public in developing the required strategies under this order and in monitoring their subsequent progress in meeting the requirements of this order."

LEADERSHIP OPTIONS: Public involvement and community awareness are two basic tenets of Executive Order 12856. This provision encourages agencies to include the public in the process of developing all agency strategies and inform the public of agency progress in meeting the requirements of this Executive Order. Agencies may meet this goal through a variety of outreach mechanisms including but not limited to public meetings and hearings, advisory committees, Federal Register notices, or public notices.

Section 3-301(a). Federal Agency Strategy. (continued)

"The strategy shall include, but shall not be limited to the following elements: (a) A pollution prevention policy statement, developed by each Federal agency, designating principal responsibilities for development, implementation and evaluation of the strategy. The statement shall reflect the Federal agency's commitment to incorporate pollution prevention through source reduction in facility management and acquisition, and it shall identify an individual responsible for coordinating the Federal agency's efforts in this area."

LEADERSHIP OPTIONS: In developing pollution prevention policies and strategies, Federal agencies should consider their role and position as: (1) a consumer and purchaser of goods and

services that cause pollution; (2) a manufacturer, processor and generator of pollution, and; (3) a policymaker and regulator responsible for control and reduction of pollution.

Additionally, the individual responsible for coordinating the agency's pollution prevention program and overseeing agency compliance with the Executive Order should be a senior agency manager/policymaker with sufficient authority to ensure full implementation of all Executive Order requirements. Agencies may wish to review "Agency Environmental Executive" requirements of section 302 of Executive Order 12873 in designating the individual responsible for coordinating the agency's pollution prevention program and overseeing agency compliance with the Executive Order.

Section 3-302 (c). Toxic Chemical Reduction Goals.

"Alternatively, a Federal agency may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the Federal agency shall delineate the scope of its reduction program in the written pollution prevention strategy that is required by section 3-301 of this order. The baseline for measuring reductions for purposes of achieving the 50 percent reduction requirement for each Federal agency shall be the first year in which releases of toxics pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that Federal agency's facilities encompassed by section 3-301. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the agency in the baseline year. For any toxic pollutants included by the agency in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the agency shall report on such toxic pollutants annually under the provisions of section 3-304 of this order, if practicable, or through an agency report that is made available to public."

LEADERSHIP OPTIONS: Federal agencies which do not meet reporting thresholds for any EPCRA section 313 toxic chemical are encouraged to establish a "toxic pollutant" baseline and establish a 50 percent reduction goal for these chemicals and wastes. Such Federal agencies should delineate the scope of their toxic pollutant baseline in the agency pollution prevention strategy required by section 3-301 of this Executive Order and outline their agency's plan for contributing to the goals of the Executive Order.

3-303(a). Acquisition and Procurement Goals.

"Each Federal agency shall establish a plan and goals for eliminating or reducing the unnecessary acquisition by that agency of products containing extremely hazardous substances or toxic chemicals. Similarly, each Federal agency shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. Priorities shall be developed by Federal agencies, in coordination with EPA, for implementing this section."

LEADERSHIP OPTIONS: Federal agencies should note that there is some overlap between this section and Executive Order 12873 entitled "Federal Acquisition, Recycling, and Waste Prevention." Pursuant to section 503 of Executive Order 12873, EPA is required to issue guidance which "recommends principles that agencies should use in making determinations for the preference and purchase of environmentally preferable products." This guidance, which is scheduled to be issued in mid-1995, will provide opportunities for federal pilot projects and is likely to include considerations that will assist in agency implementation of section 3-303(a) of Executive Order 12856.

Agencies should consider merging guidelines established under Executive Order 12873 with agency plans and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals as well as plans for reducing manufacturing, processing, and use of extremely hazardous substances or toxic chemicals at agency facilities. For further information on the Executive Order 12873 guidance, consult EPA's EPCRA Hotline. To assist in the sharing of agencies' acquisition and procurement goals, agencies are encouraged to provide copies of the agency plans to EPA for distribution.

3-303(d). Acquisition and Procurement Goals.

"Federal agencies are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, Government laboratories, academia, and others to assess and deploy innovative environmental technologies for domestic use and for markets abroad."

LEADERSHIP OPTIONS Federal agencies should emphasize pollution prevention in their investments in research, development, testing, and evaluation (RDT&E). The Federal government invests significant resources in RDT&E. Because many of the environmental problems which could be addressed by pollution prevention technologies and strategies are the same at Federal facilities as they are at private facilities, emphasis on pollution prevention in RDT&E could result in environmental benefit beyond the Federal sector. Furthermore, strong partnerships with the private sector, with emphasis on innovative pollution prevention technology will maximize return on Federal expenditure and assist private industry in developing stronger, environmentally sound markets domestically and abroad.

3-304(b). Toxics Release Inventory/Pollution Prevention Reporting.

"The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases, transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to

the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in sections 3-304(a) of this order."

LEADERSHIP OPTIONS: Significant opportunities exist in implementation of this section of the Executive Order, particularly with regard to application of the exemptions to reporting. Removal of the SIC code limitations for Federal facilities reporting provides a unique opportunity to the Federal government to take the lead in community right-to-know and pollution prevention because potentially harmful activities that are unique to Federal facilities or have not been previously covered in EPCRA reporting requirements will be reported and addressed in pollution prevention efforts. For example, DOD has elected to report for certain activities that might otherwise be excluded under the motor vehicle maintenance exemption and EPA has elected to forego the laboratory activity exemption for its facilities.

Section 4-403. Technical Advice

"In addition, to the extent practicable, all Federal agencies subject to this order shall provide technical assistance, if requested to LEPC's in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities."

LEADERSHIP OPTIONS: Federal facility employees are likely to already have extensive knowledge of the toxic chemicals, hazardous materials, and extremely hazardous substances on their facilities to meet OSHA Worker Right-to-Know requirements. Federal facilities should encourage their employees to share knowledge information or expertise concerning emergency planning with LEPC's and should support those efforts. Federal agencies may also wish to work with their State Emergency Response Commission to establish an LEPC for individual facilities.

In some communities, the Federal facility is the largest single activity/employer in the area. In these cases, that facility will likely have more technical resources than the local community. In keeping with the overall intent of this Order and the specific requirements of this section, Federal facilities are encouraged to work closely with appropriate LEPC's.

Section 4-404.

" ... Federal agencies should apply to the maximum extent practicable, life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this order."

LEADERSHIP OPTIONS: Federal agencies should strive to include long-term, cost effective accounting and planning mechanisms to the budget and resource planning process necessary to implement Executive Order 12856. EPA is currently developing a "Draft Costing and Life-Cycle Analysis for Pollution Prevention Investments: A Practical User's Guide to Environmental Project Financial Analysis at Federal Facilities". This guide is designed to provide technical assistance to Federal Agencies on the principles of the investment justification techniques of Life-Cycle Analysis (LCA), Life-Cycle Costing (LCC), and Total Cost Assessment (TCA) as they relate to justifying Pollution Prevention projects at Federal facilities.

This "Draft" guide introduces the concepts associated with utilizing the techniques identified in Section 4-404 of the Executive Order by:

- 1) Providing definitions of pollution prevention, LCA, LCC, and TCA.
- 2) Outlining the advantages of TCA principles as they relate to identifying the true costs of pollution prevention activities.
- 3) Providing the methodology of TCA with examples to justify pollution prevention projects.
- 4) Outlining the incentives and challenges of utilizing TCA principles at Federal facilities.

This guide will provide Federal agencies with a good introduction to the concepts of LCA and TCA as mentioned in Section 4-404 of the Executive Order. This information will be available through the Pollution Prevention Information Clearinghouse at (202) 260-1023.

Section 4-405. Federal Government Environmental Challenge Program.

"The Administrator shall establish a 'Federal Government Environmental Challenge Program' to recognize outstanding environmental management performance in Federal agencies and facilities. The program shall consist of two components that challenge Federal agencies; (a) to agree to a code of environmental principles to be developed by EPA, in cooperation with other agencies, that emphasizes pollution prevention, sustainable development and state-of-the-art environmental management programs, and (b) to submit applications to EPA for individual Federal agency facilities for recognition as 'Model Installations.' The program shall also include a means for recognizing individual Federal employees who demonstrate outstanding leadership in pollution prevention."

LEADERSHIP OPTIONS: Federal agencies are encouraged to formally endorse the code of environmental principles at the highest possible level once it is established under the Environmental Challenge program. Agencies are further encouraged to participate in model installation programs established under the Environmental Challenge program and provide suggestions for additional environmental leadership opportunities to the Planning Workgroup.

Section 5-5. Compliance.

Section 5-501.

"By December 31, 1993, the head of each Federal agency shall provide the Administrator with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and this order."

LEADERSHIP OPTIONS: Federal agencies not covered by the Executive Order are encouraged to join covered agencies in responding to the President's call for Environmental Leadership by the Federal community. Each Federal agency covered by the Executive Order is encouraged to revise and update the agency covered facility list periodically (annually) as new information becomes available regarding that agency's facilities. Revised information should be submitted to EPA.

Section 5-505.

"Federal agencies are further encouraged to comply with all state and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated."

LEADERSHIP OPTIONS: Certain states and local governments have right-to-know and pollution prevention, facility planning, or toxics use reduction laws and requirements which are broader in scope or more stringent than the Federal EPCRA and PPA requirements. Even where such differences exist, this Executive Order encourages Federal agencies and facilities to make good faith efforts to comply with these broader or more stringent state and local requirements. Such requirements may be addressed and highlighted in facility plans required by section 3-302(d) of the Executive Order. For more information on state and local right-to-know and pollution prevention requirements, Federal agencies should contact appropriate state and local authorities.

Section 5-508.

"To the extent permitted by law and unless such documentation is withheld pursuant to section 6-601 of this order, the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under this order by the agency preparing the strategy, plan, or report. When the reports are submitted to EPA, EPA shall compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged to provide such strategies, plans,

and reports to the State and local authorities where their facilities are located for an additional point of access to the public."

LEADERSHIP OPTIONS: One of the two basic tenets of this Executive Order is "community right-to-know." Federal agencies and facilities should ensure that open channels of communication exist with state and local regulators and local communities. Federal facilities are making substantial progress in the area of pollution prevention and community right-to-know and should share this success through public outreach.

There are a number of possible ways to publicize efforts to implement this Executive Order. One easy way is to submit strategies, plans, and reports to EPA's Pollution Prevention Information Clearinghouse (PPIC), ENVIRO\$EN\$ electronic bulletin board system which features pollution prevention among other environmental topics, at 703-506-1025.

Appropriate community outreach could include press releases, public meetings, public notices or articles in local papers, contact (in person, by phone, or in writing) with the state and local regulatory and technical assistance offices, speeches and presentations at conferences, etc. Annual TRI Reports will be of particular importance to public outreach and community right-to-know efforts. This information may create significant interest from local citizens and advocacy groups when announced by the state and EPA. To take advantage of the opportunity to highlight successes, Federal agencies and facilities should consider outreach opportunities such as press conferences or public meetings to announce annual numbers in combination with local pollution prevention initiatives at the same time the TRI reports are submitted to EPA and the state.

EPCRA SECTION 313 USE EXEMPTIONS:

LEADERSHIP OPTION: The use exemptions were promulgated in an effort to exempt manufacturers in SIC codes 20-39 from reporting under EPCRA section 313 on their small and ancillary uses of the listed chemical. Executive Order 12856 encompasses a broader range of activities and the justifications for many of the small and ancillary use exemptions established under EPCRA section 313 may not apply in the case of Federal facilities' adherence to the Executive Order. EPA recommends that Federal facilities account for all significant uses and releases of listed toxic chemicals. Federal agencies and facilities should carefully review their manufacture, process and use of toxic chemicals to determine if application of the exemptions will preclude reporting of toxic chemicals in normally reportable quantities.

Application of the Motor Vehicle Maintenance Exemption

LEADERSHIP OPTION: If a Federal facility conducts significant motor vehicle operations and maintenance involving above-threshold quantities of listed toxic chemicals, then EPA recommends that the facility seriously consider including these amounts in its threshold and release

determinations under EPCRA Section 313. A facility is required to report for maintenance activities performed on vehicles not operated by the facility itself. EPA also recommends that a facility consider reporting amounts of chemicals used to maintain vehicles operated by the facility itself, particularly in those cases where the facility knows that it is using significant quantities of fuel to operate its vehicles. For example, known use of over 1 million pounds of gasoline could mean that the facility has used in excess of 10,000 pounds of a listed toxic chemical component of that fuel (e.g. if benzene was known to be present in the gasoline mixture in excess of 1%).

If a facility chooses to report for such use, EPA recommends that the facility focus its efforts on estimating losses resulting from fuel storage and transfers. EPA would not expect the facility to estimate "tailpipe emissions" from the vehicles it operates. That is, the facility would not have to estimate the uncombusted fuel component or amounts of a listed toxic chemical coincidentally manufactured as a result of the fuel combustion by the vehicle.

Application of the Laboratory Activity Exemption

LEADERSHIP OPTION: EPA encourages federal facilities to account for their use and release of listed toxic chemicals from laboratory activities if they know that the aggregate scale of such use exceeds thresholds. Some federal laboratory facilities may use a significant amount of a toxic chemical even though all the activity may be carried out at the "bench level." For example, the facility may know from purchasing records that it routinely uses in excess of 10,000 pounds of an extraction solvent annually. It also knows that much of the solvent evaporates and is vented to the outside air. EPA recommends that the facility report on this activity.

REPORTING ON REMEDIATION ACTIVITIES

LEADERSHIP OPTION: If the facility's only activity involving a toxic chemical is the remediation of that chemical, under the current interpretation of the EPCRA Section 313 regulations, the facility exceeds no applicable threshold for the chemical and would not be required to report for that chemical. This is a situation in which the construct of the rule may not currently capture a potential significant source of releases and transfers of toxic chemicals from federal facilities. In this "remediation only" case, EPA recommends that the Federal facility take a leadership position and consider reporting for listed chemicals undergoing remediation. The facility could apply towards the reporting threshold the amount of the toxic chemical in materials undergoing remediation.

APPENDIX 1:
ENVIRONMENTAL PROTECTION AGENCY CONTACTS
LISTED BY EPA REGION

EPA REGIONAL PROGRAM CONTACTS

Region	CEPP Coordinators	TRI Coordinators	33/50 Coordinators
1	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont		
	Ray DiNardo (617) 860-4385 60 Westview Street Lexington, MA 02173	Dwight Peavey (617) 565-3230 One Congress Street Boston, MA 02203	Dwight Peavey (617) 565-3230 One Congress Street Boston, MA 02203
2	New Jersey, New York, Puerto Rico, Virgin Islands		
	John Ulshoefer (908) 321-6620 2890 Woodbridge Ave. Bldg. 209 (MS-211) Edison, NJ 08837	Nora Lopez (908) 906-6890 2890 Woodbridge Ave. Bldg. 10 (MS-105) Edison, NJ 08837	Mary Ann Kowalski (908) 906-6815 2890 Woodbridge Ave. Bldg. 10 (MS-105) Edison, NJ 08837
3	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia		
	David Wright (215) 597-5998 Mail Code 3HW34 841 Chesnut Street Philadelphia, PA 19107	Mikal Shabazz (215) 597-3659 Mail Code 3AT31 841 Chesnut Street Philadelphia, PA 19107	Bill Reilly (215) 597-9302 841 Chesnut Street Philadelphia, PA 19107
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee		
	Henry Hudson (407) 347-1033 345 Courtland St., NE Atlanta, GA 30365	Carlton Hailey (404) 347-1033 345 Courtland St., NE Atlanta, GA 30365	Beverly Mosely (404) 347-1033 345 Courtland St., NE Atlanta, GA 30365
5	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin		
	Mark Horwitz (312) 353-9045 (HSC-9J) 77 West Jackson Blvd. Chicago, IL 60604	Thelma Codina (312) 886-6219 (SP-14J) 77 West Jackson Blvd. Chicago, IL 60604	Thelma Codina (312) 886-6219 (SP-14J) 77 West Jackson Blvd. Chicago, IL 60604

Region	CEPP Coordinators	TRI Coordinators	33/50 Coordinators
6	Arkansas, Louisiana, New Mexico, Oklahoma, Texas		
	Jim Staves (214) 655-2277 1445 Ross Avenue Dallas, TX 75202	Warren Layne (214) 655-7244 1445 Ross Avenue Dallas, TX 75202	Lewis Robertson (214) 655-7582 1445 Ross Avenue Dallas, TX 75202
7	Iowa, Kansas, Missouri, Nebraska		
	Jacqui Ferguson (913) 551-7310 ARTX/TOPE/TSCS 726 Minnesota Ave. Kansas City, KS 66101	Jim Hirtz (913) 551-7472 TOPE 726 Minnesota Ave. Kansas City, KS 66101	Carl Walter (913) 551-7600 TOPE 726 Minnesota Ave. Kansas City, KS 66101
8	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming		
	Jim Knoy (303) 294-7163 999 18th Street Suite 500 Denver, CO 80202	Kathie Atencio (8ART-TS) 999 18th Street Suite 500 Denver, CO 80202	Kerry Whitford 999 18th Street Suite 500 Denver, CO 80202
9	Arizona, California, Hawaii, Nevada, American Samoa, Guam		
	Kathleen Shimmin (415) 744-2100 75 Hawthorne Street (H-1-2) San Francisco, CA 94105	Pam Tsai (415) 744-1116 75 Hawthorne Street (A-4-3) San Francisco, CA 94105	Helen Burke (415) 744 1069 75 Hawthorne Street San Francisco, CA 94105
10	Alaska, Idaho, Oregon, Washington		
	Walt Jaspers (206) 553-0285 1200 6th Avenue (HW-114) Seattle, WA 98101	Phil Wong (206) 553-4016 1200 6th Avenue (AT083) Seattle, WA 98101	Jayne Carlin (206) 553-4762 1200 6th Avenue Seattle, WA 98101

ENVIRONMENTAL PROTECTION AGENCY
REGIONAL FEDERAL FACILITY COORDINATORS

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Compliance with the Emergency Planning and Community Right-to-Know Act of 1986 as Required under Executive Order 12856

Questions and Answers Part I

For EO Section 3-304 Toxic Release Inventory Pollution Prevention Reporting (EPCRA Section 313)

General

Must DoD facilities pay EPCRA report filing fees to those states that have fee programs?

No. The payment of state filing fees by the Federal government would constitute taxation and the Federal government does not pay taxes to states.

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

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

Can EPA fine a DoD facility if the facility does not comply with EO 12856?

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

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

No. According to the customs regulations, Guam is not "in the customs territory of the U.S." The "customs territory" includes the 50 states, the District of Columbia, and Puerto Rico. Because the definition of "state" under EPCRA section 329 includes certain territories and possessions outside the customs territory of the U.S. (including Guam, American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands), DoD

facilities located in these U.S. territories and possessions are encouraged to abide by the spirit of EPCRA. Abiding by the spirit of EPCRA means planning for and preventing potential harm to the public through chemical releases, and observing the environmental protection hierarchy in the Pollution Prevention Act (i.e., source reduction, recycling, treatment, and disposal).

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

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

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

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

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

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

Under EPCRA section 313, the owner or operator of a facility is

responsible for reporting. If the owner of the facility has a "landlord or real estate interest only" in the operations conducted at the facility, then the obligation for reporting falls to the operator - who typically has the most knowledge of any toxic chemicals used at the facility. In this example, the agency is the operator and responsible for threshold determinations and release calculation - assuming that GSA had a "landlord or real estate interest only" in the facility.

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

In order to minimize the efforts required compile EPCRA information in a variety of differing formats, installation staff should work with state and local officials to determine which state or local officials will be the primary recipients of EPCRA information. The other affected state and local officials can be sent copies of the material sent to the primary officials. Installations are free to provide EPCRA information to each state and local official in the format they request but they are not required to.

My base has a public road that goes through it. Can I treat each part of the base separated by the road as a separate facility?

No, unless the two parts are separate installations that are autonomous and no host-tenant agreement exists the road does not separate the base into two facilities. All non-exempt activities that use toxic chemicals on both sides of the base will have to be accounted for in making threshold calculations.

My base has five miles of public land that separate parts of the base. Should I count the parts as one facility?

No. Because the base is separated by such a large area of land the base may count each separate part as a separate facility. The base commander can for ease of administration count the separate parts as one facility. (See page 4 of the guidance).

Are motor vehicles such as automobiles, tanks, airplanes, and ships considered individual facilities or part of a facility under the EPCRA provisions of EO 12856?

Motor vehicles are never considered part of a facility except for EPCRA section 304 emergency notification. A "facility" is defined according to section 329(4) of the Emergency Planning and Community Right-to-Know Act (P.L. 99-499 or EPCRA) as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

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

Yes. The EPCRA lists have evolved since the statute was passed in 1986. As more information has become available on the hazards and toxicity of chemicals, EPA has responded by identifying chemicals to be added to or taken off the EPCRA lists; EPA expects to continue this activity. When chemicals are added to or taken off the EPCRA lists, EPA always publishes a notice in the Federal Register. The trade press also reports changes to the EPCRA lists.

For the purposes of the 50 percent reduction goal only, DoD will base reductions on the 1994 baseline that will include only chemicals included on the EPCRA section 313 lists, as December 1, 1993 . For purposes of annual TRI reporting, DoD facilities are responsible for reporting on all chemicals that are part of the EPCRA lists as of the December 1 prior to the reporting year. For example, DoD 50% reduction goals will be based on the EPCRA TRI list dated January 1994 that includes all chemical on the added on or before December 1, 1993 -- minus Hydrogen Sulfide and ethyl Mercaptan, which were given a stay from calendar year 1994 reporting. Note though it has been deleted from future reporting installations still must report uses of Benzyl Butyl Phthalate, for calendar year 1994. For purposes of 1995 reporting, DoD installations will have to include in their TRI threshold determination and release calculations those 286 chemicals added to the EPCRA TRI list on December 1, 1994.

Government Owned Government Operated Facilities

Does Executive Order 12856 require non-manufacturing contractors at GOCO facilities to comply with EPCRA section 313 just because non-manufacturing DoD facilities other than GOCO facilities must comply?

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

How will EPA avoid double counting of GOCO releases since the GOCO is still legally required to comply with EPCRA reporting requirements and DoD must include the release data in their submissions as well?

EPA will input only Federal Facilities submitted data to the TRI database where duplicate reports were filed.

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

A GOCO facility produces electrical components under contract to the U.S. Department of Energy (DOE). The GOCO contractor conducts all of its 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 Do D or DOE include the contractor's uses of toxic chemicals when performing threshold determinations under EPCRA section 313?

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

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

We have a GOCO that does work for DoD within a larger GOCO that is not controlled by DoD, are we responsible for the whole GOCO?

No. The controlling component is only responsible for reporting the operations of the GOCO that does work for DoD. The reverse is also true. If a DoD GOCO has a GOCO within it that does work for a non-DoD agency, the DoD component responsible for controlling the GOCO is only required to report the operations associated with the GOCO work that supports DoD.

A DoD GOCO performs work for DoD at a stand-alone facility but has only a small DoD staff. Does the Component that owns this facility

have to report?

Yes. The DoD Component that controls the GOCO still must report EPCRA information.

A GOCO performs only a small percentage of its work for DoD, is the DoD component that owns the facility required to report?

The DoD component that owns the facility is only required the portion of the work that is done for DoD. Existing contracts will have to be modified to enable DoD to report that EPCRA information on that portion of the contractor's work that supports DoD.

A GOCO builds aircraft that are sold to foreign governments, non DoD agencies as well as DoD. Is DoD responsible for reporting all EPCRA information associated with the production of the aircraft?

The DoD Component that owns the facility should work with the contractor to determine the portion of the production that directly supports DoD. This portion should be factored against EPCRA information to determine the amount of releases and off-site transfers that the DoD component should report to EPA and include in the CY 94 baseline. Alternatively, all the EPCRA information should be reported to EPA but not included in DoD's baseline.

A GOCO produces products for the private sector, and only in the event of mobilization or a 'ramp up' will the facility produce items for use by DoD, should the DoD Component that owns the facility report EPCRA information?

No. Because DoD does not control the production at the facility except under special conditions the DoD Component that owns the facility is not required to report EPCRA information. If the facility begins continuous (longer than six months) production for DoD, then the DoD Component that owns the facility will be required to report EPCRA information.

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

Yes. EO 12856 does not alter a GOCO contractor's reporting responsibilities under EPCRA. Contractors will still be required to submit Form R reports if SCI code, full-time employee, and chemical threshold criteria are met. EPA will avoid the potential for double-counting caused by GOCO contractors and Federal agencies reporting for the same facility

through programming changes to the database and associated search structure, or by entering only the more comprehensive, Federal facility data into the TRIS database. (GOCO contractor data would be maintained for compliance and enforcement purposes.)

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

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

FORM R REQUIREMENTS (GENERAL)

How should a DoD facility report its facility name on the Form R report?

A DoD facility should report its facility name on page one of the Form R reports (Section 4.1). It is important that the word 'U.S. DoD' precede the specific DoD Component name and installation name, as shown in the following example:

U.S. DoD U.S. Army Ft. Dix

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

U.S. DoD U.S. Army Cornhusker Army Ammunition Plant

For section 5.1 'Parent Company' the GOCO should list the U.S. DoD followed by the DoD component that oversees the facility. Continuing with the above example section 5.1 should read:

U.S. DoD U.S. Army

For Part I, section 4.5 of the Form R, how should DoD departments and agencies determine the SIC code(s) for reporting activities being

performed at DoD facilities?

DoD facilities should use SIC code 9711 the SIC code for facilities involved in national security.

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 DoD facility complete the street address data element within Part I, section 4.1?

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

Is a DoD facility required to report if it had no releases of the toxic chemicals during the calendar year?

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

Employee Threshold Determinations

What DoD facilities are subject to EPCRA section 313 reporting under EO 12856?

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

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

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

Does the full-time employee determination include the hours worked by field, clerical, or professional staff whose office is in the same

building as the production staff actually using the toxic chemical?

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

Questions About Specific Activities That Are or Are Not Exempted

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

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

Are chemicals used at the wastewater treatment plant to be included in TRI threshold calculations?

No. The chemicals are exempted because they are used to support activities related to personal comfort and use and are, therefore, exempted under the personal use exemption. This is not true for chemicals used in industrial wastewater treatment plants. Chemicals used for industrial wastewater treatment plants are not exempt from TRI threshold calculations.

When would a ship's activities be covered under the Executive Order?

If a ship is docked in port at a DoD facility and shore based maintenance or support activities are being conducted, then such activities during that time should be included by the shore facility when determining Executive Order section 3-304 reporting status for that DoD facility. Maintenance performed by the ship's personnel is exempt..

Would the refueling of aircraft be exempt from EPCRA section 313?

DoD's guidance states that releases associated with fuel used in mobile sources are exempt under the motor vehicle maintenance exemption.

Are toxic chemicals that are used for de-icing of aircraft wings exempt from EPCRA section 313 reporting?

Yes. The specific use of propylene glycol and ethylene glycol compounds

to de-ice wings is exempt from EPCRA 313 reporting under the vehicle maintenance exemption.

Activity Threshold Determinations

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

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

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

Yes. Under the authority of EPCRA section 313, EPA defines "manufacture" to mean produce, prepare, compound, or import (40 CFR 372.3). If a DoD facility causes more than 25,000 pounds of a toxic chemical to be imported, it has exceeded the "manufacture" threshold and is subject to the release reporting requirements for that toxic chemical. A facility would "cause" a toxic chemical to be imported by specifically requesting a product (containing the toxic chemical) from the a foreign source or requesting a product known to be only available from a foreign source. If, after receipt, the DoD facility processes 25 thousand pounds or otherwise uses 10 thousand pounds of that chemical, then the DoD facility must report releases of that chemical.

My facility receives material from deployed units, being retrograded into the US. It is usually of domestic manufacture, but occasionally contains foreign-purchased products. Does such retrograde constitute importing, for an organization whose mission is wholesale supply distribution?

No. As long as the material remains under U.S. government control it is not considered to have been imported for purposes of the Executive Order.

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

No. As long as the chemical remains under U.S. government control it is not considered to have been imported for purposes of the Executive Order.

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

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

Are warehouses subject to the threshold determinations of section 313?

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

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

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

I have a 50 gallon container of gray paint. I pour into five gallon

containers. Because the paint is the kind I can buy at Walmart don't I get the consumer use exemption?

There is no consumer quantity use exemption per se. The exemptions under EPCRA 313 are for how the material is used. There are structural, janitorial/facilities grounds maintenance and personal use exemptions. If the paint is used to maintain the physical integrity of a building then it is exempt. If the paint is used in intermediate or depot level maintenance of aircraft, tactical vehicles or ships then the painting is not exempt. Further, the pouring of the paint from a 50 gallon container into 5 gallon containers constitutes processing.

Are the activities of public work centers (PWCs) exempted from TRI threshold activities?

All buildings and grounds maintenance activities performed by PWCs are exempt under the routine janitorial/facilities grounds maintenance exemption. Releases associated with the transfer and emissions of fuels will also be exempt under the vehicle maintenance exemption. However, due to the nature and size of PWC maintenance efforts, motor pool activities will be included in threshold and release calculations.

Is operational use of pesticides exempt?

Yes if it is used in the same type and concentration as commercial facilities. See personal use exemption.

Do we have to count the activities of our stand alone hospitals?

No. DoD has included medical facilities in the personal use exemption and excludes from reporting their activities under TRI.

Exemptions

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General

Do the exemptions available under EPCRA section 313 apply to DoD facilities?

The exemptions listed under EPCRA section 313 apply to DoD facilities in exactly the same way as they apply to industry.

De Minimis

A DoD facility "otherwise uses" toluene, a toxic chemical, in two ways. In one "otherwise use," toluene is in a product below the de minimis level, and is therefore exempt from threshold determinations and release reporting under EPCRA section 313. In the second

"otherwise use," toluene is in a product in an amount greater than the de minimis level and is used in excess of the 10,000-pound "otherwise used" threshold. Because the facility must prepare a Form R for toluene, must the facility report all of the releases and off-site transfers in the report, including those that qualified for the "de minimis" exemption?

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

Articles

In its manufacturing operations, a DoD facility uses a catalyst that is in pellet form and contains a toxic chemical. No releases of the toxic chemical occur during the use of the pellets. Is this catalyst an "article," making the quantity of toxic chemicals in the pellets exempt from release reporting under EPCRA section 313?

Under 40 CFR 372.3, an "article" is "a manufactured item which: (1) is formed to a specific shape or design during manufacture; (2) has end use functions dependent in whole or in part upon its shape or design during end use; and (3) does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishment." Some catalysts are formed to a specific shape and their end use functions are dependent on this shape (e.g., spore structure, internal surface area). Many catalysts, however, degrade during use and could release over 0.5 pounds of a toxic chemical over the course of a year. All three of the above conditions must be met if the quantity of the toxic chemical in the catalyst is to qualify for the "article" exemption.

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

Yes. because the lead is part of an article it is exempt.

Use Exemptions

Structural Component Use

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

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

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

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

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

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

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

The EPCRA section 313 "structural component" exemption (40 CFR 372.38(c)(1)) would not apply to grinding wheels and metal-working tools.

Because of the nature of their use, these items are intended to wear down and to be replaced, which would be considered "active" degradation. The "structural component" exemption only applies to "passive" or natural degradation of structures and equipment such as pipes.

Would the maintenance of a runway be exempted under structural component use?

Yes. Maintaining the physical integrity of a runway is exempt.

Routine Janitorial or Facility Grounds Maintenance Use

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

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

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

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

How is routine janitorial/facility grounds maintenance defined?

The routine maintenance exemption is intended to cover janitorial or other custodial or plant grounds maintenance activities using substances such as bathroom cleaners, or fertilizers and pesticides used to maintain facility lawns, in the same type or concentration commonly distributed to consumers.

Would all janitorial or other custodial activities performed at a hospital qualify for the routine janitorial/facility grounds maintenance exemption? Would activities such as sterilizing rooms and equipment be exempt?

Yes. Janitorial or custodial activities or grounds maintenance activities using substances in the same type or concentration commonly distributed to consumers used anywhere on a facility are exempt. In addition, any activities associated with hospitals are exempt under the personal use exemption according to DoD policy.

Personal Use

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

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

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

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

Are toxic chemicals used to maintain recreational components at our base subject to EPCRA section 313 reporting requirements?

No. Toxic chemicals used to maintain a facility's recreational activities (e.g., cleaning swimming pools) are exempt from EPCRA section 313 threshold determinations and release reporting requirements under the "personal use exemption" (40 CFR 372.38(c)(3)).

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

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

Motor Vehicle Maintenance

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

No. A motor vehicle is not part of the definition of a facility, therefore, toxic chemicals emitted in vehicle exhaust are not counted in threshold determinations and release calculations.

Is fuel transferred via tanker truck to a base heating plant exempt from TRI reporting under the Motor Vehicle Exemption for Maintenance?

No. Releases from fuel transferred via tank which has an end use in a stationary source must be reported. The end use of the fuel determines the exemption status of the transfers. Release due to the transfer of fuels to be used in motor vehicles are exempt.

Intake Water/ Air Use Exemption

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

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

process, then the toxic chemical would also be exempt from release reporting requirements under EPCRA section 313.

Other

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

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

Laboratory Activities

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

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

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

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

A DoD facility sends samples of manufactured products containing toxic chemicals to an on-site laboratory for quality control purposes. Are the quantities of the toxic chemicals contained in the samples

exempt from the facility's EPCRA section 313 threshold determinations as a result of the "laboratory activities" exemption (assuming all other "laboratory activities" exemption criteria are met)?

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

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

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

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

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

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

quantities of the toxic chemical must be included in threshold determinations and release calculations?

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

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

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

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

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

Release Reporting

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

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

releases.

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

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

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

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

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

No. The DoD facility does not need to report the gaseous waste stream in Part II, section 7A of the Form R report, because no treatment is applied to the gaseous waste stream. However, any resulting air emissions would

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

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 DoD facility has monitoring or emissions data for a toxic chemical that they do not believe are representative, should they still use that data to complete the release calculations on the Form R report?

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

Transfers to Off-Site Locations

A DoD facility discharges waste containing EPCRA 313 metals that are toxic chemicals to an on-site cooling pond. The metals settle and accumulate over time. Water from the pond eventually is drained, leaving behind a heavy metal sludge. The sludge is then dredged and sent off-site for disposal. How should toxic chemicals in the sludge be reported on the Form R?

Reportable toxic chemicals that are contained in the sludge sent off-site should be reported as an off-site transfer in Part II, section 6.2 of Form R. The quantities of toxic chemicals contained in the sludge should also be reported in Part II, section 8 of the Form R (e.g., section 8.1 for disposal or section 8.7 for treatment).

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

The DoD facility is required to use the best data available at the facility to identify the final, known disposition of a toxic chemical that it is reporting on a Form R report for the purpose of entering a waste management code in Part II, section 6.2.C of the Form R. While obtaining additional information from the off-site location concerning the fate of the particular

toxic chemical is not required, it is certainly an option for facilities who lack a complete understanding of the final disposition of a toxic chemical in a waste sent off-site.

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

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

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

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

Remediation Projects and TRI Reporting Requirements

A site exceeds an activity threshold (manufacture and import, or process, or otherwise use) for a toxic chemical. During a remediation project, the same toxic chemical is transferred from one media to another. For example, soil excavation during groundwater remediation causes a toxic chemical to be released to the air. How is this release considered for Form R reporting?

A toxic chemical contained at a installation restoration program site that is undergoing remediation is reported in Part II, Sections 5,6, and 8.8 of Form R only if the DoD facility exceeds an activity threshold through some

other activity involving the same toxic chemical. A toxic chemical being used to remediate an installation's restoration program site is considered 'otherwise used,' and if an activity threshold is met for that toxic chemical, all releases and off-site transfers are reported in Part II, Sections 5, 6, and 8.1-8.7 of Form R.

If a Federal agency operates a treatment plant as part of remediation of an environmental contaminant at a Federal facility, do contaminants already there, not being added, have to be included in calculating thresholds and releases?

Such material is not included in section 313 threshold determinations as long as it is not being manufactured, processed, or used. If the Federal facility's uses of the same toxic chemical exceed the manufacture or process or otherwise use thresholds, then release or transfer reporting is required. For example, chemicals used in the treatment plant are considered otherwise used. In that event, a release does not include material already in a landfill, but does include any material released to the environment by remedial activity or transferred off-site.

Source Reduction and Recycling

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

If the accidental release of ammonia at a DoD 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, for example, would be included in the quantity reported in section 8.8.

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

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

high enough to sustain combustion (e.g., metals, CFCs, and halons).

Certification and Submission

Who should sign the Form R for the Federal facility?

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

Supplier Notification

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

Because supplier notification is not required of commercial suppliers to facilities outside of SIC codes 20-39, there currently is no regulatory mechanism to ensure that this information is received by the purchasing facility. One mechanism for ensuring that suppliers identify toxic chemicals present in mixtures and trade name products and provide concentration information is for the Federal facilities to request this type of information from their suppliers, revise existing contracts with suppliers to require this information, or ensure this information is required to be provided in any new contracts with suppliers.

TRI Reduction Goals

What is the baseline chemical list for the DoD toxic chemical reduction goal?

The DoD 50% reduction goals will be based on the EPCRA TRI list dated January 1994 that includes all chemical on the added on or before December 1, 1993 -- minus Hydrogen Sulfide and Ethyl Mercaptan, which were given a stay from calendar year 1994 reporting. Note though it has been deleted from future reporting installations still must report uses of Benzyl Butyl Phthalate, for calendar year 1994. However, once Benzyl Butyl Phthalate is delisted it will not be longer be counted for reduction goals. The baseline does not include those chemicals EPA added in 1994.

What values will the 50% goal based on?

The sum of Form R Sections 8.1 (quantity released) and section 8.7 (quantities transferred off-site) will be used as the baseline. Section 8.1 is a compilation of section 5, section 6.2 (disposal codes only) minus the section 8.8 data. Section 8.7 includes the section 6.2 (waste treatment

codes) and section 6.1 data.

Is the 50% voluntary reduction goal a facility goal or an agency goal?

It is a DoD goal. The Department of defense is required to reduce its aggregate amount of chemicals released and transferred off-site by 50% by 1999 from a CY 1994 baseline. The reduction goals are neither facility nor chemical specific. However, under section 3- 302(d) of Executive Order 12856, each of the agency's covered facilities is required to identify its contribution to the agency's 50% reduction goal. Further, DoD guidance directs that each facility is required to reduce toxic chemical releases and transfers by as close to 50% as possible.

If in 1994 I used 11,000 lbs of a chemical to maintain my aircraft and released 2,000 pounds of the chemical and then in 1995 I use 8,000 pounds and release 1,000 pounds is that a 2,000 pound reduction because I don't have to report or is it a 1,000 pound reduction?

According to current EPA policy such a situation would count as a 2,000 reduction because the use of the chemical did not meet the threshold level required to report. Keep in mind, however, that such uses of chemicals that are near the threshold levels should be carefully monitored because if a threshold is exceeded the reverse of the problem above could be. For example, if in the year following the scenario above, you used 12,000 pounds of the chemical and released 2,500 pounds then your form R records would show a 2,500 pound increase in release.

Compliance with the Emergency Planning and Community Right-to-Know Act of 1986 as Required under Executive Order 12856

Questions and Answers Part II

For EO Section 3-305 Emergency Planning (EPCRA Sections 301-312)
EPCRA Sections 302-303 (Emergency Planning)

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

Section 302 of EPCRA requires that any facility that has a listed extremely hazardous substance (EHS) present at any time (either in pure form or a mixture above de minimis) in an amount that exceeds the threshold quantity (TPQ) must notify the Local Emergency Planning Committee (LEPC) and State Emergency Response Commission (SERC).

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

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

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

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

EPCRA Section 304 (Emergency Release Notification)

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

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

A military base stages simulated airplane crashes for response training purposes. CERCLA hazardous substances contained in the fire suppressant foam are released during these training exercises. Would these releases qualify for continuous release reporting if the base conducted training sessions on a regular schedule (e.g., once a month or once a week)?

Under CERCLA section 103(f)(2) and EPCRA section 304, releases of listed CERCLA hazardous substances and extremely hazardous

substances that are routine, anticipated, and intermittent may qualify for reduced reporting as continuous releases. For more information on applying for the reduced reporting as a continuous release, see 55 FR 30185, July 24, 1990, (40 CFR 302.8) and EPA guidance (EPA/540/G-91/003 and EPA/540/G-91/005).

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

What are the exemptions to EPCRA section 304 reporting requirements?

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

- (1) "Federally permitted releases" as defined under CERCLA section 101(10); 42 USC 9601 (10);
- (2) Releases which result in exposure to persons solely within the boundaries of the facility (EPCRA section 304(a)(4); 42 USC section 11004(a)(4));
- (3) "Continuous releases" stable in quantity and rate, provided other restrictions established as defined under CERCLA section 103(f) are met - reporting would be required for initial release and statistically significant increases;
- (4) Application of a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the handling or storage of such pesticide by an agricultural producer (See CERCLA section 103(e); 42 USC 9603(e));
- (5) Emissions from engine exhaust of a motor vehicle, rolling stock, aircraft, or pipeline pumping station engine (CERCLA section 101(22)(B); 42 USC 9601(22)(B));
- (6) Normal applications of fertilizer (CERCLA section 101(22)(D));
- (7) Release of source, byproduct, or special nuclear material from a nuclear incident at a facility subject to financial protection requirements established by the Nuclear Regulatory Commission (i.e. nuclear power

plants) (CERCLA section 101(22)(C); 42 USC 9601(22)(C));

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

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

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

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

Under EPCRA section 304, who is responsible for reporting an accidental release above the RQ that occurs from a motor vehicle traveling on a public road that passes through a Federal facility?

Under EPCRA section 304, it is the responsibility of the owner or operator of a facility to report an accidental release above the established RQ. For reporting purposes under EPCRA section 304, the definition of facility includes motor vehicles (EPCRA 329(4)). Section 304(d) requires emergency notification for releases of EHSs or CERCLA hazardous substances from fixed facilities, as well as if in transit, or stored under active shipping papers. Because the release occurs from a motor vehicle traveling on a public road that passes through a Federal facility, the owner or operator of the vehicle would be responsible for reporting the release. The Federal facility is not responsible for reporting the release because they are not the owner or operator of the vehicle. However, any and all assistance should be provided to the owner/operator of the vehicle to facilitate the timely and comprehensive reporting of the accident.

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

Releases of EHSs or CERCLA hazardous substances that are subject to Federal permits are exempt from reporting requirements because they are considered a Federally permitted release. However, according to 40 CFR

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

Are vessels included in the definition of motor vehicles under EPCRA section 304?

No. Vessels (ships and barges) are excluded from section 304 reporting.

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

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

- (1) The chemical name or identity of any substance involved in the release.
- (2) An indication of whether the substance is an extremely hazardous substance.
- (3) An estimate of the quantity of any such substance that was released into the environment.
- (4) The time and duration of the release.
- (5) The medium or media into which the release occurred
- (6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
- (7) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).
- (8) The names and telephone numbers of the person or persons to be contacted for further information.

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

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

- (1) Actions taken to respond to and contain the release,
- (2) Any known or anticipated acute or chronic health risks associated with the release, and,
- (3) Where appropriate, advice regarding medical attention necessary for exposed individuals.

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

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

- (1) Any hazardous waste as such term is defined by the Solid Waste Disposal Act as amended when subject to regulations issued under that Act;
- (2) Tobacco or Tobacco products;
- (3) Wood and wood products;
- (4) Articles-as defined under section 1910.1200(b) as a manufactured item which is formed to a specific shape or design during manufacture; which has end use functions dependent in whole or in part upon the shape or design during end use; and, which does not release, or otherwise result in exposure to a hazardous chemical under normal conditions of use.
- (5) Food, drugs, cosmetics or alcoholic beverages in a retail establishment which are packaged for sale to consumers;
- (6) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace.
- (7) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers,
- (8) Any drug, as that term is defined in the Federal, Food, Drug, and Cosmetic Act, when it is in solid, final form for direct administration to the patient.

If a facility has a hazardous chemical that meets one or more of these

exemptions, it is not required to have a Material Safety Data Sheet (MSDS). If a facility is not required to prepare or have available an MSDS for a hazardous chemical, that hazardous chemical is not subject to sections 311 and 312 of EPCRA.

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

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

EPCRA Sections 311-312 (Hazardous Chemical Inventory Reporting)

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

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

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

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

The requirements for EPCRA sections 311 and 312 apply to any facility

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

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

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

- (1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug administration.
- (2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
- (3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.
- (4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.
- (5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

For EPCRA sections 311 and 312, an extremely hazardous substance (EHS) is present in a mixture. The only information on the concentration of the EHS in the mixture is a range code (e.g., 20- 30 percent). Is the mid-point of the range used as your concentration to determine thresholds, similar to the approach used in EPCRA section 313?

No. According to the Hotline Monthly Report, February 1990 (EPA/530-SW-90-090b), the highest concentration of the range given (e.g., 30 percent) for an EHS present in a mixture should be used for EPCRA sections 311 and 312 purposes.

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

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

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