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EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT - SECTION 313

EPCRA Section 313 Questions & Answers 2019 Consolidation Document

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106.

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SECTION 1.0 INTRODUCTION AND DISCLAIMER

Under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA, or Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499), certain facilities are required to report releases and other waste management quantities of specific chemicals listed in 40 CFR part 372. EPCRA section 313 is also referred to as the Toxics Release Inventory or TRI. Under the Pollution Prevention Act of 1990 (PPA), facilities must include reporting on certain pollution prevention and waste management activities when reporting under EPCRA section 313 requirements. Most of the reporting requirements for EPCRA section 313 are codified at 40 CFR Part 372.

Facilities that meet all three of the following criteria are subject to TRI reporting requirements:

- the facility has 10 or more full-time employee equivalents (i.e., a total of 20,000 hours or greater; see 40 CFR 372.3);
- the facility is included in a North American Industry Classification System (NAICS) code which corresponds to one of the following Standard Industrial Classification (SIC) Codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20–39, 4911 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4953 (limited to facilities regulated under RCRA Subtitle C, 42 U.S.C. section 6921 et seq.), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis), or, under Executive Order 13148, federal facilities regardless of their SIC code; and
- the facility manufactured (defined to include imported), processed, or otherwise used, in the course of a calendar year, any toxic chemical in quantities greater than the set threshold for the chemical.

Under Section 313, for each chemical that a facility must report to TRI, a Form R or Form A Certification Statement must be submitted to EPA and to designated State (or Tribal) agencies. Reporting forms are due by July 1 of each year and cover activities at the facility during the previous calendar year.

The Environmental Protection Agency (EPA) has published questions and answers guidance to help clarify the reporting requirements under Section 313. This document is a consolidation of and minor update to the following questions and guidance materials that EPA has been providing to help clarify TRI reporting requirements:

- *EPCRA Section 313 Questions and Answers* (Revised 1998 Version; EPA 745-B-98-004). This document updated the previous EPCRA 313 Q&As document (1997 version).
- *EPCRA Section 313 Addendum to the Guidance Documents for Newly Added Industries* (1998; EPA 745-B-98-001). This addendum to the Revised 1998 Version addressed a 1997 final rule which expanded the scope of the industry sectors required to report to TRI (*see*: 62 FR 23834).
- *EPCRA Section 313 Questions and Answers Addendum for Federal Facilities* (Revised 1999 Version; EPA-745-R-00-003). This addendum addressed questions for federal facilities, which

Executive Orders have required to report to TRI, beginning with Executive Order 12856 (August 3, 1993).

- *EPCRA Section 313 Questions and Answers Addendum to the Revised 1998 Version as of December 2004* (2004; EPA 260-B-04-002). The 2004 Addendum revised some of the 1998 Questions and Answers to align with regulatory changes and legal decisions since the publication of the Revised 1998 Version, including lowered reporting thresholds for certain persistent bioaccumulative toxic chemicals, and court rulings affecting the *de minimis* exemption eligibility and the reporting determination criteria of multi-establishment facilities.
- *Frequent Questions.* This source was an online collection of frequent questions and answers submitted to the TRI program over several years.

The Q&A guidance documents listed above have been marked as archived and are available publicly through EPA's TRI online guidance database, TRI GuideME, available at: https://ofmpub.epa.gov/apex/guideme_ext/f?p=guideme:home.

This 2019 Q&As Consolidation document compiles all current Q&As from these five sources. The document is organized thematically, so that all current Q&As are re-ordered and renumbered. This Consolidation document also includes some minor maintenance edits to some Q&As, limited to: updating references of SIC codes to NAICS codes; providing updated regulatory text citations and other URLs; providing updated terminology (e.g., "Material Safety Data Sheets" are now referred to as "Safety Data Sheets") and explanations of current electronic reporting processes; and eliminating any redundant Q&As (i.e., Q&As from multiple documents with duplicative text). Lists and crosswalks of Q&As with these housekeeping changes are in Section 3 of this document. EPA is including this crosswalk to assist the regulated community and other interested parties in identifying the Q&As that have been edited by this Consolidation and to explain the changes made to them.

The 2019 Consolidation Q&As can be found on GuideME. Each Q&A includes a reference and link to its previous source. The five previous Q&A source documents will remain accessible through GuideME's archived documents.

The Agency compiled this document to facilitate facility reporting. This document supplements the instructions for completing the Form R and the Alternate Threshold Certification Statement (Form A). This document is intended solely for guidance and does not alter any statutory or regulatory requirements. The document should be used in conjunction with the statute and regulations but does not supersede them. The guidance provided in this document addresses the very specific circumstances stated in each question. Accordingly, the reader should consult other applicable documents (e.g., the statute, the Code of Federal Regulations (CFR), relevant preamble language, and the current Toxic Chemical Release Inventory Reporting Forms and Instructions) when determining whether a facility is subject to EPCRA section 313 reporting requirements, and how the facility should report releases and other waste management quantities of toxic chemicals. If a conflict exists between guidance provided in this document and the statutory or regulatory requirements, the conflict must be resolved in favor of the statute or regulation.

EPA recognizes that activities involving toxic chemicals may vary significantly from one facility to another. Because it is not possible to address in a guidance document the specific circumstances that exist at each facility that may be subject to Section 313 reporting requirements, EPA intends to apply this guidance in a flexible manner. Similarly, individual facilities may find that the guidance provided in this document is inapplicable to their processes or circumstances, and that alternative approaches or

information are more accurate and/or more appropriate for meeting the statutory and regulatory requirements of EPCRA section 313. Facilities should therefore use facility-specific information and process knowledge, where available, to meet the requirements of EPCRA section 313.

There may be instances where this Consolidation document does not sufficiently address a facility's concerns (e.g., an issue with a facility's specific manufacturing process) with the reporting requirements of EPCRA section 313. In those instances, the facility should contact EPA or consult with professional counsel for compliance assistance. Facilities are also encouraged to contact the Agency with any additional or clarifying questions about the guidance provided in this document, or if the facility believes that EPA has incorrectly characterized a particular process or recommendation.

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SECTION 2.0 2019 CONSOLIDATION Q&As

Chemical Categories; Coal Mining; Disposal; Energy Recovery; Facility; Manufacture; Manufacturing; Mining; NAICS; Process; Recycle; Recycling; Releases; Waste; Waste Management Activities; Waste Treatment

1. What is the Toxics Release Inventory?

The Toxics Release Inventory (TRI) is a database that currently contains detailed information on 595 individually listed chemicals and 33 chemical categories that over 23,000 industrial and other facilities manage through disposal or other releases, recycling, energy recovery, or treatment. The data are collected from industries including manufacturing, metal and coal mining, electric utilities, commercial hazardous waste treatment, and other industrial sectors. Information on the North American Industry Classification System (NAICS) can be found at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors.

Section 313 of the Emergency Planning and Community Right to Know Act (EPCRA) of 1986 was enacted to facilitate emergency planning, to minimize the effects of potential toxic chemical accidents, and to provide the public with information on releases of toxic chemicals in their communities. The Pollution Prevention Act (PPA) of 1990 mandates collection of data on toxic chemicals that are treated, recycled, and combusted for energy recovery. Together, these laws require facilities in certain industries, which manufacture, process, or use toxic chemicals above specified amounts, to report annually on disposal or other releases and other waste management activities related to these chemicals. The U.S. Environmental Protection Agency (EPA) maintains this information in a national database called the Toxics Release Inventory, which is available to the public via the Internet at: https://www.epa.gov/toxics-release-inventory-tri-program.

Facility; NAICS; Reporting Criteria

2. What facilities are subject to EPCRA section 313 reporting?

A facility must report release and other waste management information pursuant to EPCRA section 313 if it: (1) has 10 or more full-time employees or the equivalent; (2) is in a covered NAICS code; and (3) exceeds any one threshold for manufacturing (including importing), processing, or otherwise using a toxic chemical listed in 40 CFR Section 372.65.

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Alternate Threshold; Form A; Form R; Reporting Criteria

3. If a facility triggers TRI reporting thresholds for a listed toxic chemical (i.e., it meets the employee and toxic chemical activity thresholds and is in a covered NAICS code), is it required to report if it had no releases of the toxic chemical during the reporting year?

Yes, even if it releases no toxic chemicals into the environment and does not conduct any other waste management activities involving the listed toxic chemical, the facility must submit a TRI reporting form. If the facility meets the employee and chemical activity thresholds and is in a covered NAICS code, but its annual reportable amount of a non-PBT chemical does not exceed 500 pounds and the facility has not manufactured, processed, or otherwise used more than one million pounds of the toxic chemical, the facility may submit the Form A (Alternate Threshold Certification Statement). If the facility exceeds either the 500- or one million-pound limits, it must report on the Form R (40 CFR Section 372.85 and 372.95).

NAICS

4. Effective January 1, 1997, the Office of Management and Budget adopted the North American Industry Classification System (NAICS), a new economic classification system that replaces the 1987 Standard Industrial Classification (SIC) system (62 FR 17228; April 19, 1997). How will EPA update its EPCRA section 313 regulations to reflect this change?

EPA issued a final rule to amend 40 CFR Section 372 and require reporting facilities to include NAICS codes (71 FR 32464; June 6, 2006).

Toxic Chemical List

5. What list of toxic chemicals is subject to reporting under EPCRA section 313?

EPCRA section 313 defined the list of toxic chemicals. The initial list (with certain technical modifications and revisions) appears in the regulations (40 CFR Section 372.65) and in the instruction booklet for completing Form R. EPA, from time to time, has revised the list. The most recent instruction booklet for completing the Form R contains the updated chemical list. To obtain information on the latest additions or deletions from the list of toxic chemicals contact the Emergency Planning and Community Right-to-Know Information Hotline.

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Toxic Chemical List

6. What is the difference between the Section 313 list of toxic chemicals and other EPCRA lists of regulated chemicals?

There are overlaps, which exist between lists of chemicals covered by different Sections of EPCRA. Section 313 focuses on toxic chemicals that may cause chronic health and environmental effects, although the list does contain chemicals that cause acute health effects. When EPCRA was written, the Section 313 list was developed from lists of regulated toxic chemicals in New Jersey and Maryland. The other EPCRA lists cover chemicals of concern for emergency planning purposes. The List of Lists: Consolidated List of Chemicals document (EPA 550-B-15-001, March 2015) identifies toxic chemicals that are specifically listed and must be reported under various sections of EPCRA.

Activity Threshold; Chemical Category; Metal Compounds; Release Reporting

7. How are toxic chemical categories handled under Section 313 threshold determinations and release and other waste management calculations?

All toxic chemicals in the category that are manufactured, processed, or otherwise used at a covered facility must be totaled and compared to the appropriate thresholds (40 CFR Section 372.25(d)). A threshold determination for toxic chemical categories is based on the total weight of the compound. Except for metal compound categories and nitrate compounds, the total weight of the compound released or otherwise managed as waste must be reported. Releases and other waste management quantities of metal compounds are reported as the parent metal portion of the compounds (40 CFR Section 372.25(h)). If the metal and corresponding metal compounds exceed thresholds, a joint report for metal compounds, including the parent metal, can cover both reporting requirements. Similarly, releases and other waste management quantities of nitrate compounds are reported as the nitrate portion of the compound.

Facility; NAICS

8. How do facilities determine their NAICS code?

If a facility is not sure what its NAICS code is, it should consult the Census Bureau's webpages on NAICS codes for assistance. To determine which industries are covered under Section 313, visit TRIs website: https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors.

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Establishment; Facility; NAICS

9. What is the definition of primary SIC code? How can there be more than one SIC code for a facility?

A primary SIC code generally represents those goods produced or services performed by an establishment that have the highest value added. Form R and the Alternate Certification Statement (Form A) provide space for more than one SIC code because a facility may be made up of several establishments each of which may have a different primary SIC code.

Note that the North American Industry Classification System (NAICS) is the economic classification system that replaced the 1987 SIC code system. A Federal Register notice was published on June 6, 2006 (71 FR 32464) adopting NAICS codes for TRI reporting.

Establishment; Facility; Form A; Form R; NAICS

10. What is the definition of primary NAICS code? How can there be more than one NAICS code for a facility?

A primary NAICS code generally represents those goods produced or services performed by an establishment that have the highest value added. Form R and the Alternate Certification Statement (Form A) provide space for more than one NAICS code because a facility may be made up of several establishments each of which may have a different primary NAICS code. Additional information on NAICS codes can be found on the NAICS TRI website.

Facility; Reporting Requirements; Toxic Chemical List

11. Does EPA have the authority to require facilities that don't meet all of the EPCRA section 313 thresholds to submit TRI reports?

Pursuant to EPCRA section 313(b)(2), EPA has the option to apply TRI reporting requirements to the owners and operators of facilities that manufacture, process, or otherwise use a toxic chemical listed in EPCRA section 313(c), yet do not meet the full criteria to trigger reporting. EPCRA section 313(b)(2) also provides an opportunity for governors of states to request that EPA apply TRI requirements to the owners and operators of such facilities. When determining whether to require facilities that do not meet the full criteria to report, EPA considers the toxicity of the chemical, the proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at a facility, and other factors that EPA deems appropriate when determining whether such action is warranted.

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Facility

12. What is the reporting deadline for EPCRA section 313 submissions?

EPCRA section 313 submissions are due on July 1st of the year following each reporting (calendar) year (40 CFR Section 372.30(d)). Facilities must submit reports by midnight, July 1st, for each facility's respective time zone. For example, a submission from a facility on the West Coast at 11:59 P.M. (PST) on the reporting deadline is considered to be on time. Reports are stamped with the time and date as the Central Data Exchange (CDX) receives them.

Disposal; Facility; Landfill; Recycling; Releases; Underground Injection; Waste

13. What should I know about the different types of disposal or other releases?

The TRI Program collects data on a number of different types of disposal or other releases, as well as on certain waste management and recycling practices. For more information on the differences between these data elements, please refer to the Toxics Release Inventory (TRI) and "Factors to Consider When Using TRI Data" on the TRI Web site.

Disposal or other releases of chemicals into the environment occur through a range of practices that may ultimately affect the potential for human exposure to the toxic chemicals. Most disposal or other release practices are subject to a variety of regulatory requirements designed to limit environmental harm. Facility releases may include discharges to air, water, and land.

Facilities limit contamination and human exposure by disposing of or otherwise releasing waste in certain ways. For example: - they may dispose of harmful materials in Class I underground injection wells located in isolated formations beneath the lowermost underground source of drinking water, thereby limiting the potential for contamination of drinking water; and - they may dispose of wastes in landfills that have liners, covers, leak-detection systems, and groundwater monitoring systems, thereby limiting the potential for human exposure to the contents of the landfill.

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CAS Number; Chemical Name; Mixture

14. We use a toxic chemical with a CAS number not on the list of Section 313 toxic chemicals. There are similar toxic chemicals on the list, but none with the same CAS number. How can I be sure I do not have to report?

Although CAS numbers are useful, a covered facility should also use the toxic chemical name to determine if a toxic chemical is listed on the EPCRA section 313 list. Be aware, however, that mixtures are often assigned CAS numbers. These mixtures may contain individually listed toxic chemicals. The facility should use all available information, including the toxic chemical name as well as process and chemical knowledge, to determine if a component of the mixture is a listed toxic chemical under Section 313. CAS numbers may be of limited use in this case. Also, certain specific compounds (e.g., copper chloride) are not listed individually on the EPCRA section 313 list with a specific CAS number, but are reportable under a compound category.

CAS Number; Category Code; Chemical Categories

15. If an item on the Section 313 list incorporates toxic chemicals with multiple CAS numbers (i.e., nickel compounds), how is the CAS number of the item described?

Do not enter a CAS number in such cases. Instead, enter the appropriate category code (provided in the instructions to the Form R) in the space for the CAS number in Part II, Section 1.1 of the Form R. The individual chemical members of a listed category are not required to be, and should not be, identified in the report.

Part I Section 2.1; Trade Secret

16. On the Form R, if I do not check the 'Trade Secrets' box in Part I, Section 2.1, what other blocks can I leave blank? Do I still have to fill in the CAS number?

If the toxic chemical for which you are reporting is not a trade secret, you may leave the boxes in Section 2.2 blank. The CAS number, however, must be filled in along with the toxic chemical name (Part II, Section 1.1 and 1.2). If you are reporting for a toxic chemical category, no CAS number applies. If you are claiming that the toxic chemical is a trade secret you must enter the generic name in Part II, Section 1.3.

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Chemical Categories; Health Effects

17. Do the toxic chemical categories such as nickel compounds include all compounds, even those that have not been associated with adverse health effects? What is the authority for this decision?

The EPCRA section 313 list established by Congressional legislation included categories. EPA interprets these listings to mean all compounds of nickel, for example, regardless of whether specific toxicological problems have been identified for a specific compound in the category. However, EPA may grant, and has granted, petitions to delete specific compounds from a category if the Agency determines that the compound does not meet the listing criteria.

Applicability; Facility; Mining; NAICS; Releases; Reporting Requirements; Waste

18. One part of applicability for TRI reporting is that the facility is included in a covered North American Industry Classification System (NAICS) code. The Office of Management and Budget (OMB) revises NAICS codes every five years. Which list of NAICS codes are facilities currently required to follow in determining whether they are subject to TRI reporting?

EPA has published final rules in the Federal Register updating the list of NAICS codes subject to reporting under TRI to reflect the OMB revisions. As a result of these rulemakings, facilities must use the applicable NAICS code list beginning with TRI reporting forms that are due on July 1covering releases and other waste management quantities for the prior calendar (reporting) year. This update will not change the universe of facilities that are currently required to submit TRI reports. All facilities currently required to report to TRI will still be required to report. However, some facilities will need to modify the NAICS code that they report on their TRI forms. TRI-MEweb has a list of the applicable NAICS codes automatically populated. No other reporting requirements will change as a result of this rulemaking. Additional information regarding the final rules, including the Federal Register notices, is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/tri-laws-and-regulatory-activities.

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Applicability; Facility; NAICS; Reporting Requirements

19. If a covered facility changes its primary NAICS code during the reporting year, how should it determine applicability for EPCRA §313 TRI reporting?

A facility that changes its primary NAICS code during the reporting year must determine applicability based on the NAICS code that represented a majority of the facility's activity value. The activity value is the sum of the value of services provided and the products shipped or produced by the facility. If the facility's activity value while it was in a covered NAICS code is greater than 50 percent of the total value of all services or products provided for the entire year, then the facility would be covered under TRI with respect to the NAICS code applicability criterion. If the facility's activity value for any one NAICS code used during the year does not exceed 50 percent of the total value of all services or products provided for the entire year, then the facility's NAICS code with the highest activity value would be the primary NAICS code for the year. If the facility determines that its primary NAICS code was a covered NAICS code, and it met the other applicability requirements in §372.22, then the facility must comply with the TRI reporting requirements.

EGF; Facility; Joint Venture; Parent Company

20. A coal mine, that is subject to EPCRA section 313, is owned and operated by company A and is adjacent to an electricity generating facility (EGF), which is also subject to EPCRA Section 313. The EGF is owned and operated by a joint venture which Company A owns 40 percent of and Company B owns 60%. Are the coal mine and the EGF considered one facility?

No. The parent company in a joint venture is the joint venture. The electricity generating facility is owned by Company B and is a separate facility from the adjacent coal mine.

Facility Closure; Reporting Criteria

21. Must the Form R report be submitted by July 1 for facilities that were in operation during part of the reporting year, but which were closed by December 31?

Yes. A facility that operated during any part of a reporting year must report if it meets the NAICS code, employee, and chemical activity thresholds for that reporting year.

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Electricity Generating Facility; Facility-Definition of; Multi-Establishment

22. Electricity generating unit 1 (EGU 1) is subject to EPCRA section 313 and is owned by Company A. EGU 2 is also subject to EPCRA and is adjacent to EGU 1. EGU 2 is owned by a joint venture, 80 percent of which is owned by Company A and 20 percent of which is owned by Company B. Are EGF's 1 and 2 two separate facilities for the purpose of EPCRA section 313?

No. Because Company A owns the majority share in the joint venture, Company A owns EGU 2 and therefore owns EGUs 1 and 2. Because EGU 1 and 2 are adjacent to one another and have the same owner, they constitute one facility. As one facility, the owner or operator should consider the toxic chemicals and operations at both establishments for threshold determinations and release and other waste management calculations.

Facility; NAICS; Parent Company

23. Two distinct NAICS code operations that are covered under EPCRA section 313 (e.g., an electricity generating facility and a cement plant) are located on adjacent properties and are owned by the same parent company. The two operations are operated completely independently of one another (e.g., separate accounting procedures, employees, etc.). Are these two operations considered one facility under EPCRA section 313?

Yes. Under EPCRA section 313 a facility is defined as: all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (40 CFR Section 372.3). Because these two operations are located on adjacent properties and are owned by the same person they are considered one facility for EPCRA section 313 reporting purposes.

Definition of Facility; NAICS; Vessels

24. In Alaska several fish processors have factories on ships. They use ammonia and chlorine in their fish processing operations. Is each ship a covered facility under Section 313 or is the whole group of ships (all of which belong to one company) a covered facility?

A facility is defined as all buildings, equipment, structures, and other stationary items which are located on a single site or adjacent or contiguous sites owned or operated by the same person (40 CFR Section 372.3). A ship is not a facility as defined under the Section 313 regulations. It is not stationary and it is not located on a single site (if it moves to other locations). Therefore, the ships should not report even if they are in a covered NAICS code.

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Definition of Facility

25. A recently constructed facility which has not begun production but is in a covered NAICS code has used several listed toxic chemicals in preparing a reactor bed and distillation columns for manufacturing. Is the facility required to report these chemicals if they exceed the threshold levels?

Yes, assuming the facility also meets the employee threshold of at least ten full-time employees or the equivalent. Once a covered facility has been constructed, any toxic chemicals used to prepare production equipment for manufacturing activities must be included towards the threshold determinations that reporting year. This includes start-up activities.

Activity Threshold; Applicability; Facility; Facility Construction; NAICS; Otherwise Use; Process; Releases; Reporting Criteria; Reporting Requirements; Threshold Determination; Waste; Waste Management Activities

26. EPCRA section 313 reporting requirements apply to facilities meeting the applicability criteria in 40 CFR Section 372.22. During a facility's construction and prior to the onset of operations, toxic chemicals are otherwise used to construct and install process equipment. After the facility is constructed and begins operations, it will employ more than 10 full-time employees and will operate in a TRI-covered NAICS code. Must the facility apply toxic chemicals used during the construction and installation of process equipment towards the otherwise use threshold?

The toxic chemicals need not be considered towards any activity threshold. Prior to initial facility construction and before an NAICS code can be assigned, the EPCRA section 313 reporting criteria in Section 372.22, including the activity threshold criterion, do not have to be considered. However, if chemical activity thresholds for any toxic chemicals used in the construction and installation of process equipment are exceeded elsewhere at the facility during the reporting year, all non-exempt releases and other waste management activities of those toxic chemicals occurring during the reporting year must be reported, including those non-exempt release and other waste management quantities associated with the construction and installation of process equipment.

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Definition of Facility; Pipeline

27. A covered petroleum company sends its hazardous waste containing a Section 313 toxic chemical to a land treatment unit by underground pipeline. The petroleum company and the land treatment unit are owned and operated by the same individual. The land treatment unit is not adjacent nor contiguous to the petroleum company, but the petroleum company maintains a 'right-of-way' of the pipe-line. Are these two facilities under EPCRA section 313?

Since the land treatment unit is not adjacent nor contiguous to the petroleum company and they are connected only by a pipeline, the two are considered two separate facilities with the same owner/operator, even though the petroleum facility controls 'right of way' of the pipeline. However, releases and other waste management activities associated with loading or unloading activities or leaks from a pipeline within either facility would be covered.

Electronic Data

28. I am a new preparer/certifying official. How do I start using TRI-MEweb?

TRI-MEweb is EPA's only tool for industry to submit EPCRA Section 313 reports. You will need to create a CDX user account to get started with your TRI reporting. You may use the two guides below to 1) get step-by-step instructions on how to create your new user account in CDX, 2) learn how to add TRI-MEweb to your MyCDX account, and 3) learn how to use your access key to load your facility data into TRI-MEweb to start preparing your TRI forms. The second guide provides instructions for newly-designated certifying officials on how to get their Electronic Signature Agreement (ESA) approved and the TRIFID Signature Agreement electronically signed in TRI-MEweb, so that a new certifying official can certify pending forms transmitted by the preparer. To meet your TRI reporting requirement, all forms must be certified before July 1.

Preparer -- Person who prepares, but is not authorized to certify, TRI forms for submission.

Certifying Official -- Person with management responsibility for the person(s) preparing TRI forms, or the manager of environmental programs for the facility or corporation that is responsible for certifying prepared forms in TRI-MEweb. The certifying official may also prepare TRI forms.

On-line tutorials are available and are designed to demonstrate how different tasks are performed within the TRI-MEweb application reporting tool. To watch a tutorial, visit the TRI-MEweb tutorial web page: https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

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Definition of Facility; Pipeline

29. Two covered bulk petroleum stations owned by the same parent company, but a considerable distance apart from each other, are connected to each other by a pipeline. The parent company has an easement to access the pipeline but the land on which the pipeline rests is not owned by the parent company. The easement only allows the parent company to conduct repairs on a sporadic basis. The parent company has no other rights to the land and does not exert any other control over the land. For the purposes of reporting on the Form R, are the two stations considered two separate facilities?

Yes. Since the two bulk petroleum stations are not contiguous or adjacent properties and are connected only by a pipeline, the two stations are considered two separate facilities with the same owner. The parent company has an easement on which the pipeline is located, but does not control, operate, or own the land on which the pipeline rests to an appropriate degree.

Multi-Activity Facility; Petroleum Bulk Stations; NAICS

30. Many bulk petroleum stations operating in some midwestern states sell their petroleum products directly to end users. These plants typically sell to farmers and construction companies, as well as state and local governments. Generally, quantities are transferred to the customer in quantities of 500 gallons or less. For these facilities, distribution to retail facilities may make up approximately 5 percent of their overall customer business. Are these facilities considered bulk wholesale distributors of petroleum products, or are they more appropriately classified in retail trade and therefore not covered under EPCRA section 313?

Based on the facts provided in the question, these facilities were properly classified in SIC code 5171 (bulk petroleum stations and terminals), which are included in the list of facilities covered under EPCRA section 313 as listed in 40 CFR 372.23(a). According to the SIC code manual (1987 edition) '...establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, farm, construction contractors, or professional business users; or other wholesalers; or acting as agents or brokers in buying or selling merchandise to such persons or companies' are properly classified in Division F, Wholesale Trade, and are therefore covered under EPCRA section 313, beginning with the reporting year 1998. EPA believes that the facilities described in the above question are appropriately classified in the Wholesale Division as defined in the SIC code manual.

Note that the North American Industry Classification System (NAICS) is the economic classification system that replaced the 1987 SIC code system. A Federal Register notice was published on June 6, 2006 (71 FR 32464) adopting NAICS codes for TRI reporting.

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Definition of Auxiliary Facility

31. A retail gas station sells only products supplied by one covered bulk petroleum station. Is the retail gas station considered an auxiliary facility and therefore does it take on the covered NAICS code of the bulk petroleum station?

No. While the retail gas station sells only products supplied by the covered bulk petroleum station it is not an auxiliary facility because it does not support the operation of the bulk petroleum station (i.e., the retail sale of gasoline and other petroleum products is a distinctly separate activity that benefits the gas station as opposed to benefitting the bulk petroleum station). The SIC system assigned SIC codes to auxiliary facilities according to the primary activity of the establishment that they served. An auxiliary facility was one that supported another facility's activities. An auxiliary facility could assume the SIC code of another covered facility if its primary function is to serve that other covered facility's operations. However, the NAICS system does not recognize the concept of auxiliary facilities and assigns NAICS codes to all establishments based on their own activities. For the purpose of establishing consistency with the NAICS classification methodology, EPA changed its interpretation of the applicability of TRI reporting requirements to auxiliary facilities. As a result, some establishments previously considered to be auxiliary will no longer be subject to TRI reporting.

Contiguous/Adjacent; Definition of Facility; Warehouse

32. A company houses all of its operations including its manufacturing processes in a leased warehouse that is neither contiguous nor adjacent to the facility. In June, it bought a different warehouse and moved the manufacturing operations there. These two locations are neither adjacent nor contiguous. The company did not shut down or close during this time. How should the company make threshold determinations and report for Section 313?

Under EPCRA section 313 a facility is defined as: 'all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person' (40 CFR Section 372.3). Because the operations were carried out at two distinctly separate, physical sites, the company operated two separate facilities over the reporting year. The owner/operator of the company, therefore, must make threshold determinations and release and other waste management calculations individually for each facility. The company need only file Form Rs for the facility(ies) that exceeded the reporting thresholds during the reporting year. If independently both facilities meet the reporting criteria, the company must submit the appropriate forms for each facility.

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Definition of Facility; Right-of-Way

33. A single company owns two divisions that operate separately. Both divisions are within a covered NAICS code. The two divisions are located on contiguous/adjacent property that is divided by a public right-of-way. The entrance and exit between the two operations are not at a cross-roads (i.e., access between the two operations can only be gained by going along the public right-of-way, not simply crossing the public right-of-way). Are the two divisions considered two separate facilities under EPCRA section 313?

No. Because the two divisions are owned by the same person and are physically contiguous/adjacent to one another, except for a public right-of-way, they are considered one facility for Section 313 reporting purposes. A facility may consist of more than one establishment. The entrances to each establishment within a multi-establishment facility do not have to be located at a crossroads in order to meet the definition of facility. EPCRA section 313 defines a facility as 'all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person' (40 CFR Section 372.3).

NAICS

34. Facilities in the scrap and waste materials businesses are in NAICS code 423930, indicating that they assemble, shred, sort, melt, and wholesale scrap metal ingots and waste materials. When they landfill residuals, a small volume of air pollutants are generated. How extensive will the reports be for such operations?

Such scrap metal processing facilities are not currently covered by Section 313 reporting requirements if their primary NAICS codes are 423930.

DRAFT

Reporting Responsibility

35. A chemical distribution facility has an off-site chemical bulk storage unit on a non-contiguous property that is typically unmanned. When filling orders for customers, the facility sends trucks to the off-site bulk storage unit, 'drums-off' a specified amount and delivers the order to the customer. What reporting is required for the chemicals that are processed at this off-site location?

The off-site location may itself be classified as a chemical distribution facility and be covered in terms of its NAICS code designation. The off-site bulk storage facility may also assume the NAICS code of the covered chemical distributor that it supports and also be considered covered. In terms of determining if the off-site facility meets the employee threshold, potentially requiring it to report, the facility should consider all of the hours spent servicing the units such as product delivery, tank clean-out, and construction in making that determination. If these hours add up to 20,000 hours over the course of the reporting year, the facility would meet the employee threshold and would be required to consider its chemical activities. It is possible that the type of employee hours associated with the off-site bulk storage facility would potentially exceed thresholds in one year and not in another.

NAICS; Solvent Recovery

36. Is a mobile solvent recovery unit within the solvent recovery NAICS Code?

Yes. If the owner or operator of a mobile solvent recovery unit conducts solvent recovery services on a contract or fee basis, it is in NAICS Code 562112 (Hazardous Waste Collection). For more information on NAICS Codes and to determine which industries are covered under Section 313, visit TRI's website: https://www.epa.gov/toxics-release-inventory-tri-program/my-facilitys-six-digit-naics-code-tri-covered-industry.

DRAFT

Multi-Activity Facility; NAICS

37. NAICS code 562 (waste management and remediation services) contains many diverse activities. How does a facility that conducts more than one activity in NAICS 562 and is regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq., determine if it is primarily engaged in solvent recovery, and therefore, covered under EPCRA section 313?

A facility that conducts several uniquely different activities that are within NAICS 562 and is regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq., should identify the value added of the goods or services that each activity contributes. A facility is considered to be "primarily engaged" in solvent recovery if the goods or services produced by the solvent recovery activity have a value added of more than 50 percent of the total value added of all goods and services produced at the facility, or if the value added of the goods and services produced by the solvent recovery activity of the facility are greater than the value added of the goods and services produced by any other activity at the facility.

NAICS

38. Is an automobile proving ground facility subject to reporting under Section 313?

The NAICS code for 'automobile proving and testing grounds' is 541380. It, therefore, is not within a covered NAICS code and would not need to report under EPCRA section 313.

Toxic Chemical List

39. Is a feed company that is regulated by the Food and Drug Administration (FDA) exempt from filing Form R under Section 313?

No. EPCRA section 313 applies to any facility that meets all the applicable criteria (40 CFR Section 372.22). There is no specific exemption for facilities or toxic chemicals regulated by the FDA.

DRAFT

Applicability; Auxiliary Facility; Establishment; Facility; NAICS; Reporting Requirements; Storage; Warehouse

40. An auxiliary facility is one that supports another covered establishment's activities (e.g., research and development laboratories, warehouses, and storage facilities). How has the switch from the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS) for TRI reporting affected auxiliary facilities?

The SIC system assigned SIC codes to auxiliary facilities according to the primary activity of the establishment that they serve. NAICS does not recognize the concept of auxiliary facilities and assigns NAICS codes to all establishments based on their own activities. For the purpose of establishing consistency with the NAICS classification methodology, EPA changed its interpretation of the applicability of TRI reporting requirements to auxiliary facilities. As a result, some auxiliary establishments will no longer be subject to TRI reporting. For the years in which SIC codes and auxiliary facilities were relevant (Reporting Years 1991-2005), TRI-MEweb will automatically guide users to select a SIC code in lieu of a NAICS code.

TRI-MEweb contains a list of NAICS codes for users to search and select. For example, Company X owns and operates a rice milling facility with NAICS code 311212. Company X also owns a warehouse where the finished product from the rice milling facility is stored before it is distributed to customers. Under the SIC system, the warehouse would have adopted the same SIC code as the rice milling facility (2044) and would be subject to TRI reporting if it met the other applicability criteria. However, under the NAICS system, the warehouse would not adopt the code of the rice milling facility and would be assigned a NAICS code based on its own economic activity. As a result, the warehouse might not be subject to the TRI reporting requirements.

Auxiliary Facility; Reporting Criteria

41. Are auxiliary facilities associated with activities at a facility in a covered SIC code exempt from reporting under Section 313?

No. The SIC system assigned SIC codes to auxiliary facilities according to the primary activity of the establishment that they served. An auxiliary facility was one that supported another facility's activities. An auxiliary facility could assume the SIC code of another covered facility if its primary function is to serve that other covered facility's operations. However, the NAICS system does not recognize the concept of auxiliary facilities and assigns NAICS codes to all establishments based on their own activities. For the purpose of establishing consistency with the NAICS classification methodology, EPA changed its interpretation of the applicability of TRI reporting requirements to auxiliary facilities. As a result, some auxiliary establishments will no longer be subject to TRI reporting.

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Auxiliary Facility

42. An airplane engine repair shop (not in a covered NAICS code) owns an auxiliary facility at a separate location that does metal plating for the engine repair shop and other unrelated facilities (in a covered NAICS code). Would the plating facility be exempt?

This facility would be considered a separate operating establishment conducting a manufacturing activity. It would, therefore, need to make the employee and activity threshold determinations and report, if appropriate, because it falls within a covered NAICS code.

Auxiliary Facility; Reporting Requirements

43. A reclamation center collects and sorts scrap metal received from many different facilities owned by the same corporate entity. This corporate entity also performs the reclamation center's payroll. Is this reclamation center considered an auxiliary facility and therefore subject to EPCRA section 313 reporting requirements?

No. For the purposes of EPCRA section 313, auxiliary facilities are primarily engaged in performing support services for another facility, or establishment of a primary company. In general, the company performs the auxiliary facility's basic administrative services (e.g. filing paperwork, performing payroll activities, or employing the auxiliary facility's administrative staff). In addition, auxiliary facilities perform an integral role in the primary company's activities. Both of these factors must be present to establish an auxiliary facility. Because reclamation is not integral to the primary company's activities, the reclamation center does not play an integral role in the primary company's operations and it would not be considered an auxiliary facility.

Note that the NAICS system does not recognize the concept of auxiliary facilities and assigns NAICS codes to all establishments based on their own activities. For the purpose of establishing consistency with the NAICS classification methodology, EPA changed its interpretation of the applicability of TRI reporting requirements to auxiliary facilities. As a result, some auxiliary establishments will no longer be subject to TRI reporting.

Auxiliary Facility; NAICS

44. Does a facility, which is not a RCRA Subtitle C facility, where a wastewater treatment plant is located have to report even if the rest of the establishments at that facility are not in the covered NAICS codes?

A facility must report only if it meets the employee, NAICS code and activity criteria. Because the NAICS code criterion is not met, the facility as a whole need not report.

DRAFT

Auxiliary Facility; Laboratory; Multi-Establishment; NAICS

45. Is my facility covered by EPCRA section 313 if the value added of laboratory research at my facility is greater than 50 percent of the total value added of goods and services produced at my facility?

If the research laboratory is a separate establishment from the other activities at the facility and its NAICS code is not in a covered NAICS code, then the 50 percent test is used to determine if the whole facility is in the covered NAICS codes (40 CFR Section 372.22). In this case, the facility would not be subject to reporting because the primary NAICS code is not within the covered NAICS codes.

NAICS

46. Does a facility that is subject to RCRA Subtitle C, and just happens to manage waste generated by facilities within the same company, fall within the covered NAICS code range for EPCRA section 313 reporting?

Waste treatment facilities are classified in NAICS Codes beginning with 562, which includes such activities as hazardous waste collection, treatment and disposal, and remediation. Hazardous waste treatment facilities that are regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. Section 6921 et seq. were added in the final rule published on May 1, 1997 (62 FR 23834). Provided that the facility is classified within a covered NAICS code and meets the employee threshold, the facility would be required to consider its chemical management practices for purposes of EPCRA section 313 reporting. A facility's NAICS code classification is not necessarily affected because it limits activities to facilities within the same company. For more information on NAICS codes and to determine which industries are covered under Section 313, visit TRI's website: https://www.epa.gov/toxics-release-inventory-tri-program/my-facilitys-six-digit-naics-code-tri-covered-industry.

Reporting Criteria; NAICS

47. I run a trucking company and all I do is pick up the chemicals at the vendor and take them to the customer. Must I report under Section 313?

Trucking companies are generally not in a covered NAICS code. If you are not in a covered NAICS code, then you are not required to report under Section 313.

DRAFT

Reporting Responsibility; NAICS

48. The final rule on facility expansion created regulatory language in 40 CFR Section 372.23(a) that limits the coverage of electricity generating facilities to those that operate in SIC codes 4911, 4931, and 4939 (now covered in NAICS codes beginning with 2211) and specifically to those 'facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.' Based on this regulatory language, are electricity generating facilities that only use coal and/or oil to test backup generators considered covered facilities for EPCRA section 313 reporting?

No. Use of oil or coal for purposes of testing, (e.g., testing safety equipment at nuclear facilities) would not constitute a use of oil or coal for purposes of generating power for distribution in commerce. However, if a facility intentionally generates excess power during the testing operations for the purpose of distributing it in commerce, the facility would be 'covered.' In fact, if the facility is intentionally generating electricity for distribution in commerce, provided that the facility meets the chemical activity and employee thresholds, the facility would be considered 'covered' even if only a small amount of fuel oil used.

Coal or Oil; Electricity Generating Facility; Fuel

49. An electricity generating facility (EGF) in a covered NAICS code combusts kerosene for the purpose of generating power for distribution in commerce. Is the facility subject to EPCRA section 313?

Yes. Under the rule that expanded the industry sectors (May 1, 1997; 62 FR 23834) that must report under EPCRA section 313, electricity generating facilities (EGFs) in SIC codes 4911, 4931, and 4939 (now under NAICS codes beginning with 2211) that combust coal and/or oil for the purpose of generating power for distribution in commerce are subject to EPCRA section 313 reporting requirements, provided that the other threshold criteria are met. Pursuant to this expansion, kerosene (as well as petroleum coke) is an oil.

Coal or Oil; Electricity generating Facility; Fuel

50. A facility in a NAICS code beginning with 2211 (Electric Utilities) combusts refuse-derived fuel. During the reporting year, the facility combusts small amounts of oil-contaminated debris to produce electricity for distribution into commerce. Is the facility covered by EPCRA section 313?

No. Facilities in NAICS codes beginning with 2211 are only covered by EPCRA section 313 if they combust coal and/or oil for the purpose of generating power for distribution in commerce. 'Coal and/or oil' does not include non-hazardous oil-contaminated debris. Since the facility is in a NAICS code beginning with 2211, but does not combust coal or oil, it is not covered by EPCRA section 313.

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Definition of Facility; Disposal; Reporting Responsibility; Waste Management Activities

51. A recycling and disposal facility encompasses several RCRA subtitle C hazardous waste and subtitle D municipal solid waste management units. Is this facility subject to EPCRA section 313?

Yes. If this facility also meets employee and chemical thresholds, the facility is subject to EPCRA section 313. Because at least one unit at this facility is regulated by RCRA subtitle C and the facility's operations are classified in NAICS code beginning with 562, for the purposes of EPCRA section 313, this facility is considered to be in NAICS code beginning with 562 (regulated under RCRA subtitle C) (40 CFR Section 372.23). As such, this facility must consider all non-exempted activities at the entire facility for TRI threshold determinations and, if reporting is triggered, release and other waste management reporting. The owner or operator should be sure to include any information the facility may have concerning toxic chemicals at the solid waste units of the facility as well as at the hazardous waste units.

Definition of Facility; Reporting Responsibility; Waste Disposal; Waste Management Activities

52. A RCRA subtitle C hazardous waste landfill facility in NAICS code 562212 is planning to construct a RCRA subtitle D disposal cell on-site. Is this facility subject to EPCRA section 313?

Yes. This facility is subject to EPCRA section 313. Because at least one unit at this facility is regulated by RCRA subtitle C and the facility's operations are classified in NAICS code 562212, for the purposes of EPCRA section 313, this facility is considered to be in NAICS code 562212 (regulated under RCRA subtitle C). As such, this facility must consider all non-exempted activities at the entire facility for threshold determinations and release and other waste management reporting. The owner or operator should be sure to include any information the facility may have concerning toxic chemicals at the solid waste units of the facility as well as at the hazardous waste units.

Reporting Responsibility; NAICS

53. Is a waste management facility that is classified in NAICS code 562212 (Refuse Systems), but is not regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA), subject to EPCRA section 313?

No. Facilities in NAICS code 562212 are only subject to EPCRA section 313 if they are also regulated under RCRA Subtitle C. Many types of waste management facilities operate within NAICS code 562212 that are not regulated under the RCRA Subtitle C programs, such as sanitary landfills, garbage collection, and street refuse systems, which were not added under EPCRA section 313 by the May 1, 1997, final rule.

DRAFT

Form R Revisions; NAICS

54. A facility whose NAICS code is outside the covered NAICS codes believes that their current NAICS code is misrepresentative of the facility's activities. In actuality, the facility may be better represented by an NAICS code within the covered NAICS codes. If the facility changes its NAICS code to a covered group, should they back report for previous reporting years under EPCRA section 313?

If the facility has not altered its operations and should have been classified in a covered NAICS code and has met the threshold and employee criteria, it is required to report for all the previous years under EPCRA section 313. If the mix of activities at the facility shifted from non-covered to covered NAICS codes, then it should begin reporting for the year in which the change occurred.

Disposal; Facility; Recycling; Release Calculation; Releases; Threshold Determination; Waste; Waste Management Activities

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

Federal facilities should utilize the best readily available information needed to make threshold determinations and release and other waste management calculations. For example, a release through an air stack or to a receiving stream may be estimated from the appropriate air and water permits. Permit applications may also include the mathematical equations that were used to calculate permitted release amounts. These equations potentially could be modified and used to calculate releases for section 313 reporting purposes. Reaction equations and engineering notes also may provide a good source of information for release calculations and on-site waste management activities.

For transfers off-site for further waste management, annual or biannual RCRA reports provide an excellent source of information. These reports refer to specific hazardous waste manifests. From the manifests, it may be possible to estimate the amounts of EPCRA section 313 chemicals in the waste transferred off-site. Invoices and shipping receipts are essential if a reportable EPCRA section 313 chemical that is not a RCRA waste, is sent off-site for recycling or disposal. In addition, the EPA has produced estimation guidance manuals for specific industries and for specific chemicals. Information about how to obtain these guidance manuals is available on the EPA website: https://www.epa.gov/chemicals-under-tsca.

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Contractor Hours; Employee Threshold

56. When should an individual's time spent working for a facility be counted for purposes of determining whether or not a facility exceeds the 20,000-hour employee threshold?

If an individual is employed by the facility or by the facility's parent company to work for the facility, then all of the hours worked by the individual for the facility should be counted toward the 20,000-hour employee threshold. For example, a headquarters engineer spends most of her time at headquarters, but some of her time is spent at a covered facility. The time the engineer spends at the covered facility and the time the engineer spends working for the covered facility while at headquarters should be included in the facility's employee threshold determination. If the individual is hired by the facility (or by the facility's parent company) as a contractor to work at the facility and is based at the facility, then all hours worked by the contractor should be counted. If the individual is not an owner, contractor, nor an employee of the facility, then the individual's time spent working at the facility should not be counted toward the 20,000-hour employee threshold. For example, the time spent by individuals who are performing intermittent service functions at the facility, such as municipal trash collectors or the electric utility company repairing power lines, should not be counted.

Employee Threshold

57. Under the Section 313 regulations, a full-time employee is defined as, '...mean 2,000 hours per year of full-time equivalent employment.' The definition of full-time employee goes on to stipulate that (a) facility would calculate the number of full-time employees by totaling the hours worked during the reporting year by all employees including contract employees and dividing the total by 2,000 hours (40 CFR Section 372.3). It follows that 20,000 hours worked is equivalent to 10 full-time employees. When calculating the total number of hours worked by all employees during the reporting year should vacation and sick leave used be included toward the 20,000 hour threshold?

Yes. When making the full-time employee determination the facility should consider all paid vacation and sick leave used as hours worked by each employee who claims such vacation or sick leave. If the facility meets or exceeds the 20,000-hour threshold (including vacation and sick leave), the facility is considered to have 10 or more full-time employees (40 CFR Section 372.3).

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Employee Threshold; Full-time Employee; Part-time Employee

58. Would a facility with nine full-time employees and four part-time employees be required to report under Section 313?

The total hours worked by all employees should be reviewed. A full-time employee is defined on a time equivalent basis of 2,000 labor hours per year (40 CFR Section 372.3). If the total hours worked by all employees at a facility, including contractors, is 20,000 hours or more, the criterion for number of employees has been met. Therefore, if combined, the 13 employees of the facility worked 20,000 hours or more, the facility has satisfied the employee threshold.

Employee Threshold; Full-time Employee

59. A manufacturing facility has 8 employees. Each employee worked 2,500 hours in the reporting year. Consequently, the total number of hours worked by all employees at this facility is 20,000 hours. How should the facility determine whether it meets the 10 full-time employee threshold for purposes of reporting under Section 313?

One full-time employee is equal to 2,000 hours (40 CFR Section 372.3). The number of full-time employees is determined by dividing the total number of hours worked, 20,000, by 2,000 hours, or 10 full-time employees. Therefore, even though only eight persons worked at this facility, the number of hours worked is equivalent to 10 full-time employees and this facility has met the employee criterion.

Employee Threshold; Full-time Employee

60. Is an 'employee' a group of people who work 2,000 hours per year (such as three people who work 1/3 time) or is it one person who works full-time?

An 'employee' can be either a single person or a group of people, including the owner. The regulatory criterion is that the total hours worked by all employees is equal to or greater than 20,000 for that reporting year at the facility.

Employee Threshold; Sales Staff

61. Does the full-time employee determination include the hours worked by sales staff whose office is included in the same building as the production staff?

Yes. All persons employed by a facility regardless of function (e.g., sales, clerical) or location count toward the employee threshold determination (40 CFR Section 372.22(a)).

DRAFT

Employee Threshold; Maintenance Staff

62. An electricity generating facility has maintenance staff for maintaining the electricity distribution system. Staff are based on-site. When counting the hours of this staff, the electricity generating facility is over the 20,000 hours or 10 FTE (full-time employee) threshold. Without counting the management staff hours, the electricity generating facility falls below the 20,000 hours or 10 FTE threshold. Because these hours are not directly in support of the electricity generating portion of the facility (i.e., they are in support of the distribution system), do they count toward the 20,000 hours or 10 FTE threshold?

Yes. Hours worked by employees who support the distribution system must be included in the facility's employee determination. All of the hours worked by all employees based at a covered facility must be considered toward the facility's employee threshold, regardless of whether the activities they perform are associated with covered activities.

Employee Threshold; Truck Drivers

63. The employee threshold under Section 313 is 10 full-time employees or the equivalent, 20,000 work hours/year. This includes all sales staff, clerical staff, and contractors. Would this also include delivery truck drivers who returned to the facility only to pick up a shipment and then leave again?

If the truck drivers are employed by the facility or the facility's parent company, and paid by the facility or by the parent company, then they are employees of the facility and would be factored into the employee threshold. If they are based at the covered facility, all of the hours worked by the truck drivers for the facility are counted towards the employee threshold. If the truck drivers are not based at the covered facility, then only their time spent servicing the covered facility is considered towards the employee threshold. However, facilities are not required to count hours worked by contract drivers.

Employee Threshold; Truck Drivers

64. A facility employs drivers to pick up and deliver its products. Some of the drivers use the facility's trucks, while other drivers use trucks not owned by the facility. Should the facility count all driver hours towards its employee threshold, regardless of whose trucks the drivers use?

Yes. Hours worked directly for the facility by drivers that are employed by the facility are counted, regardless of whose truck they use.

DRAFT

Employee Threshold; Truck Jobbers

65. A petroleum bulk terminal contracts with truck jobbers who purchase its petroleum products. The terminal has no direct control over the activities of the truck drivers. Are the hours worked by these jobbers and their drivers at the petroleum terminal counted towards the terminal's employee threshold calculation?

No. The hours worked by the truck jobbers do not directly support the terminal. The jobbers purchase the petroleum products and function as customers to the terminal. However, the petroleum bulk terminal must consider these activities toward its processing threshold.

Employee Threshold; Off-Site Employees

66. Facility A manufactures and sells machinery. Facility A sends employees to customers' sites to repair and service the machinery. These employees are not based at Facility A. For example, some of the employees pick up company vehicles and needed supplies from rented property before going to the client's site. Facility A also has employees who work directly for the facility, but work entirely from their homes. Should Facility A consider hours worked by these employees in making the employee threshold determination?

Yes. If an individual is employed by a covered facility and works for the covered facility, then all hours worked by that individual must be counted towards the 20,000-hour employee limit, regardless of where the employee works (i.e., on-site or off-site).

Employee Threshold

67. A facility covered under EPCRA section 313 has nine full-time employees and one part-time employee. The facility also has an employee who works at the facility, but does not draw a salary. Should the hours worked by the employee who does not draw a salary be counted towards the employee threshold for the facility?

Yes. Even though the employee does not draw a salary, he/she is still working for the facility. Therefore, the employee's hours must be counted towards that facility's employee threshold.

DRAFT

Facility; Form R; NAICS; Primary NAICS Code

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

Federal facilities should use NAICS codes that most accurately characterize the activities being performed at the facility. Facilities form preparers and certifying officials can input any NAICS Code when preparing and submitting forms through TRI-MEweb. The Form R allows six different NAICS codes to be reported in Part I, section 4.5. For example, a Forest Service facility (Department of Agriculture) includes forests and an airport to service aircraft used for fighting fires. This facility can enter NAICS codes 115310 (Support Activities for Forestry) and 488119 (Other Airport Operations) into Part I, section 4.5 of the Form R because these NAICS codes best describe the activities being performed at the facility. The federal facility, however, should indicate the primary NAICS code (which NAICS codes most accurately addresses the primary activity at the federal facility) by entering this NAICS code in the first data field (Part I, section 4.5a), which is indicated by a red key icon in TRI-MEweb. In this example, the Forest Service facility may determine that its primary function is forestry services, thus entering 115310 in Part I, section 4.5a.

Corporate Employees; Employee Threshold

69. A covered facility that is part of a larger corporate entity has corporate employees located on-site. These employees do not directly support the activities that are conducted at the facility where they are located; rather, their time is spent working for that facility as well as for other facilities that are part of the same corporate entity. Does the facility where these employees are located have to count the hours worked by these employees toward its employee threshold?

Yes. The facility where these employees are located should count the hours worked by them toward the facility's employee threshold, unless the facility's time keeping system allows it to track the time worked by these employees according to the actual facility for which they are working. If a facility can demonstrate through time keeping records that the time worked by these employees was in support of another facility within the same corporate entity, then it does not have to count the hours worked by these employees towards its own employee threshold. The facility that these employees directly support would have to count the hours toward its employee threshold.

DRAFT

Employee Threshold; Facility Owner

70. If an individual both owns and works at a facility, how should the owners time be accounted for when determining whether or not the facility exceeds the 20,000 hour employee threshold?

The owner must be counted as the equivalent of a full-time employee of the facility and his/her hours must be applied toward the 20,000-hour employee threshold.

Employee Threshold; Facility Owner; Profit Share

71. The owner of a covered facility does not work at the facility but draws an income from profit sharing. Would he/she be considered an employee according to the definition under EPCRA section 313 (40 CFR Section 372.3)?

No. If the owner of the facility does not work at the facility and only draws a profit share, the owner is not considered an employee and the reporting facility will not count the owner towards the employee threshold.

Employee Threshold; Permanent Disability

72. A covered facility under EPCRA section 313 has nine full-time employees. The facility also has one paid employee who is on permanent disability. Should the facility include this employee in their employee threshold determination (40 CFR Section 372.22(a))?

No, the facility does not have to include the disabled employee when determining their employee threshold. The employee would be considered the equivalent of a retired employee.

Employee Threshold; Paid Holidays

73. Must paid holidays be included in an owner's employee threshold calculation?

Yes. Paid holidays need to be included in the owner's employee threshold calculation.

Employee Threshold; Off-Site Employees

74. Does Facility A need to include in its employee threshold (10 FTE/20,000 hours) determination sales representatives that work for Facility A but are never/rarely physically working at Facility A?

Yes. For purposes of determining the EPCRA section 313 employee threshold, employee hours for employees that directly support the facility, should be included in the employee calculation for the facility. Therefore, if the hours spent by sales staff directly support a facility, then their hours should be allocated to the facility they directly support, regardless of the amount of time those employees are physically at the facility.

DRAFT

Contractors; Employee Threshold

75. A facility employs several contractors for various types of work, on- and off-site. Which contractors should the facility consider in its employee threshold determination?

The facility must include maintenance contractors, such as those for general building structure maintenance, process equipment maintenance, and lawn care, in its employee threshold determination. Major contractors for services such as tank building/wrecking and tank painting are also included in the employee threshold. The facility should not include hours worked by minor on-site intermittent service vendors such as trash haulers, vending machine servicers, and service repair persons for utility-owned equipment that are not employed by the covered facility.

Contractors; Employee Threshold; Multi-Establishment

76. Should contractors who construct dikes, clean tanks, and perform inventory control activities conducted off-site, and who are all performing process-related activities in support of a covered facility, be included in the employee threshold determinations?

Yes. The hours worked on- or off-site by any contract employee for the facility must be counted toward the 20,000-hour threshold. Facilities should keep records that identify all hours that employees or contract employees work in support of facilities. EPA describes a contract employee as a person working on-site or off-site for the facility under a specific contractual agreement performing specific tasks or services for the facility, except intermittent service vendors such as trash pick-up.

Activity Threshold; Contractors; Facility; NAICS; Reporting Criteria; Reporting Requirements; Waste

77. A company is contracted to operate equipment at a TRI-covered facility, but the contracted operations do not fall under a covered NAICS code. Is the TRI-covered facility required to count the toxic chemicals used by the contracting company towards any applicable activity thresholds and release and waste management quantities?

EPA defines a facility as "all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with such person)" (40 CFR Section 372.3). If a facility meets the TRI reporting criteria (i.e., covered NAICS code for the facility and it exceeds the employee and activity thresholds), then all activities taking place at the facility, even those activities associated with non-covered NAICS codes and/or performed by contractors, are subject to reporting requirements, unless otherwise exempt.

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Contractors; Employee Threshold

78. An establishment leases one acre of land adjacent to the reporting facility from a three-acre strawberry farm. The facility imports and repackages methyl bromide for sale and distribution. Does the facility have to include the strawberry pickers when determining whether the 10 full-time employee equivalent criterion applies?

The reporting facility should not tabulate the hours worked by farm workers it does not pay. If, however, the reporting facility actually employs or contracts with these farm workers then the hours worked on-site by these workers would count towards the 10 full-time employee equivalent (40 CFR Section 372.3).

Contractors; Employee Threshold

79. A manufacturing company that normally employs only four employees hires a construction company to modify its facility. The construction workers are employees of the construction company and worked on-site for several months. Do the hours worked by the construction workers count toward the 10 or more full-time employee threshold (20,000 hours of work)?

Yes. The hours these contract employees worked on-site or off-site for the facility must be counted toward the 20,000-hour threshold (40 CFR Section 372.3). In general, a contract employee is a person working on-site or off-site for the facility under a specific contractual agreement performing specific tasks or services for the facility, except intermittent service vendors.

Employee Threshold; Facility Closure

80. A manufacturing facility was shut down on January 30. Between January 1 and January 30, the facility manufactured a toxic chemical in excess of 25,000 pounds, and 10,000 hours were worked at the facility. After the manufacturing activities ceased on January 30, six employees remained to work on electrical wiring and warehouse activities. For purposes of reporting under EPCRA section 313, does the facility have to add the working hours of the 6 employees to the 10,000 hours worked during January in order to determine if 20,000 hours or more were worked at the facility during that reporting year?

Yes. In calculating the working hours, the manufacturing facility has to include the employees who worked after the facility ceased actual manufacturing operations regardless of the type of work they did (the number of hours worked do not necessary correlate directly to the manufacturing activities). If, during the reporting year, the total working hours at the facility is equal to or in excess of 20,000 hours, the facility owner/operator is subject to reporting for that reporting year (40 CFR Section 372.22).

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Release Reporting; Ultimate Disposition

81. If a facility in one of the newly added industries, which begins reporting for activities conducted in 1998, has information on the amount of seepage from a landfill in 1998, do they report this amount as a release to land, since they were not required to report the initial disposal to land in the previous year?

No. Facilities are required to report only the amounts that are disposed during the reporting year in which they are disposed, provided certain thresholds have been met and the facility does not conduct any further activities involving amounts previously disposed. Amounts that move within the same media, such as seepage from a landfill to surrounding soils, do not have to be included in release estimates in subsequent years. EPA requires reporting of the amount of toxic chemical placed in an on-site landfill during the year. EPA does not require the facility to estimate migration from the landfill in subsequent years, provided the facility does not conduct activities that further involve the listed toxic chemical disposed.

Disposal; Facility; Landfill; Waste

82. A facility disposes of an amount of waste in a surface impoundment in year 1 for which no report was required. In year 2, a report for the chemical is required and the chemical has migrated from the surface impoundment to ground water. Does the facility have to report the amount migrated in year 2?

No, facilities are only required to report amounts released or otherwise managed in the year that the amounts were released or otherwise managed for chemicals for which they exceeded thresholds (40 CFR Section 372.85(b)(14)). If a facility exceeds thresholds in a subsequent year for a chemical that was disposed of in a preceding year, the facility should not report amounts previously released or otherwise managed. Facilities are also not required to estimate the migration of chemicals from landfills except for the current reporting year.

Release Reporting; Ultimate Disposition

83. In 1999, a facility disposes of a waste containing benzene in an on-site landfill, but does not exceed an activity threshold for benzene. The facility does not report the amount of benzene released to the landfill in 1999. In 2000, the facility exceeds a threshold for benzene. If some of the benzene released to land in 1999 seeps from the landfill to groundwater (i.e., migration of previously disposed materials), does the facility report the amount of benzene that seeped into groundwater during 1999?

No. EPA requires reporting of the amount of a toxic chemical placed in an on-site landfill during the reporting year in which these amounts are disposed. Amounts disposed in previous years are not reportable in subsequent submissions provided no additional activity is performed with these amounts.

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Employee Threshold; Reporting Responsibility

84. Facility A stores oil at Facility B. Facilities A and B have different owners. Facility A sends personnel to Facility B to load oil onto Facility A's trucks using Facility B's truck rack. Facility A then distributes the oil in commerce. Who processed the oil and does Facility B have to count Facility A's hours?

Facility B has processed the oil that was taken from Facility B's truck rack located on Facility B's property. Facility A's use of product at Facility B must be considered toward Facility B's threshold, release and other waste management calculations, where appropriate. The hours spent by Facility A's truck drivers while at Facility B do not directly support Facility B but instead directly support Facility A and should be accounted for by Facility A.

Change of Ownership; Reporting Responsibility

85. A company purchased a facility in September through bankruptcy proceedings. The previous owner of the facility filed Form Rs under EPCRA section 313 for the preceding reporting year. The new owner of the facility has no plans to continue any manufacturing activities at the site. All listed EPCRA section 313 toxic chemicals at the facility were removed or sold by the previous owner as terms of the bankruptcy proceedings prior to final sale to the new owner. Who must submit Form Rs for the months during the reporting year that the facility was in operation and sold through bankruptcy?

The new owner/operator of the facility is liable for filing Form Rs for the months of operation during the previous reporting year since he/she is the owner/operator of the facility on the reporting deadline. The purchase of a facility through bankruptcy proceedings does not negate the liability for reporting activities at the facility during the period it was in operation. The new owner/operator must attempt to acquire the necessary information to determine if Form Rs are to be submitted for the reporting year. If reports must be filed, the new owner/operator must submit them in a timely and accurate manner.

Owner/Operator; Reporting Responsibility

86. Is the owner or the operator of a covered facility responsible for reporting?

Both the owner and the operator are subject to the Section 313 reporting requirements. If no reports are received from a covered facility both persons are liable for penalties, provided that the facility was required to file a Form R or the Alternative Certification Statement (Form A). As a practical matter, EPA believes that the operator is more likely to have the information necessary for reporting.

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Multiple Owners/Operators; Reporting Responsibility

87. A piece of contiguous property consists of three covered sites with various buildings, structures and equipment. The three sites are owned by two different companies - Company A and Company B. All three sites operate completely independently of each other and have separate personnel, finances, and environmental reporting systems. Site 1 and its buildings and structures are owned and operated by Company A and site 3 and its buildings and structures are owned and operated by Company B. The middle site, site 2 and its buildings and structures, are owned by Company A and operated by Company B (see diagram). Are all three sites and their buildings and structures considered separate facilities under EPCRA section 313? Who is responsible for reporting for each?

Site 1	**Site 2**	**Site 3**
Owned and operated by A	Owned by A and operated by B	Owned and operated by B

Under 40 CFR Section 372.3 a facility is defined as; 'all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person.' Because all buildings and structures located on sites 1 and 2 are located on contiguous property and are owned by the same person, they are considered one facility. Because all buildings and structures located on sites 2 and 3 are located on contiguous property and are operated by the same person, they are also considered one facility. Therefore, for purposes of determining thresholds, the toxic chemicals manufactured, processed, and otherwise used at site 2 must be counted toward both Facility A's and Facility B's threshold determinations. Because the operator is primarily responsible for reporting, estimating and reporting releases and other waste management calculations for sites 2 and 3 are the primary responsibility of Company B, and the release and other waste management reporting for site 1 is the primary responsibility of Company A. EPA allows the release and other waste management reporting to be done in this manner to avoid 'double counting' releases and waste management activities at site 2. However, provided thresholds have been exceeded, if no reports are received from a covered facility both the owner and the operator are liable for penalties.

DRAFT

Facility; Reporting Requirements

88. An electricity generating facility is owned by a utility authority but operated by a different company. The utility authority has rights to half of the energy produced at the electricity generating facility, and the operator of the facility has rights to the other half. The operator sells its half of the energy to various users, including the utility authority. Who is responsible for reporting?

Both the owner and the operator are subject to the Section 313 reporting requirements. However, EPA believes that the operator is more likely to have the information necessary for reporting. If no reports are received from a covered facility both the owner and the operator are liable for penalties.

Change of Ownership; Reporting Responsibility

89. Who is obligated to file Form Rs for a given reporting year if the facility has changed ownership during the year? Would both owners be obligated to file separate Form Rs for that year?

The owner/operator of the facility on the annual July 1 reporting deadline is primarily responsible for reporting the data for the previous year's operations at that facility. Any other owner/operator of the facility before the reporting deadline may also be held liable. The reports submitted must cover the full reporting year.

Facility; Facility Reporting; Form R; Location Change; Reporting Requirements

90. Company Y sold its timber preserving chemical manufacturing business to Firm X in September, transferring only the operating rights of the business. After the sale, all manufacturing operations were moved to Firm X's production facility in another city. In February of the following year, Company Y was converted to a warehousing facility. What is Company Y's reporting obligation under Section 313?

Though manufacturing operations ceased in September of the reportable year, Company Y must submit, no later than July 1 of the subsequent year, a Form R for any listed toxic chemical manufactured, processed, or otherwise used, at Company Y's facility, in excess of threshold levels within the reportable year. No reporting is required for the following reporting year and subsequent reporting years as long as the facility operations are not classified within a covered NAICS code.

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Facility; Form A; Form R; NAICS; Process

91. Company A purchases a facility from Company B between January 1 and June 30, of the same year. For the reporting forms covering the prior year, which company's name and identification number should appear on the Form R or Form A submission?

In the case that a facility is purchased between January 1 and June 30, the form submitted for the previous year must reflect the name used by the facility on December 31 of that reporting year (Monthly Call Center Report Question, EPA530-R-98-005; October 1998). In this example, Company B's name should appear on the form because it owned the facility for the duration of the reporting year. The TRI identification number is location-specific; thus, the identification number will stay the same even if the facility changes names, production processes, or NAICS codes. With regard to reporting, the owner or operator of the facility on the annual July 1 reporting deadline (Company A) is primarily responsible for reporting the data for the previous year's operations at that facility. However, all prior owners and operators back to January 1 of the year covered in the report may also be held responsible if the current owner or operator does not submit a report.

Facility; Form A; Form R; NAICS; Parent Company; Process

92. In October, Facility X changes ownership and is purchased by Company Y. For that reporting year, which facility is obligated to submit the Form R or Form A, and whose name and what TRI identification number should be on the form?

The owner or operator of the facility on the annual July 1 reporting deadline (i.e., Company Y) is primarily responsible for reporting the data for the entire previous year's operations at that facility. Any other owner or operator of the facility before the reporting deadline may also be held liable. The form submitted for a given reporting year must reflect the names used by the facility and its parent company on December 31 of that reporting year, even if the facility changed its name or ownership at any time during the reporting year (Monthly Call Center Report Question, EPA530-R-98-005j; October 1998). In this scenario, because Facility X changed ownership before December 31 of the reporting year, Company Y's name should appear on the form. The TRI identification number is location-specific; thus, the identification number will stay the same even if the facility changes names, production processes, or NAICS codes.

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Facility; Reporting Responsibility

93. Company A owns a facility which manufactures crude oil. It sells the crude oil to Company B, but the oil is kept in tanks located on Company A's facility but that are leased to Company B. Who is subject to reporting under Section 313?

Since the tanks are part of Company A's facility and they are the owner/operator of the facility, Company A would be subject to Section 313 reporting for any releases and any other waste management activities involving toxic chemicals from the tanks.

Change of Ownership; Reporting Responsibility

94. Company A owns and operates an electricity generating facility. The facility consists of a combustion unit and a peaker unit. Company A sells the combustion unit to Company B on June 15 of the reporting year, but retains ownership of the peaker unit. From the time of purchase, Company B owned, controlled, and operated the combustion unit and Company A continued to own and operate the peaker unit. What are the reporting responsibilities of Companies A and B for determining thresholds and filing Form R reports?

From the time of the purchase transaction on June 15, there are two separate facilities with two non-related owners and operators. Thus, Company B is responsible only for reporting for the combustion unit after its purchase. Company A is responsible for the combustion unit and the peaker unit prior to sale, but only the peaker unit after the sale. Thus, for threshold determinations, Company A must combine amounts of toxic chemicals manufactured, processed, or otherwise used at the entire facility before the transaction on June 15, with those manufactured, processed, or otherwise used at the peaker unit after the transaction.

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Change of Ownership; Definition of Facility; Reporting Responsibility

95. A facility owner sold a quarter of his plant to another company. This purchase transaction was finalized January 15. The quarter of the plant that was sold was moved to its new location in April of the same year. During the period between sale and move, the entire facility kept operating. The new owner, however, controlled and operated the sold part of the facility. For purposes of reporting under EPCRA section 313, is the original owner responsible for reporting for the part of the facility that was sold?

From the time of the purchase transaction on January 15, there are two separate facilities with two non-related owners and separate operators. Therefore, the original owner must report on the three quarters of the facility retained after the sale if he manufactured, processed, or otherwise used a toxic chemical equal to or in excess of a threshold amount for that year. The original owner, however, would also include in threshold determinations and release and other waste management calculations any activities that went on from the beginning of January up to the time of the purchase transaction (January 15) for that part of the facility that was sold. The owner of the quarter of the original facility also must report if that new facility exceeds the reporting threshold during the period of January 15 through April. Once the facility is moved to its new location, a new threshold determination must be made for the remainder of the reporting year and the facility would be assigned a new TRI Identification number.

Change of Ownership; NON; Reporting Responsibility

96. When a facility changes ownership after a Form R has been submitted, who is required to respond to a Notice of Noncompliance (NON) related to the Form R? Is the current or prior owner/operator required to respond to the NON?

The current owner/operator has the primary responsibility for responding to a NON. However, all prior owners/operators back to January 1 of the reporting year may also be held responsible if the current owner/operator does not respond to the NON in an accurate, complete, and timely manner.

Business Interest; Owner/Operator; Reporting Responsibility

97. Would an owner of a facility who has no knowledge of any operations at the facility be responsible for reporting?

An owner with no business interest in a facility beyond owning the real estate on which the covered facility is located is not responsible for reporting (40 CFR Section 372.38(e)). If the owner is part of the same business organization as the operator, or has a business interest in the facility and contracts out the operation of a particular site, he/she is not exempt from reporting.

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Multiple Owners; Parent Company; Part I Section 5.1

98. An electricity generating facility (EGF) is comprised of multiple independent owners. Each individual owner runs his/her own separate operation, but each has a financial interest in the operation of the entire facility. What name should be entered as the parent company in Part I, Section 5.1 of the Form R? Should the facility report under one holding company name?

The electricity generating facility should enter in Part I, Section 5.1 of the Form R the name of the holding or parent company, consortium, joint venture, or other entity that owns, operates, or controls the facility.

Joint Venture; Parent Company

99. Who is the parent company for a 50/50 joint venture?

The 50/50 joint venture is its own parent company.

Definition of Facility; Joint Venture

100. An EPCRA section 313 covered facility transfers wastes containing a toxic chemical to a 50/50 joint venture company for treatment. The joint venture is located within the property boundaries of the covered facility, and is a partnership between the owners of the covered facility and a separate company. The 50/50 joint venture operates the treatment unit. Is the joint venture a separate facility as defined in 40 CFR Section 372.3?

The term facility includes 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)' (40 CFR Section 372.3). The joint venture is a separate facility because a 50/50 joint venture is its own parent company. As its own parent company, the joint venture is not owned nor operated by the same person (or by any other person which controls, is controlled by, or under common control with such person) as the covered facility.

Parent Company; Wholly Owned Subsidiary

101. Mom and Pop Plastics is a wholly owned subsidiary of a major chemical company which is a wholly owned subsidiary of Big Oil Corporation, located in St. Paul, MN. Which is the parent company?

Big Oil Corporation is the parent company.

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Parent Company-Parent Company Name; Part I Section 5.1

102. A covered facility sells one of its establishments to a new owner. The operator of the newly sold establishment, however, does not change. The same operator operates the newly sold establishment and the rest of the facility. Although the facility makes its threshold determinations based on the activities at the entire facility (including the newly sold establishment), the facility chooses to report separately for the different establishments. What parent name should the newly sold establishment use, the parent name of the owner or the parent name of the operator (i.e., the same as the rest of the facility)?

All establishments of a covered facility must report the parent name of the facility. Therefore, in the instance described above, the newly sold establishment should use the parent name of the facility operator (i.e., the same parent name the rest of the facility is using.)

Facility-Definition of; Facility-Facility Reporting; Reporting Responsibility

103. A RCRA-permitted subtitle C facility shares a common fence line with a RCRA subtitle D facility that landfills municipal solid waste and non-hazardous special wastes. Each of these operations has its own waste management permits and are considered distinct entities. They are both operated by the same company and owned by the same parent company. Are both operations subject to EPCRA section 313?

Two adjacent establishments, owned or operated by the same corporation constitute one facility under section 313. As such, the facility must consider their combined activities for threshold determinations and release and other waste management calculations.

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Reporting Criteria; Threshold Determination

104. Who is responsible for EPCRA section 313 reporting if a covered solvent recovery service arrives at a covered facility and either recycles ethylene glycol antifreeze on-site with a mobile recovery unit or removes the ethylene glycol antifreeze for off-site recycling?

All covered facilities are responsible for EPCRA section 313 reporting obligations of the toxic chemical while the toxic chemical is at a facility, including while the chemical is in an on-site mobile recovery unit. Although this facility may not directly operate the mobile solvent recovery unit, the facility controls the unit's operations while on-site because it has contracted or paid a fee for the unit's services. Therefore, if the mobile unit recovers toxic chemicals from the solvents on-site the facility would include those toxic chemicals in its facility-wide release and other waste management calculations.

If the mobile solvent recovery unit removes toxic chemicals from the facility for off-site recycling, the facility would report the amount of the chemicals sent off-site as an off-site transfer for recycling. However, the facility must account for any releases of the toxic chemical from the unit while it remains on-site. Finally, those toxic chemicals that are transferred off-site are considered processed and therefore, must be applied toward the facility's processing threshold.

Definition of Facility; Hazardous Waste

105. Are all processes occurring at a single hazardous waste facility potentially covered by EPCRA section 313 if only some of the activities are regulated by RCRA subtitle C?

If all of the activities occurring at a site are occurring on the same contiguous or adjacent piece of land and are owned or operated by the same organization, the entire area is considered one facility. If the facility is a hazardous waste facility with primary NAICS code regulated under EPCRA section 313 and any portion of the facility is regulated under RCRA subtitle C, the facility meets the NAICS code criterion and must thus determine thresholds and calculate releases and other waste management amounts for all activities at the facility, even those not regulated under RCRA subtitle C.

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Business Interest; Facility; Multi-Establishment

106. A fish processor rents space in a building. The refrigeration system in the building uses ammonia. The building owner supplies the ammonia, runs the refrigeration system, and bills the fish processor based on the amount of fish processed. Must the fish processor report for ammonia? Another business, a frozen food packager also uses the refrigeration system but is a separate company from the fish processor.

The owner of the building must report on the ammonia if the threshold for ammonia is exceeded since he/she is operating the system. In this instance, the owner has more than just a real estate interest in the property. If both businesses are in covered NAICS codes and the owner is operating part of that facility, he/she should report.

Contiguous/Adjacent; Definition of Facility

107. How would a facility report toxic chemicals in wastes that are treated in waste treatment units that it does not own? For example, if a facility sold a unit that is within its contiguous property to another company, which facility should report?

The facility creating the waste containing the toxic chemical would report the toxic chemicals as an off-site transfer. Assuming the waste treatment units are neither owned nor operated by the facility creating the waste, the waste treatment unit is a separate facility. The waste treatment facility would only report if they manufacture, process, or otherwise use the toxic chemical in excess of the thresholds. In that case, the waste treatment facility would report any release or other waste management activities associated with the toxic chemical at its facility.

Definition of Facility; Establishment; Multi-Establishment; NAICS

108. Clarify the application of NAICS codes for facility versus establishment?

The NAICS code system classifies businesses on the basis of an establishment, which is generally a single business unit at one location. Many Section 313 covered facilities will be equivalent to an establishment. If the facility's NAICS code is a covered NAICS code, the facility has met the NAICS code criterion for reporting under EPCRA section 313 (40 CFR Section 372.23). However, a reporting facility can encompass several establishments located on a single site or on contiguous or adjacent sites owned or operated by the same entity. Therefore, a Section 313 facility can be a multi-establishment complex. To determine if a multi-establishment complex is a covered facility, the owner/operator must determine the complex's primary NAICS code based on the relative value added of products and services provided by the various establishments. If the primary NAICS code for the facility is a covered NAICS code, the facility has met the NAICS code criterion (40 CFR Section 372.22(b)).

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Activity Index; Multi-Establishment

109. A covered facility is comprised of several establishments. None of the establishments meet a chemical activity threshold separately, but together, the facility exceeds a chemical activity threshold. Since no single establishment exceeds the reporting quantities, is it necessary for the facility to file a Form R?

The covered facility, not the establishments, must report if the facility meets all of the reporting criteria. The threshold determination for manufacture, process, or otherwise use of the listed chemical must be made by adding the amounts of the chemical from appropriate activities of all the facility's establishments.

Multi-Establishment; NAICS

110. Suppose a facility consists of several establishments, some of which have primary NAICS codes within the covered NAICS codes and some of which have primary NAICS codes outside that range. How would this facility determine if it is covered by EPCRA section 313?

To determine if a facility is covered by EPCRA section 313, the facility must determine if it meets the NAICS code criterion. To make this determination, the facility must report if those establishments that are in the covered NAICS codes have a combined value added of more than 50 percent of the total value added of services provided or products shipped or produced by the whole facility, or if one of those covered NAICS code establishments has a value added of services or products shipped or produced that is greater than the value added of any other establishment in the facility (40 CFR Section 372.22(b)(3)). If the facility determines that the establishments meet this test, the entire facility has met the NAICS code criterion. If the entire facility also meets the employee and chemical activity thresholds (based on all establishments at the facility), then the entire facility would be subject to EPCRA section 313 reporting.

Facility; Multi-Establishment

111. If a company has a plant in New Jersey, which processes 15,000 pounds of methanol, and a plant in Texas, which processes the same amount of methanol, do both plants have to report as establishments of a facility?

No. The two processing plants are separate facilities because they are not located within the same, or adjacent, or contiguous physical boundary. Thus, their activities are not additive and neither would report for methanol because the processing threshold of 25,000 pounds has not been met by either facility.

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Multi-Establishment; Product Value; Reporting Criteria

112. A facility consists of several different establishments. In terms of the NAICS Code determination, how is product value defined? Where do state and federal taxes fit into the calculation of value? Is pre-tax or after tax value counted? Over what period of time is value calculated?

Product value should be based on the total sales before taxes, not profits. Total product value includes the value of services provided, products shipped, and/or products produced. This includes a fair market value for inter-company transfers, including a reasonable proportion of overhead and profits. If the facility transports the products itself, the value of the transportation services should be part of the calculation of the total value of all production, shipments, and/or service. Taxes collected from customers and forwarded to local, state, or federal taxing authorities should be excluded from the calculation of product value. Taxes that are paid by manufacturers, wholesalers, or retailers upstream of the facility and passed on to the facility in the price of goods and services it purchases should be included in the calculation of product value. The time period for calculating product value should be the reporting year in question.

Multi-Establishment; NAICS

113. A multi-establishment facility grows wheat and mills it into flour. At the agriculture portion of the facility, all of the wheat grain is grown, harvested and placed into a silo. After leaving the silo, 20 percent of the wheat grain is sold, while the remaining 80 percent of the wheat grain is milled into flour and packaged. If the facility farms and sells more than it mills into flour and sells, is it a covered facility? What is the primary NAICS code of this facility?

In order to make the facility coverage determination, the facility must compare the value added of products shipped and/or produced at the two different establishments (i.e., agriculture versus the flour processing). The value added of the product produced at the agricultural establishment (not in a covered NAICS code) is the market value of all the wheat grain harvested during the reporting year. The value added of the product from the milling/packaging establishment (in a covered NAICS code) is the value added of the products shipped and/or produced minus the market value of the wheat grain used to produce the flour. In other words, you do not double count the value of the wheat grain as part of the value added of the products from the flour processing operation. If the value added of milled flour products is greater than the market value of harvested grain, then the facility's primary NAICS code would be within a covered NAICS code and the facility would be subject to reporting under EPCRA section 313.

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Multi-Establishment; Primary NAICS

114. A facility has two establishments, one in NAICS code 314110 (a covered NAICS code), and one in NAICS code 721120 (not a covered NAICS code). In determining the facility's primary NAICS code, the facility must determine the value added of the services provided and/or products shipped from or produced by each establishment. Some of the employees who support the establishment in NAICS code 721120 work entirely off-site, either at home or at clients' sites. Should the facility consider this off-site work when determining the value added of the services provided by NAICS code 721120?

Yes. In determining the primary NAICS code, the facility should consider the value added of services provided by each establishment, including services provided by employees who work for that establishment at home or who service that establishment's products at clients' sites (see 40 CFR Section 372.22(b)(3)).

Multi-Establishment; Zero Releases

115. A covered facility with three establishments exceeds an activity threshold for a listed toxic chemical. The facility has the option to file one form to cover the activities at the entire facility or they may file forms for each of the establishments as long as the threshold determinations and release and other waste management calculations are based on all of the activities at the entire facility. The facility chooses to file separate Form R reports for each establishment. All three of the establishments conduct a threshold activity with the listed toxic chemical. However, one establishment does not release or perform any waste management activities with the listed toxic chemical. Must this establishment also file a Form R or can the facility submit only two Form R reports?

If individual establishments or groups of establishments report separately for one listed toxic chemical, they must report separately all covered activities, releases, and other quantities of the toxic chemical managed as waste. Therefore, if each establishment conducts a threshold activity with the toxic chemical, each establishment is also required to report separately for the toxic chemical even if the establishment had no releases or other waste management activities with the toxic chemical. Such establishments should make certain that they file a complete Form R including reporting the chemical activity information on Part I, Section 3 of the Form.

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Form R; Multi-Establishment; NAICS; NAICS Code

116. The instructions for completing Form R indicate that the report should contain only covered NAICS codes in Part I, Section 4.5 on page 1. A facility has the option of reporting as an entire facility or as separate establishments. If an establishment filled out a separate Form R, what NAICS code would be used in Part I, Section 4.5? Would a NAICS code be entered for an establishment not in covered NAICS codes?

When a facility opts to file separate Form Rs for each establishment it should list in Part I, Section 4.5, of each Form R submitted the NAICS code only of the establishment being reported on that Form R. If the establishment's NAICS code is not a covered NAICS code, that establishment can list their NAICS code. TRI-MEweb users cannot manually enter 'NA' or leave the field blank.

Dun and Bradstreet Number; Form R; Part I Section 4.7

117. If a covered facility does not have a Dun & Bradstreet number but the parent corporation does, should this number be reported?

Report the Dun and Bradstreet Number for the facility. If a facility does not have a Dun and Bradstreet Number, enter 'NA' in Part I, Section 4.7. The corporate Dun and Bradstreet Number should be entered in Part I, Section 5.2 relating to parent company information.

Dun and Bradstreet Number; Form R; Multi-Establishment

118. If two plants are separate establishments under the same site management, must they have separate Dun & Bradstreet numbers?

They may have separate Dun & Bradstreet numbers, especially if they are distinctly separate business units. However, different divisions of a company located at the same facility usually do not have separate Dun & Bradstreet numbers.

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Disposal; Establishment; Facility; Form R; Multi-Establishment; Releases; Threshold Determination; Waste; Waste Management Activities

119. A DOE facility is divided into three distinct operations that are administratively managed and operated separately. Can the DOE facility be divided into multiple sites for the purpose of TRI reporting?

No. While the DOE facility contains three operations that are administratively managed separately and are not located in close proximity to each other, they are considered one facility under EPCRA because the operations are located on contiguous and adjacent properties owned by DOE. These operations, if they are "distinct and separate economic activities [e.g., separate NAICS codes][that] are performed at a single location" are establishments under EPCRA section 313. Each establishment may file separate Form R reports as long as the threshold determinations are made based on the entire facility. If separate Form R reports are filed, the total releases and further waste management activities on these Form R reports must equal the aggregate for the entire facility.

For the multi-establishment facilities, DOE must ensure that all EPCRA section 313 chemicals are covered and avoid multiple reporting on chemicals involved in intra-site transfers. For example, if Establishment A transferred an EPCRA section 313 chemical to Establishment B for on-site disposal, only Establishment B would report on the disposal of the EPCRA section 313 chemical. Establishment A would not report the on-site transfer of that EPCRA section 313 chemical to Establishment B.

Form R Submissions; Multi-Establishment; Off-site Transfer

120. Each establishment of a multi-establishment facility files its own Form R for a toxic chemical. The waste that this multi-establishment facility ships off-site is inventoried on an entire facility basis. To report the listed toxic chemical in this waste, does each establishment estimate their percentage of the total listed toxic chemical in the waste or can one establishment report the entire quantity of the listed toxic chemical in the waste?

If individual establishments or groups of establishments report separately for one listed toxic chemical they must report separately all releases and other quantities of the toxic chemical managed as waste. Therefore, in the case cited above, one establishment cannot report the off-site transport quantity of a toxic chemical in waste from the entire facility. Each establishment would have to report separately its percentage of the transfer quantity.

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Establishment; Facility; Form R; Multi-Establishment; Releases; Waste

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

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

Multi-Establishment; Part II Section 3

122. A facility consists of many establishments and the operators have chosen to file Form Rs by establishment rather than as a facility. Establishment 1 has a manufacturing process that otherwise uses over 10,000 pounds of a listed toxic chemical. Establishment 1 sends its wastewater to establishment 2, where it is treated. Establishment 2 just treats the toxic chemical and does not use it anywhere else. Since a Form R has to be filed because of establishment 1's activities, how should the operator of establishment 2 fill out the Form R? Specifically, how should establishment 2 address Part II Section 3 for activities and uses at the facility? How should establishment 2 reflect the releases resulting from the waste treatment?

Since the facility has chosen to report separately as two establishments, rather than not answering that Section of the Form R, EPA recommends that establishment 2 check the block 3.3(c) for otherwise use as an ancillary use. The rest of the Form R can be filled out as if that second establishment had triggered reporting itself. If any further questions were to arise about activities at establishment 2, its required record keeping should indicate that the Form R is for treatment only and reflects releases and other waste management activities transferred to establishment 2 by other establishments.

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Air Releases; Establishment; Facility; Form R; Incineration; Releases; Threshold Determination; Waste; Waste Management Activities; Waste Treatment

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

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

Multi-Establishment; Separate Form Rs

124. Establishments A, B, and C are all part of a facility and the facility elects to file Form Rs by establishment for chemicals that exceeded a threshold based on combined activities. The facility exceeds the reporting threshold for benzene, but only establishments A and B use any benzene. Is establishment C required to file a Form R report for benzene?

Provided that establishment C has no amounts of the toxic chemical involved in threshold or release and other waste management calculations, establishment C is not required to submit a report for that chemical.

Facility; Multi-Establishment; Right-of-Way

125. Two manufacturing establishments, owned by the same corporation, are divided by a public railroad. One establishment has rented parking lot space from the other establishment and a walkway was constructed so the employees can go over the railroad tracks to the parking lot. Is this a multi-establishment facility or two separate facilities?

Two establishments owned by the same corporation separated by a railroad constitute one facility for Section 313, since they are still physically adjacent to one another except for a public right-of-way. Therefore, reporting thresholds would be determined by the combined toxic chemical quantities processed, manufactured, or otherwise used at both establishments.

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Facility; Multi-Establishment; Pipeline

126. Two manufacturing plants owned by the same parent company are connected to each other by a thin patch of land on which a pipeline rests that joins the two plants. The pipeline and connecting land are also owned by the same parent company. For the purposes of reporting on the Form R, are the plants considered two separate facilities, or are they establishments of the same facility?

Under 40 CFR Section 372.3 the definition of facility means, '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 or is controlled by or under common control with such person). A facility may contain more than one establishment.' Since both plants are connected to each other by a strip of land that is owned by the same parent corporation, they are contiguous and, therefore, are considered establishments of the same facility. This facility must make threshold determinations based on the combined amounts of listed toxic chemicals at both establishments. Both establishments may report together as the same facility or they may report separately provided that the sum of the releases of the establishments reflects the total releases of the facility and threshold determinations are based on activities at the entire facility.

Otherwise Use; Preparation for Otherwise Use; Threshold Determination

127. A facility buys 10,000 pounds of a listed toxic chemical in one year and creates a mixture for a metal cleaning bath. In the following year, the facility begins cleaning metal in the bath. How does the facility determine thresholds for both years?

The threshold applies to the total amount of the toxic chemical otherwise used during the reporting year that the mixture was created. The facility would count the entire 10,000 pounds and any amount added to the bath during that year toward the otherwise use threshold the first year. Only the amount of the toxic chemical added to the bath during the second year would be counted toward the otherwise use threshold determination for the second year.

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Preparation for Distribution; Process; Threshold Determination

128. A facility owner/operator begins a process in December of Year 1 by mixing a batch of listed toxic chemicals into their product formulation. The mixture remains in the vat until January of Year 2. At that time, the mixture is packaged into quart containers and sent to customers. For Section 313 threshold purposes, are the toxic chemicals in the mixture considered processed in Year 1 or Year 2?

Process is defined as 'the preparation of a toxic chemical, after its manufacture, for distribution in commerce' (40 CFR Section 372.3). The Agency interprets the activity of processing to be reportable when the toxic chemicals are initially prepared. Therefore, the amount of toxic chemicals mixed in Year 1 would be added to the processing threshold determination for Year 1.

Activity Threshold; Storage

129. A coal mine receives a flotation agent containing a Section 313 chemical in December, but does not use it until the following January. Is the amount of toxic chemical in the flotation agent considered for threshold determinations for the reporting year during which they received the chemical?

No. Storage in itself of a toxic chemical is not considered a manufacturing, processing, or otherwise use activity and, therefore, is not subject to threshold determinations. However, the facility is required to include any amounts released or otherwise managed as waste that occur during storage of the listed toxic chemical, provided a threshold for the same chemical has been exceeded elsewhere at the facility. When the toxic chemical is used in January, the facility will include the amount of toxic chemical used towards the applicable otherwise use or processing threshold, whichever is appropriate, for that reporting year.

Preparation for Distribution; Process

130. If ore is extracted for ultimate distribution in commerce, are toxic chemicals in ore that are not actually distributed during the reporting year considered to be processed for threshold determination purposes, since they were prepared for distribution during the reporting year?

Yes. The total amounts of the listed toxic chemicals contained in the ore are considered toward the facility's processing threshold in the year that the amounts undergo a processing step. For purposes of the EPCRA section 313 threshold determination, extraction is considered a processing step and all amounts extracted for preparation of a product to be distributed in commerce are considered processed in the year they are extracted.

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Facility; Process; Processing; Threshold Determination

131. A facility processes pipes, stores them for the remainder of the reporting year, and then ships them off-site the following year to be distributed in commerce. Are TRI chemicals in the pipes that were prepared but not actually distributed during the reporting year considered to be processed for threshold determination purposes?

For purposes of the EPCRA section 313 TRI threshold determination, amounts of a TRI chemical prepared for distribution in commerce are considered processed in the year that they undergo the processing step. Therefore, even though the pipes were not distributed into commerce until the following reporting year, the chemicals in the pipes would be counted towards the processing threshold for the year in which they were prepared for distribution.

Limited Distribution; Process; Samples

132. Electricity generating facilities supply companies with ash for off-site market testing (e.g., the receiving company may test the ash to see if it can be used in a topsoil). Is this processing?

Amounts of listed toxic chemicals contained in material or products that are sent off-site for sample testing are considered processed and these amounts must be considered toward threshold and release and other waste management calculations.

Auxiliary Facility; Electricity Generating Facility; NAICS Code Determination

133. An electricity generating facility in NAICS code 221112 uses a separate facility (Facility A) for ash disposal. Facility A's primary function is to dispose ash generated at the electricity generating facility. Facility A does not produce electricity. Is Facility A, which is not contiguous or adjacent to the electricity generating facility, subject to EPCRA section 313?

No. Facilities in NAICS code 221112 are only covered by EPCRA section 313 if they also combust coal or oil for purposes of generating electricity for distribution into commerce. Since Facility A does not combust coal or oil for distribution into commerce, it is not subject to reporting under Section 313.

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Activity Threshold; Maximum Amount On-Site; Storage; Threshold Determination

134. If a facility has a chemical in storage but does not process or otherwise use it during the reporting year, is the owner/operator subject to reporting?

No. Storage, in itself, would not meet an activity threshold under EPCRA section 313 (Note: the facility may have reporting requirements under other portions of EPCRA such as Sections 311 and 312). However, if the facility exceeds the manufacturing, processing, or otherwise use threshold for the same toxic chemical elsewhere at the facility, the facility must consider releases from the storage of the toxic chemical. The facility must also consider the amount of the Section 313 chemical in storage when calculating the maximum amount on-site during the year.

Storage; Threshold Determination

135. Are materials in inventory (i.e., amounts on hand at year end) factored into threshold determinations?

No. Only quantities of a toxic chemical actually manufactured (including imported), processed, or otherwise used during the reporting year are to be counted toward a threshold.

Facility; Mixture; Otherwise Use; Process; Threshold Determination

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

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

Reuse System; Threshold Determination

137. If a facility employs a reuse system, how does it determine the amount that it must consider for threshold determinations?

For reuse systems, the amount considered for threshold determination purposes is the amount added to the system during the reporting year. If the system is completely empty and is started up during the year, a facility makes its threshold determination by adding the total amount needed to charge the system to any amount which is added to the system during the reporting year.

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Closed-loop; Otherwise Use; Reuse System; Threshold Determination

138. Many facilities maintain reuse operations such as closed-loop refrigeration systems. If a facility uses 15,000 pounds of ammonia as a coolant in a closed-loop refrigeration system, this amount of the toxic chemical is considered otherwise used under EPCRA section 313 because the ammonia is not incorporated into the final product. Only the amount of a listed toxic chemical added to a refrigeration system during the reporting year must be included in the threshold calculation. If the facility replaces its refrigeration system but uses the same ammonia to maintain the new system, must the transferred ammonia be considered otherwise used and therefore included in threshold determinations for EPCRA section 313 reporting?

In such reuse systems, the amount of listed toxic chemical which must be applied toward the otherwise use threshold would include any quantity added as a result of start-up or total replacement of the contents of the reuse operation. If a reuse system is completely empty and is started up during the year, a facility must base its threshold determination on the total amount initially needed to charge the system plus any amount which is subsequently added to the system during the year. In this case, the 15,000 pounds of ammonia should have been counted towards the otherwise use threshold when it was first used to charge the old system and any ammonia added to maintain the level of ammonia in the old system should also have been counted towards the otherwise use reporting threshold in the year that it was added.

If the facility is reusing ammonia from the old system by simply using it again in a new system this amount of ammonia would not have to be counted towards the otherwise use threshold because it should have already been counted towards that threshold. Once a chemical has been counted towards the otherwise use threshold, any further use of that listed chemical at a facility does not need to be counted again towards the otherwise use threshold.

Recycle; Reuse System; Threshold Determination

139. A toxic chemical in a solvent is used, recycled on-site, and then reused as a solvent at the facility. How is that toxic chemical handled for the purpose of threshold determination for Section 313?

For solvents in an on-site recycle and reuse system, the total amount of new toxic chemical added to the system during the reporting year is counted towards the otherwise use threshold. The amount of the toxic chemical that is re-circulated in the recycle/reuse system is not considered towards the threshold determination unless it is replaced.

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Activity Threshold; Adhesive; Otherwise Use; Process; Process vs. Otherwise Use

140. A facility covered under EPCRA section 313 manufactures shoes. During production the facility uses adhesives that contain solvents such as toluene. Due to the inefficiency of the process, 20 percent of the solvent remains behind in the shoes when they are sold in commerce. Would the facility count the amount of solvent remaining in the shoes toward the processing threshold?

No. The amount of solvent used in the adhesive would count toward the otherwise use threshold. Since the toxic chemical does not function as a component of the shoe, it would not be considered processed. Thus, the facility would file if it meets an otherwise use threshold for the toxic chemical in the adhesive.

Activity Threshold; Otherwise Use; Solvents

141. If a solvent that is a listed toxic chemical is used to clean an apparatus but does not become part of the final product, is the chemical covered for reporting purposes under EPCRA section 313?

If a solvent is not incorporated into a product distributed in commerce, then for the purposes of Section 313, it would be considered otherwise used. It would be subject to reporting if used in quantities exceeding the otherwise use threshold.

Facility; Form R; Otherwise Use; Process; Recycle; Recycling; Reuse; Threshold Determination; Waste

142. A covered TRI facility otherwise uses a solvent containing trichloroethylene (TCE), a listed toxic chemical, in its production process. Once the solvent has been used, the facility reclaims it on-site and then reuses it. This on-site recycling process occurs several times until the solvent can no longer be used. How should the facility consider the TCE in the solvent for purposes of EPCRA section 313 threshold determination and release and waste management calculations?

For threshold determination, the amount of the TCE in the solvent should be counted only once toward the otherwise use threshold, regardless of how many times the solvent is reused on-site. However, for release and other waste management calculations, the facility must consider the quantity of TCE recycled on-site each time it is recycled, and report the aggregate total quantity in Part II, Section 8.4 of the Form R. In addition, the facility would report the on-site recycling methods in Part II, Section 7C.

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Activity Threshold; Facility; Lead; Manufacture; Otherwise Use; Process; Releases; Reuse; Threshold Determination; Waste; Waste Management Activities

143. Must toxic chemicals contained in solid items and equipment that are reused from one year to the next be counted toward the otherwise use activity threshold every year?

EPCRA section 313 toxic chemicals contained in process-related items and equipment used on-site must only be counted toward the otherwise use threshold for a given reporting year if the chemicals were newly brought into use at the facility during that year. Once a chemical has been counted towards the otherwise use threshold, any further use or recirculation of that listed chemical at a facility does not need to be counted again towards the otherwise use threshold unless it is replaced (40 CFR Section 372.25(e)). For example, lead contained in a process-related grinding wheel that is used on-site during a particular reporting year need not be counted toward the otherwise use activity threshold for that year if the grinding wheel was also used on-site during the previous reporting year. The amount of lead contained in any grinding wheel(s) newly introduced into use at the facility during the reporting year, however, must be counted toward the otherwise use threshold.

Threshold Determination

144. A covered facility feeds 50,000 pounds of solvent containing 90 percent methyl isobutyl ketone (MIBK) (i.e., 45,000 pounds) into a recycling process that is 85 percent efficient. The facility distributes the recovered MIBK in commerce. Should the facility count 45,000 pounds of MIBK (i.e., the entire amount that was inserted into the process) towards the processing threshold?

Yes. The facility considers the entire amount (45,000 pounds of MIBK) entering the recovery system toward the processing threshold regardless of the recovery efficiency of the process.

Remediation; Threshold Determination

145. If you operate a treatment plant as part of remediation at a Superfund site on your facility, do contaminants (already present at the site) have to be included in calculating thresholds and releases and other waste management activities?

EPCRA section 313 listed toxic chemicals undergoing remediation are not included in threshold determinations because remediated chemicals are not manufactured, processed, or otherwise used. However, if a covered facility exceeds an activity threshold for a listed toxic chemical elsewhere at the facility, any releases and other waste management activities of the listed toxic chemicals undergoing remediation must be included in the facility's release and other waste management calculations. In that event, a release does not include material already in a landfill but does include any material released to the environment or transferred off-site due to the remedial activity.

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Facility; Otherwise Use; Threshold Determination; Waste

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

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

Intake Water Exemption; Release Reporting; Remediation; Threshold Determination

147. A covered facility removes toxic chemicals from groundwater in a clean-up action. The listed toxic chemicals, after treatment, are sent off-site for disposal. Is the facility required to report? Does the exemption for intake water apply?

Since the toxic chemicals are not manufactured, processed, or otherwise used, no reporting threshold applies to the cleanup action. If the toxic chemicals are manufactured, processed, or otherwise used elsewhere at the facility and exceed a threshold, releases and other waste management activities from the cleanup must also be reported on the Form R. The quantities of toxic chemicals in the remediation wastes that are sent off-site for waste management are reported in Part II, Section 8.8. The intake water exemption does not apply since the toxic chemicals are not being used in a process activity and because the toxic chemicals in groundwater are not at background levels.

Air Emissions; Process; Threshold Determination; Waste

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

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

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Facility; Otherwise Use; Releases; Threshold Determination; Waste

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

Yes. Deicing runways would be considered an "otherwise use" activity (40 CFR Section 372.3). The facility, therefore, should count the amount of EPCRA section 313 chemical used in the deicing toward its otherwise use threshold. This would include any amount of the chemical recovered from the remediation of soil and groundwater from previous years, as well as amounts obtained from purchases.

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

Import; Manufacture; Threshold Determination

150. Can chemicals be added to or subtracted from the EPCRA section 313 chemical substance list?

Yes. EPCRA lists have evolved since the statute was passed in 1986. As more information has become available on the hazards and toxicity of chemicals, EPA has responded by identifying chemicals to be added to or taken off the EPCRA lists; EPA expects to continue this activity. When chemicals are added to or taken off the EPCRA lists, EPA always publishes a notice in the Federal Register. The most recent list of EPCRA section 313 chemicals is accessible online at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-listed-chemicals. You may also contact the EPCRA Hotline at 1-800-424-9346 to obtain information on the latest additions to or deletions from the list of EPCRA section 313 chemicals.

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Chemical Deletion; Effective Date

151. EPCRA section 313(d) provides for the addition and deletion of chemicals to and from the list of toxic chemicals found at 40 CFR Section 372.65. According to EPCRA section 313(d)(4), any revision to the list made on or after January 1 and before December 1 of any reporting year will take effect beginning with the next reporting year. Any revision made on or after December 1 and before January 1 of the next reporting year will take effect beginning with the reporting year following the next reporting year. While all additions to the list are subject to these provisions, the Agency has not applied the delayed effective dates specified in EPCRA section 313(d)(4) for any rules deleting chemicals from the EPCRA section 313 list. To date, the promulgated final rules delisting chemicals have been effective on the date of publication of the final rule in the Federal Register. Moreover, when EPA has issued the final rule before July 1, the Agency has relieved facilities of their reporting obligation for the previous reporting year in addition to obviating future reporting. Given the statutory language, why has EPA not promulgated a delayed effective date for those actions deleting substances from the list of toxic chemicals?

Although the statutory language outlines a delayed effective date provision, EPA interprets EPCRA section 313(d)(4) to apply only to actions that add to the list of toxic chemicals. As explained in the final rule deleting di-n-octyl phthalate from the EPCRA section 313 list, published on October 5, 1993 (58 FR 51785), the Agency believes that it may, in its discretion, make deletions effective immediately upon the determination that a chemical does not satisfy the listing criteria found in EPCRA section 313(d)(2). Since a deletion from the list alleviates a regulatory burden, and 5 U.S.C. Section 553(d)(1) permits any substantive rule that relieves a restriction to take effect without delay, EPA is authorized to delete chemicals from the list effective immediately. The Agency believes that the purpose of EPCRA section 313(d)(4) is to provide covered facilities with adequate time to incorporate newly listed chemicals into their data collection processes. Because facilities can immediately cease reporting on a delisted chemical, and since the chemical no longer satisfies the listing criteria, EPA has not specified a delayed effective date for deletions from the list of toxic chemicals under EPCRA section 313.

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Chemical Deletion; Withdrawal

152. EPCRA section 313(d) provides for the addition and deletion of chemicals from the list of toxic chemicals found at 40 CFR Section 372.65. When a toxic chemical is deleted, and the final action is effective upon publication in the Federal Register, thereby relieving covered facilities from EPCRA section 313 reporting requirements for the newly deleted chemical from the date of publication forward. If a facility submits a Form R for a newly deleted chemical, must the facility submit a formal written withdrawal request to the Agency?

Covered facilities need not submit a formal written withdrawal request because the Agency does not enter a Form R received for a newly delisted toxic chemical into the TRI database. Facilities that submit Form Rs for that chemical will receive a Notice of Data Change informing the facility that the data on the Form R was not entered into the database due to the chemical's deletion from the toxic chemical list. The Agency does not, however, remove from the database information from Form R reports submitted for years during which the toxic chemical was listed as an EPCRA section 313 toxic chemical.

In the case where only certain forms of a toxic chemical are delisted, the Agency will not automatically exclude the Form Rs because the Agency cannot determine for which form of the chemical the threshold determinations and reported data were based. For example, non-aerosol forms of sulfuric acid were delisted on June 30, 1995 (60 FR 34182), making aerosol forms the only EPCRA section 313 reportable forms of sulfuric acid. In this case, without written clarification from the facility and review of the data submitted, the Agency cannot assume Form Rs submitted for sulfuric acid for reporting year 1994 represent reporting for only non-aerosol forms of sulfuric acid. Therefore, the Agency will enter the data as received, unless the facility submits a written revision or withdrawal request, as appropriate.

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Chemical Deletion; New Chemical; Toxic Chemical List

153. Any person may petition EPA to add or delete a chemical from the TRI list of covered chemicals (40 CFR Section 372.20(d)). What should a person include in a petition to add or delete a listed TRI chemical?

A petitioner should provide EPA with enough information concerning his or her request and as much credible scientific support documentation as can reasonably be developed to assist EPA in reviewing the petition. The following elements illustrate the type of information that would assist EPA in reviewing petitions: chemical identification, specific criteria elements, rationale, published literature citations, and unpublished information. The summary of the petition should include the following: name, address and telephone number of the petitioner, and a description of any organization that the person represents if applicable Actions requested (i.e., to add or delete chemicals).

In the case of additions, which of the criteria in EPCRA section 313(d)(2) the chemicals meet if more than one chemical is involved, a tabular summary of the specific chemicals should be provided with associated chemical abstract service (CAS) registry numbers. The body of the petition should be chemical-specific and should be structured so that each chemical and its CAS number are listed at the heading of the paragraph or page that describes it. The associated information elements could be presented under the following subheadings: the action requested (i.e., to add or to delete); the specific criteria elements that the chemical meets; the justification or rationale, including a statement explaining why the chemical meets or does not meet the stated criteria elements. A listing or attachment of the supporting documents should also be included with the petition.

The petition should be sent to the following address: Toxics Release Inventory Program Division (7410M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Additional information on the petition process is available in the February 4, 1987, Federal Register (52 FR 3479). Specific information on the metal compound category petition process is available in the May 23, 1991, Federal Register (56 FR 23703).

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Form R; test

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

Yes. The EPCRA lists have evolved since the statute was passed in 1986. As more information has become available on the hazards and toxicity of chemicals, EPA has responded by identifying chemicals to be added to or taken off the EPCRA lists; EPA expects to continue this activity. When chemicals are added to or taken off the EPCRA lists, EPA always publishes a notice in the Federal Register. The most recent instruction booklet for completing the Form R contains the updated chemical list. To obtain information on the latest additions or deletions from the list of EPCRA section 313 chemicals contact the EPCRA Hotline at 1-800-424-9346.

Hydrogen Sulfide; Reporting Requirements

155. Hydrogen sulfide (H2S) was originally added to the list of TRI covered chemicals in 1993; however, dating back to 1994, there has been an administrative stay for reporting hydrogen sulfide under EPCRA §313. What is the current status of the administrative stay on EPCRA §313 reporting requirements for hydrogen sulfide?

Hydrogen sulfide is included on the TRI list of chemicals reportable under EPCRA section 313 (40 CFR Part 372, Subpart D). Beginning with the 2012 reporting year (reports due July 1, 2013), the Administrative Stay is lifted and facilities are required to submit TRI reports for hydrogen sulfide.

Additional information regarding the lifting of the administrative stay on hydrogen sulfide is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/lifting-administrative-stay-hydrogen-sulfide.

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Activity Threshold; Applicability; De minimis; De minimis Exemption; Hydrogen Sulfide; Manufacture; Manufacturing; Mining; Mixture; Otherwise Use; Process; Processing; Reporting Requirements

156. The administrative stay for hydrogen sulfide (H2S) under EPCRA §313 was lifted in November 2011; therefore, facilities will be required to submit TRI reports for Reporting Year 2012 by July 1, 2013. Will there be any special applicability issues for the reporting of hydrogen sulfide?

The reporting requirements for hydrogen sulfide have not changed from those that have been in place since it was originally listed in 1993. Therefore, facilities should consider the following information in determining applicability:

a) Hydrogen sulfide is not a persistent bioaccumulative toxic (PBT) chemical. Therefore, it is subject to the standard activity thresholds of 25,000 pounds for manufacturing and processing and 10,000 pounds for otherwise use.

b) Hydrogen sulfide is listed without a chemical qualifier; therefore, it is subject to reporting in all forms in which it is manufactured, processed, or otherwise used.

c) For purposes of the *de minimis* exemption, the 1.0% level applies to hydrogen sulfide because it does not meet the Occupational Safety and Health Administrations definition of a carcinogen. Therefore, hydrogen sulfide is exempt in a mixture at a concentration lower than 1.0%.

Additional information about the reporting of hydrogen sulfide and the lifting of the administrative stay are available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/lifting-administrative-stay-hydrogen-sulfide.

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Reporting Requirements

157. Acetonitrile was included on the original list of chemicals subject to the reporting requirements under EPCRA §313; however, EPA has since received two petitions to have it removed from the list of covered chemicals. What is the status of the most recent petition for the removal of acetonitrile from the list of chemicals subject to reporting requirements under EPCRA §313?

On March 5, 2013, EPA published a notice in the Federal Register denying the petition to remove acetonitrile from the list of chemicals subject to TRI reporting requirements (78 FR 14241). After reviewing the available data on this chemical, EPA determined that acetonitrile does not meet the deletion criterion of EPCRA §313(d)(3). Specifically, EPA denied the petition because after a review of both the petition and available information, the Agency concluded that acetonitrile meets the listing criterion of EPCRA §313(d)(2)(B) due to its potential to cause death in humans.

Further information about the petition is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/acetonitrile-petition.

Threshold Determination

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

There are many ways a facility can identify the EPCRA section 313 chemicals it has on-site. Here are some: (1) look for Safety Data Sheets (SDS); (2) look at acquisition and procurement records; (3) examine existing environmental permits; (4) review process engineering records; (5) look at chemical composition sheets provided by suppliers; and (6) utilize professional knowledge.

Facility; Process

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

There are many ways a federal facility can identify the EPCRA section 313 chemicals it has on-site. Here are some: (1) look for Safety Data Sheets (SDS); (2) look at acquisition and procurement records; (3) examine existing environmental permits; (4) review process engineering records; (5) look at chemical composition sheets provided by suppliers; and (6) utilize professional knowledge.

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Manufacture; Process

160. A chemical manufacturing facility manufactures 20,000 pounds of benzene on-site for distribution and sale. The same facility purchases and then repackages and sells a cleaning mixture that contains benzene. Over the calendar year the facility repackages and sells (i.e., processes) 10,000 pounds of benzene in the cleaning mixture and sells the 20,000 pounds of benzene that is manufactured on-site. How many pounds of benzene should the facility count toward its processing threshold?

The facility should consider 30,000 pounds of benzene (the 10,000 pounds in the cleaning solution plus the 20,000 pounds of benzene manufactured and sold) toward the facility's processing threshold. When determining if a facility meets a chemical use threshold, owners and operators of covered facilities must consider each chemical use activity separately to determine if any one threshold has been met. For the purposes of EPCRA section 313, process means 'the preparation of a toxic chemical, after its manufacture, for distribution in commerce...' (40 CFR Section 372.3) A facility that creates a listed toxic chemical and then prepares it for distribution in commerce is both manufacturing and processing the listed toxic chemical and must consider the amount of the toxic chemical manufactured and processed towards both thresholds.

Threshold Determination

161. Are the thresholds for manufacture and process considered separately? That is, if a covered facility manufactures 24,000 pounds of toxic chemical A (a non-PBT chemical) and processes 24,000 pounds of toxic chemical A, does the facility need to report for toxic chemical A?

No. The facility does not have to report because it has not independently exceeded either threshold. Thresholds are considered separately for manufacture, process, and otherwise use of the same toxic chemical. Assuming that no individual threshold is met for chemical A (i.e., manufacturing, processing, or otherwise use), the facility does not trigger reporting for chemical A.

Activity Threshold

162. If I manufacture 74,000 pounds of a non-PBT toxic chemical and otherwise use 9,000 pounds, am I covered?

Yes. The facility has exceeded the manufacturing threshold of 25,000 pounds for the toxic chemical. Releases and other waste management from all activities including the 9,000 lb otherwise used of the toxic chemical at the facility are reportable.

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Process; Reclamation

163. Is the reclamation of elemental mercury from mercury retorting (e.g., recycled fluorescent lamps, contaminated phosphor powder, mercury batteries, and other sources) and the subsequent sale of the recovered mercury (e.g., for use in thermometers and other equipment) subject to the 10-pound processing threshold?

Yes. Mercury retorted from wastes and subsequently distributed into commerce should be counted towards the 10-pound processing threshold (40 CFR Section 372.28(a)).

Activity Threshold; Coincidental Manufacture; Definition of Otherwise Use; Off-site Waste

164. A covered facility, in treating for destruction listed toxic chemical A (a non-PBT chemical), which it receives from off-site, manufactures 11,000 pounds of chemical B, another listed non-PBT chemical. The facility subsequently disposes of chemical B on-site. Would the facility meet the manufacture or otherwise use threshold for chemical B?

This manufacture of chemical B is below the manufacturing activity threshold of 25,000 pounds. However, after January 1, 1998, the facility would also be otherwise using toxic chemicals A and B. Included in activities covered by EPA's revised interpretation of otherwise use is the disposal of a toxic chemical that is produced from the management of a waste that is received by the facility. In this example, because the facility received from off-site a waste containing a chemical that is treated for destruction (i.e., chemical A) and during that treatment produced and subsequently disposed of chemical B, the disposal of chemical B under EPA's revised interpretation would be considered otherwise used as well as the treatment for destruction of chemical A. Because the facility disposed of, or otherwise used, 11,000 pounds of chemical B, the 10,000 pound statutory threshold for the otherwise use of non-PBT chemicals has been met. Thus, the facility would need to report all releases of, and waste management activities involving chemical B. If the facility treats for destruction more than 10,000 lb of chemical A, it would also report for this toxic chemical.

Fumigants; Otherwise Use; Threshold Determination

165. Must releases of listed toxic chemicals used as fumigants be reported if the other criteria and thresholds are met?

Yes. Fumigant use would be subject to the otherwise use threshold.

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Relabel; Threshold Determination

166. Our facility domestically purchases a mixture containing toxic chemicals. We store it and then sell it to our customers without even opening the boxes. Must we report on these toxic chemicals?

No. Covered facilities must only report on those toxic chemicals that they manufacture, process, or otherwise use in excess of the applicable activity thresholds. Because relabeling or redistributing the toxic chemical where no repackaging of the toxic chemical occurs is not manufacturing, processing or otherwise using the toxic chemical (40 CFR Section 372.3), the facility is not conducting a reportable activity. Therefore, it does not need to apply these toxic chemicals to the reporting thresholds.

Threshold Determination; Warehouse

167. How are warehouses affected by Section 313?

A warehouse located within the physical boundary of a covered facility is part of the facility. Toxic chemicals manufactured, processed, or otherwise used at the warehouse are included in making threshold determinations and release and other waste management calculations for the toxic chemicals.

Facility; Manufacture; Otherwise Use; Process; Processing; Repackage; Threshold Determination; Warehouse

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

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

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Activity Threshold; Coincidental Manufacture; Facility; Form A; Form R; Manufacture; Manufacturing; Otherwise Use; Process; Releases; Waste; Waste Management Activities

169. A facility is in operation for the first three months of a reporting year, but does not exceed any activity thresholds for a listed TRI chemical and subsequently closes. The closed facility then demolishes buildings on the site. During this process, residual amounts of the TRI chemical are sent off-site for further waste management. Does the facility need to count quantities of the chemical managed during demolition towards activity thresholds?

Demolition of materials or equipment containing TRI toxic chemicals, by itself, is not a threshold activity. Any TRI toxic chemicals used to perform demolition should be counted toward the otherwise use threshold and any toxic chemicals coincidentally manufactured during demolition should be counted toward the manufacturing threshold. Therefore, if no TRI chemicals were used or manufactured during demolition and an activity threshold was not exceeded while the facility was in operation, the facility, while subject to TRI reporting, is not required to submit a TRI report.

However, if the facility exceeded an activity threshold while in operation during the first three months of the reporting year or the facility exceeded an activity threshold based on the activities in the first three months coupled with any otherwise use of toxic chemicals to perform the demolition and any coincidental manufacture of toxic chemicals during demolition, then any releases and other waste management activities during those three months as well as during demolition activities would need to be reported on a TRI reporting form. Releases must be reported on the Form R unless the criteria are met for submission of a Form A Certification Statement in lieu of a Form R.

Reporting Responsibility; NAICS Code Determination

170. An electricity generating facility in NAICS code 221112 combusts coal for generating power for distribution in commerce. A warehouse is located several miles away and stores materials for the electricity generating facility. While the warehouse serves as support to a covered facility, the warehouse does not combust coal or oil. Is the warehouse subject to EPCRA section 313?

No. Facilities in NAICS code 221112 are only covered by EPCRA section 313 if they also combust coal or oil for purposes of generating electricity for distribution into commerce. Since the warehouse does not combust coal or oil, it is not subject to reporting under Section 313.

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Auxiliary Facility; NAICS

171. A covered facility consists of three establishments. If a warehouse located on a non-contiguous/adjacent site 20 miles away solely supports one of the covered facility's establishments that is not within a covered NAICS code, is that warehouse considered a covered facility because of its status as an auxiliary facility?

No. The SIC system assigned SIC codes to auxiliary facilities according to the primary activity of the establishment that they served. However, the NAICS system does not recognize the concept of auxiliary facilities and assigns NAICS codes to all establishments based on their own activities. For the purpose of establishing consistency with the NAICS classification methodology, EPA changed its interpretation of the applicability of TRI reporting requirements to auxiliary facilities. As a result, some auxiliary establishments will no longer be subject to TRI reporting. Because the warehouse assumes a non-covered NAICS code, it is not a covered facility.

Concentration Range; Threshold Determination; Upper Bound

172. If a covered facility only knows the range of concentration of a Section 313 toxic chemical in a mixture, is it required to use the upper bound concentration to determine thresholds? Use of the average or midpoint of the range will avoid overestimating emissions. If a metal mixture contains a range of 1 to 10 percent of three metals together, how can this information be used to determine thresholds?

The upper bound should be used if the person knows only the upper bound concentration. For the combination of three toxic chemicals, the owner/operator of the facility should split the upper bound among the three toxic chemicals based on the knowledge that it has, so the total equals 10 percent. If a range is available, using the midpoint or average is reasonable. In this case, if there is a range of 1 to 10 percent of a mixture of three toxic chemicals, the facility would divide the midpoint (5 percent) by three. Therefore, the facility would assume 1.33 percent of each of the toxic chemicals in the mixture. The owner/operator of the facility does not have to assume 10 percent maximum for each toxic chemical.

Concentration Range; Mixture; Threshold Determination

173. A covered facility uses a mixture in its processing operations and knows only that the mixture contains less than 99.9 percent of four listed toxic chemicals (combined). How should it report?

The facility should proportion the amount of chemicals so that their total percentage equals 99.9 percent, since each one cannot physically be present at 99.9 percent. The percentage could be divided equally among the four, unless the facility has some basis for proportioning them differently.

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Concentration Range; Threshold Determination

174. A covered facility is told by its supplier that the mixture the facility receives contains as much as 80 percent of 4-aminobiphenyl, a listed toxic chemical, and as little as 20 percent. How should the facility estimate the concentration of 4-aminobiphenyl in this mixture?

If the facility knows the upper and lower bound concentrations in a mixture (i.e., 80 and 20 percent), it should use the midpoint of these concentrations for threshold determinations. In this instance, 50 percent should be used because it is the midpoint between 80 and 20 percent.

Concentration Range; Lower Bound; Threshold Determination

175. A covered facility receives a mixture from a supplier who only provides the lower bound concentration of a Section 313 listed toxic chemical in the mixture (e.g., more than two percent toluene). Should the covered facility use this information in threshold determinations for the listed toxic chemical?

The facility should subtract out the percentage of any other known components of the mixture to determine what a reasonable 'maximum' percentage of toluene could be (e.g., if the mixture contains 80 percent water then toluene can be no more than 20 percent). The facility then should use the midpoint of the 'minimum' and 'maximum' percentages in order to determine the pounds of toluene to apply toward the threshold. If no other information is available, the facility should assume that the 'maximum' is 100 percent.

Concentration Range; Mixture; Threshold Determination; Upper Bound

176. A covered facility knows that a mixture it processes contains up to 56 percent of mustard gas, a listed toxic chemical. How should the facility estimate the concentration of mustard gas in this mixture for threshold determinations?

If the facility knows only the upper bound concentration of the listed toxic chemical and has no other information about the concentration of the other components of the mixture, it should use this upper bound (i.e., 56 percent) for threshold determinations.

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Byproduct; Coincidental Manufacture; Concentration Information; Threshold Determination

177. A listed toxic chemical is manufactured as part of a mixture which is a byproduct. The facility does not know the specific concentration of the listed toxic chemical in this byproduct. For determining the threshold for Section 313, does the facility include this byproduct without knowing the specific concentration of the listed toxic chemical?

Because the reporting facility is manufacturing the toxic chemical mixture on-site, the facility is required to calculate the amount of the toxic chemical coincidentally manufactured during the reporting year based upon a reasonable estimate of the percentage of the toxic chemical in the mixture. This quantity is aggregated to determine if the facility exceeds the threshold for manufacturing.

Concentration Range; Facility; Mixture; SDS; Threshold Determination

178. If a covered facility receives a Safety Data Sheet (SDS) from its supplier that states that the concentration of the TRI substance in the mixture ranges between zero and 10 percent, can the facility estimate the concentration of the TRI chemical in the mixture by using zero as the lower bound?

No, a facility cannot estimate the concentration of a TRI chemical in a mixture by using zero as a lower bound concentration, even if the facility receives an SDS from a supplier stating that the concentration of a TRI substance is between zero and a stated upper bound. If an SDS shows zero as the lower bound of the concentration range, then the lower bound concentration is unknown, and the facility must use the provided upper bound for threshold determinations (40 CFR Section 372.30(b)(3)(ii)). Therefore, in the scenario above, since the facility only knows that the upper bound is 10 percent, it must calculate the amount of TRI chemical in the mixture based on the 10 percent concentration.

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Facility Construction; Threshold Determination

179. A covered manufacturing facility ceased operations at the beginning of the reporting year and construction work took place through July. At that time, the facility resumed manufacturing operations. Listed toxic chemicals were used at the facility during the construction phase. For purposes of threshold determinations and release and other waste management calculations under EPCRA section 313, does the facility include in its calculations the toxic chemicals used during construction when the facility was not in operation?

Yes. Since the facility is a covered facility, any covered activity of a listed toxic chemical will count toward an applicable threshold. Therefore, the toxic chemicals used during the construction phase would be counted toward threshold determinations. Releases and other waste management of a given toxic chemical, used during construction, would also be reported if, during the course of a reporting year, an activity threshold was exceeded for that toxic chemical. If the toxic chemical becomes a fixed part of the facility structure and is not process-related, then the structural component exemption may apply.

Metal Compounds; Threshold Determination

180. How are threshold determinations made for metal-containing compounds?

Threshold quantities for metal compounds are based on the total weight of the metal compound, not just the metal portion of the metal compound. The threshold quantities are determined by adding up the total weight of all metal compounds containing the same parent metal. However, release and other waste management calculations are based solely on the weight of the parent metal portion of the metal compounds. Note that there are a few metal compounds that are separately listed and are not counted in the metal compounds categories. For example, maneb (CAS number 12427-38-2) is a manganese compound that is a separately listed chemical and is not reportable under the manganese compounds category.

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Manufacturing; Metal Compounds

181. Is the conversion from one metal compound to another metal compound within the same metal compound category considered manufacturing for purposes of threshold determinations and release, and other waste management calculations?

Yes. The conversion of one metal compound to another metal compound within the same metal compound category is considered the manufacture of a metal compound, which must be considered toward threshold determinations. This is identical to how threshold calculations are derived for listed toxic chemicals in non-metal compound categories. The unique aspect for metal compounds, as compared to non-metal compounds within a listed compound category, is how amounts released and otherwise managed as waste are reported. As stated in the final rule (62 FR 23850; May 1, 1997), 'if a metal is converted to a metal compound or if a metal compound is converted to another metal compound,..., a metal compound has been manufactured as defined under EPCRA section 313.' However, provided that thresholds are exceeded, covered facilities are instructed to report only the amount of the parent metal contained in the metal compound for amounts released or otherwise managed as waste. If thresholds for both the elemental metal and its metal compounds have been exceeded, covered facilities have the option to submit one Form R that includes on their report the amounts of the elemental metal from the parent metal along with amounts of the metal portion from the metal compounds.

Compound Category; Compounds; Multiple Chemical Category; Release Reporting; Threshold Determination

182. How would a compound that falls into two reporting categories be reported (e.g., $PbCrO_3$) on the Form R?

A compound that has constituents in two listed categories would have to be included under both categories when submitting a Form R. In the example indicated, the total weight of $PbCrO_3$ must be included in determining the threshold for both lead compounds and in determining the threshold for chromium compounds. In reporting the releases and other waste management of lead, only the stoichiometric weight of the lead in $PbCrO_3$ released or otherwise managed as waste would be included. Likewise, only the chromium in $PbCrO_3$ that is released and otherwise managed as a waste would be included on the Form R.

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Chromium Compounds; Compounds; Lead; Lead Compounds; Metal Compounds; Threshold Determination

183. For Section 313 reporting requirements and threshold determinations, if a covered facility uses lead, lead chromate, and other chromium compounds, can they be considered separately or must they be combined into categories? When reporting releases and other waste management activities, must quantities of categories be determined as well?

Threshold determinations for metal containing compounds are made separately from parent-metal threshold determinations because they are listed separately under Section 313. In the scenario presented in the question, the facility would apply the quantity of the lead metal manufactured, processed, or otherwise used to the appropriate threshold for lead. The facility would apply the quantities of the lead chromate manufactured, processed, or otherwise used to the appropriate threshold for lead compounds and would apply the quantities of the lead chromate and other chromium compounds manufactured, processed, or otherwise used to the appropriate threshold for chromium compounds. However, a facility may, once a threshold has been met individually, combine the parent metal and its metal compounds for reporting. In completing the Form R, only the weight of the parent metal (not the entire compound weight) is to be considered.

Activity Threshold; Compounds; Facility; Form R; Fume or Dust; Manufacture; Metal Compounds; Metals; Otherwise Use; Process; Zinc

184. If a facility exceeds an activity threshold for both the parent metal and the metal compounds category for the same metal, can that facility file both chemicals on one EPCRA §313 Form R report?

Only elemental metals without a chemical qualifier can be reported with their associated metal category compound on a combined Form R report. Elemental metals with qualifiers that are only reportable if they are manufactured, processed, or otherwise used in a specific form(s) cannot be reported with their associated metal compound category on the same Form R. For example, a facility that exceeds an activity threshold for both zinc (fume or dust) and zinc compounds must not report both zinc (fume or dust) and zinc compounds on the same Form R.

Additional information on reporting metal category compounds and their parent metal can be found in the Toxic Chemical Release Inventory Reporting Forms and Instructions.

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Chromium; Metal Compounds; Threshold Determination

185. If a covered facility has a solution containing a chromium compound, does the facility need to report on the entire mixture or just the chromium when making a threshold determination under Section 313?

To determine if a facility meets an applicable threshold for the chromium compound (or any toxic chemical) in a solution, the facility is required to determine the weight percent of chromium compound in the solution and use that amount for the threshold determination (40 CFR Section 372.30(b)).

Electroplating; Process; Threshold Determination

186. A product is immersed into a plating bath containing nickel chloride (NiCl) to bond nickel to it prior to distribution in commerce. Nickel is incorporated into the final product whereas the chloride remains in the plating bath. Since nickel chloride is reportable under the nickel compound category of Section 313, which threshold applies?

The total weight of nickel chloride used in the plating bath is considered towards the facility's processing threshold determination. If the facility exceeds the threshold, the owner/operator would only report releases and other waste management of the nickel, the parent metal. Because the facility is also creating elemental nickel, the amount of nickel manufactured from nickel chloride is considered towards the manufacturing threshold. The facility is also processing the elemental nickel. If the facility exceeds thresholds for both chemicals independently, they may file one Form R for nickel and nickel compounds.

Metal Compounds; Metal Silicates; Mixture; Threshold Determination

187. A covered facility manufactures specialty glass products. The starting materials are primarily metal silicates which are ground into a powder, mixed, and heated. The resulting mixture, the specialty glass, has all the metal silicates melted together in a non-crystalline structure. Since the metal silicates do not exist by themselves in the mixture, how should a threshold determination be made?

The metal silicates are processed since they become incorporated into a product (the specialty glass) that is distributed in commerce. If the metal silicates still exist as the original metal silicates but just mixed together then each metal silicate that belongs to a particular metal compound category is included in the processing threshold calculations for that category. If the metal silicates have been reacted to produce another compound (i.e., if the specialty glass is not just a mixture of individual metal silicates but is another new metal compound) then the metal silicates have still been processed, but a new metal compound has also been manufactured and its weight (i.e., the whole weight of the glass) must be included in the manufacturing threshold calculations.

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Activity Threshold; Compounds; Emissions Factors; Facility; Fuel; Lead; Lead Compounds; Manufacture; Otherwise Use; Process; Processing; Releases; Waste

188. Are diesel, gasoline, and fuel oils reportable under EPCRA section 313?

Although diesel, gasoline, and fuel oils are not listed as TRI toxic chemicals, these products contain listed toxic chemicals that may be reportable under EPCRA section 313, if applicable activity thresholds are met. An EPCRA section 313 listed toxic chemical that is a constituent of a fuel that is combusted on-site is being "otherwise used" (62 FR 23834, 23851; May 1, 1997). In addition, the combustion of fuels can cause listed toxic chemicals to be generated, or "manufactured." Toxic chemicals in fuel that are prepared for distribution in commerce are "processed." For example, toxic chemicals in fuel contained in automobiles that are sold by a facility are considered toward the processing threshold. Estimated concentrations of toxic chemical constituents in crude oil and various petroleum products can be found in Table 3-4 of the Electricity Generating Facilities EPCRA section 313 Industry Guidance (EPA 745-B-00-004), in Table 2-2 of the Guidance for Reporting Toxic Chemicals: Polycyclic Aromatic Compounds Category (EPA 260-B-01-03), and in Table 4-8 of the Guidance for Reporting Releases and Other Waste Management Quantities of Toxic Chemicals: Lead and Lead Compounds.

Estimated quantities of certain toxic chemicals manufactured as a result of fuel combustion are provided in Tables 3-8, 3-9, and 3-11 in the Electricity Generating Facilities Guidance and in Table 2-3 of the Polycyclic Aromatic Compounds Guidance. Additional toxic chemical emissions estimates from fuel combustion are provided in the Compilation of Air Pollutant Emissions Factors (AP 42) and other resources available through EPAs Clearing House for Inventories and Emissions Factors.

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Fuel; Manufacture; Natural Gas; Threshold Determination

189. A covered facility purchases natural gas that contains EPCRA section 313 toxic chemicals. The facility uses the gas on-site to heat buildings and power equipment. Before the natural gas is used, the listed toxic chemicals are removed and destroyed in a flare. The definition of manufacturing in 40 CFR Section 372.3 states that, 'manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, otherwise use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct...' Are the toxic chemicals that are removed from the natural gas coincidentally manufactured, and hence subject to threshold determination under EPCRA section 313?

The removal and destruction of an EPCRA section 313 toxic chemical from a fuel before it is used by a facility is not considered an activity that falls under the definition of manufacturing, processing or otherwise use. Facilities that use natural gas in production processes sometimes need to remove impurities from the gas before it is used. Such a facility does not coincidentally produce toxic chemicals as byproducts, but merely separates and removes toxic chemicals already present in the gas. These chemicals would not be subject to threshold determinations for reporting under EPCRA section 313, and would not be subject to release and other waste management reporting unless an activity threshold is exceeded elsewhere at the facility. If the facility exceeds an activity threshold elsewhere, all releases and other waste management activities from the impurity removal process would be reportable.

Although these chemical impurities are usually destroyed, they could also be captured for further use at the facility or for sale as products, either of which would constitute a reportable activity under EPCRA section 313. If the chemicals are collected and sold as products or incorporated into products, they are considered processed and the amount of each chemical is applied toward its processing threshold. Otherwise use refers to any use of a toxic chemical that is not covered by the definitions of manufacture or process (40 CFR Section 372.3). If the chemicals are collected for further use at the facility or if the chemicals are combusted for energy recovery, the chemicals are considered otherwise used, and the amount of each chemical is applied toward its otherwise use threshold.

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Activity Threshold; Fuel; Process

190. A covered facility manufactures and repairs airplanes. Prior to beginning any repair work, any fuel remaining in the airplane's fuel tanks is emptied by service personnel at the facility. After the repairs are completed, the airplane is refueled with fuel removed from the airplane's fuel tanks and/or new fuel. Should the owner/operator of the manufacturing and repair facility consider the toxic chemicals present in the fuel when making Section 313 threshold and release and other waste management calculations?

Yes. For purposes of EPCRA section 313 threshold determinations and release and other waste management calculations, the listed toxic chemicals present in the fuel are considered to be processed because they are being repackaged and further distributed in commerce. Thus, the listed toxic chemicals present in the fuel are subject to the processing threshold.

Coal Combustion; Coincidental Manufacturing; Combustion Byproducts; Incomplete Combustion

191. A covered facility heats coal to approximately 2,000°F to drive off the volatiles from the coal to produce an activated carbon product. Is this activity considered coal combustion such that Section 313 metal compounds are manufactured in this operation?

Generally, activation of carbon or other organic material involves a two-step process. The first step consists of carbonizing the organic material, which is generally carried out by subjecting the material to temperatures in the range of 500 to 700°C (approximately 930 to 1,300°F). The second step, the activation process, may be chemically performed or it may also be conducted using temperatures typically in the 750 to 1,000°C range (approximately 1,380 to 1,850°F). Both activities occur at temperatures that are below the temperature posed in the question. In any case, while these are high temperatures, these ranges are not equivalent to the temperatures that take place during combustion. Based on available information, the temperature described in the question is not high enough to cause coal combustion. For example, furnaces may operate at temperatures above 1,400°C (approximately 2,550°F). The temperature described in the question may not result in many of the chemical conversions, such as the transformation of metal compounds, which are expected to occur during combustion. However, these temperatures may result in some conversions and the facility would need to determine what takes place based on their best available information and report as necessary.

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Non-isolated Intermediates; TSCA; Threshold Determination

192. The Toxic Substance Control Act (TSCA) does not regulate non-isolated reaction intermediates. Do these intermediates still need to be considered for threshold determinations and release and other waste management calculations for EPCRA section 313?

A covered facility owner/operator would need to consider the quantity of non-isolated reaction intermediates manufactured, processed, or otherwise used at the facility when determining thresholds and releases and other waste management activities for EPCRA section 313. There is no exemption for non-isolated intermediates under EPCRA section 313.

Activity Threshold; Incorporation; Otherwise Use; Process

193. What is the difference between process and otherwise use for the purposes of EPCRA section 313 threshold determinations?

Process implies incorporation; the function or intent of the toxic chemical is dependent upon becoming a part of a product. Otherwise use implies non-incorporation; the function of the toxic chemical is not dependent upon becoming a part of a product. Beginning with reporting year 1998, otherwise use will include the on-site disposal, treatment for destruction and stabilization of toxic chemicals in wastes received from off-site for the purposes of further waste management. Otherwise use will also include the on-site disposal, treatment for destruction, or stabilization of toxic chemicals produced from the management of wastes received from off-site.

Acid Aerosol; Facility; Manufacturing; Process; Reuse; Storage; Sulfuric Acid; Threshold Determination; Waste

194. When making threshold determinations under EPCRA section 313, must a person count any amount of a toxic chemical that is created at a facility toward the manufacturing threshold, even if the chemical is almost immediately destroyed?

Yes. Any time a toxic chemical (or the reportable form of a qualified toxic chemical) is generated at a facility, it must be counted toward the manufacturing threshold. This is the case regardless of whether the chemical is created actively or passively, intentionally or unintentionally, in a process stream or in a waste stream, and regardless of how long the chemical exists at the facility or whether it is an isolated or non-isolated intermediate. [Note that there are special exceptions to this rule for sulfuric acid and hydrochloric acid aerosols generated in acid reuse systems and storage tanks. Please see EPCRA section 313 Guidance for Reporting Hydrochloric Acid and EPCRA section 313 Guidance for Reporting Sulfuric Acid.]

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PCB; Threshold Determination; Transformer: PCBs

195. A covered manufacturing facility removes PCB-laced oil that was contained in its on-site transformers. Would this activity be considered processing or an otherwise use of the PCBs, a listed toxic chemical, if the facility only extracts the PCB to dispose of it off-site?

If the PCB-laced oil is removed from an on-site transformer for disposal and is not replaced with clean PCB-laced oil, this would not be considered processing or an otherwise use. Removal of a toxic chemical from an article for disposal does not constitute a process or otherwise use activity. Therefore, this activity would not be subject to threshold determinations and release and other waste management reporting under EPCRA section 313.

Activity Threshold; Otherwise Use; Paint; Process

196. Paint containing listed toxic chemicals is applied to a product and becomes part of an article. Does the processing threshold apply? What about the volatile toxic chemicals from the painting operation - are they otherwise used?

Yes. This is a case in which different listed toxic chemicals in the same mixture may have different uses and therefore, different thresholds. The listed toxic chemicals that are incorporated as part of the coating are processed, whereas the volatile solvents in the paint are otherwise used because their function is such that they do not become incorporated into the article.

Facility; Form R; Otherwise Use; Process; Processing; Releases; Threshold Determination; Waste

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

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

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Off-site Waste; Otherwise Use

198. A covered facility receives a waste containing 13,000 pounds of a listed, non-PBT chemical. The facility disposes of 5,000 pounds of the toxic chemical and stabilizes the other 8,000 pounds of the chemical. Does the facility meet a Section 313 chemical activity?

Until January 1, 1998, this facility would not be manufacturing, processing or otherwise using the listed toxic chemical. However, beginning January 1, 1998, the facility would be otherwise using the toxic chemical. Because the facility received the 13,000 pounds of the toxic chemical in wastes received from off-site for the purposes of further waste management, the amount of the toxic chemical that is subsequently stabilized or disposed on-site is considered otherwise used at the facility for the purpose of threshold determinations. The facility would need to add the amount of the toxic chemical that is involved in all otherwise use activities to determine whether the otherwise use threshold of 10,000 pounds for non-PBT chemicals has been exceeded. In this case, 13,000 pounds of the chemical would be considered otherwise used.

Form R Submissions; Part II Section 3

199. A metal mining facility manufactures, processes, and otherwise uses cyanide compounds, but only exceeds the otherwise use threshold. How should this facility complete Part II, Section 3 of the Form R?

Even though the covered facility only exceeds the otherwise use threshold, it is required to identify all manufacturing, processing, and otherwise use activities and check at least one box in Part II, Sections 3.1, 3.2, and 3.3. The Forms and Instructions document directs facilities to check all the boxes in Section 3 that apply. Note that once a threshold has been exceeded for a listed toxic chemical, the facility must report releases and other waste management activities associated with all nonexempt activities at the facility, and not just those associated with otherwise use activities.

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Activity Threshold; Recordkeeping

200. A covered facility exceeds a threshold for manufacturing copper compounds and keeps documentation to justify its manufacturing threshold determination. The facility frequently otherwise uses various mixtures containing copper compounds during the year. Must the facility track their otherwise use of copper compounds and document that usage?

Yes, the facility must track its otherwise use of the copper compounds. However, because the facility has already exceeded the threshold for manufacturing, the facility does not have to track the copper compounds for the purpose of determining if the otherwise use threshold has been exceeded, but instead must track its otherwise use of the copper compounds to properly fill out all applicable sections of the reporting form. In short, if a facility exceeds an activity threshold it must report on all activities at the facility involving the chemical, except for those activities that qualify for an exemption provided for in 40 CFR Section 372.38. (40 CFR section 372.25(c)) And because the facility must report the otherwise uses, the facility must satisfy the recordkeeping requirements of 40 CFR section 372.10.

Compounds; Copper Compounds; Metal Compounds; Threshold Determination

201. We manufacture and use copper wire. We also use copper compounds in various parts of our processes. The Section 313 list contains both copper and copper compounds. Should we combine these categories for our determination of thresholds and reporting? Do we report the release and other waste management of copper compounds as copper metal?

Copper and copper compounds are separate entries on the Section 313 list, and therefore threshold determinations should be made separately. Copper compounds are a listed category and will include the aggregate of all copper compounds (other than the free metal). For copper compounds, report releases and other waste management activities as copper (e.g., as the copper ion in wastewater), not as the total mass of copper compounds. If a facility exceeds thresholds for both the parent metal and compounds of the same metal, EPA allows the facility to file a combined report (e.g., one report for copper compounds and copper metal).

Metal Compounds; Threshold Determination

202. Do we count the nonmetal portion of metal compounds?

The nonmetal portion of metal compounds is included in threshold determinations but not in release and other waste management calculations.

DRAFT

Compounds; Cyanide Compounds; Electroplating; Metal Compounds; Process; Threshold Determination

203. An electroplating facility uses metal cyanide compounds in their electroplating operations. Are they processing or otherwise using those cyanide compounds? How do they determine whether they meet the threshold, and which threshold applies?

The parent metal is plated onto a substance electrochemically. The metal compounds are processed, and the cyanide compounds are processed because the metal cyanide is the source of the metal that is plated and subsequently distributed in commerce. Metal cyanides are reportable as both cyanide compounds and metal cyanides. The total compound weight is applied for threshold determinations for both categories.

Compounds; Metal Compounds; Threshold Determination

204. An oxidation/reduction reaction that occurs as part of a waste treatment operation results in the formation of 2,500 pounds of lead chromate. How must a threshold determination be made for this compound?

Lead chromate meets the criteria for both a lead compound and a chromium compound. In such cases, the total amount of the compound manufactured, processed, or otherwise used must be applied to the threshold determination for both metal compound categories. The weight of the entire compound, not the weight of the parent metal, is applied for the threshold determination of each metal compound category.

Hazardous Waste; Otherwise Use; Waste Management Activities

205. Is the transfer of hazardous waste containing a Section 313 toxic chemical from one container or tank considered waste management for the purposes of the definition of otherwise use?

No. On-site container and on-site tank transfers do not constitute a waste management activity as described in the preamble to the May 1, 1997 final rule (62 FR 23834). Such transfer activities are not considered manufacturing, processing, or otherwise using activities in themselves. However, if the facility elsewhere exceeds a threshold because of other activities, any releases and other waste management associated with the transfer operations must be reported appropriately in Sections 5 and 8 of the Form R.

DRAFT

Otherwise Use; Treatment for Destruction

206. A covered facility has a commercial wastewater treatment operation and receives wastewater containing toxic chemicals from off-site. During treatment, most of the toxic chemicals are destroyed on-site. The remainder is sent off-site for incineration. Should the facility count the entire amount of the toxic chemical received from off-site towards its otherwise use threshold?

No. The facility should count only the amount of the toxic chemical that is treated for destruction on-site. The amount of the toxic chemical sent off-site for incineration would not be applied towards the facility's threshold determination. However, if the facility exceeds a threshold for that chemical, it must report the amount treated for destruction on-site in Part II, Section 8.6, and the amount sent off-site for incineration in Part II, Sections 6.2 and 8.7.

Activity Threshold; Otherwise Use

207. A covered facility manufactures 11,000 pounds of chemical A, a listed non-PBT chemical from the treatment of another toxic chemical which was received from off-site. The facility disposes of 6,000 pounds of chemical A and uses 5,000 pounds of chemical A in a non-incorporative, manufacturing activity at the facility. Does this facility meet an activity threshold?

Prior to January 1, 1998, this facility would not meet the manufacturing threshold of 25,000 pounds for chemical A nor would it have met the otherwise use threshold of 10,000 pounds because it only otherwise used 5,000 pounds. However, after January 1, 1998, the facility would meet the otherwise use threshold for chemical A. Both the on-site disposal and the non-incorporative activities are considered to be otherwise use activities. The on-site disposal of chemical A is included among the various activities covered by EPA's revised interpretation of otherwise use. The facility would add the amounts of chemical A involved in both otherwise use activities at the facility to determine whether they exceed the 10,000-pound otherwise use threshold for non-PBT chemicals. Since the total amount of chemical A that is otherwise used is 11,000 pounds, the facility would need to report on all releases and other waste management activities involving chemical A.

DRAFT

Disposal; Facility; Manufacture; Manufacturing; Metals; Otherwise Use; Process; Waste

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

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

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

Otherwise Use

209. A facility receives waste containing a toxic chemical from off-site, and disposes of the waste on-site. Should the facility count the toxic chemicals in the waste towards the otherwise use threshold upon receipt of the waste shipment (e.g., signing the hazardous waste manifest), or upon actual disposal?

The facility must count the amount of the toxic chemical towards its otherwise use threshold upon actual disposal of the waste. Toxic chemicals are applied toward the otherwise use threshold upon the performance of that activity. The facility does not otherwise use the toxic chemical in the waste received from off-site until the facility disposes of the waste on-site.

Activity Threshold; Process vs. Otherwise Use; Wastewater Treatment

210. Would a chemical used only for wastewater treatment be considered processed or otherwise used for determining the threshold level?

Because its function (to treat wastewater) is such that it is not intended to be incorporated into a product distributed in commerce, the toxic chemical would be otherwise used.

DRAFT

Otherwise Use; Phase Separation; Treatment for Destruction

211. If a toxic chemical is derived from the phase separation of wastes received from off-site and that chemical is subsequently incorporated into a product at the facility and then distributed into commerce, has the toxic chemical been processed or otherwise used?

If a facility receives materials containing toxic chemicals from off-site for further waste management and the toxic chemicals are treated for destruction, stabilized, or disposed on-site, the facility would be otherwise using the toxic chemicals. However, during phase separation the toxic chemical in the waste is not actually destroyed. Furthermore, the toxic chemical is incorporated into a product at the facility and is further distributed in commerce (e.g., retorted mercury sold for reuse in thermometers and mercury switches). Thus, as long as the toxic chemical coming from the waste is not stabilized, treated for destruction, or disposed, it would not be otherwise used because it is neither treated for destruction nor disposed on-site. Because it is distributed in commerce, it would be processed. Once a facility exceeds a threshold for a particular toxic chemical, amounts of that chemical that are released or otherwise managed as a waste must be calculated for all on-site activities.

Employee Threshold; Overtime

212. How does a facility consider overtime worked by full-time employees?

For purposes of determining the facility's employee threshold, the actual number of hours worked are considered and, therefore, the facility should count the overtime hours for any employee that directly supports the facility

DRAFT

Definition of Otherwise Use; Treatment for Destruction; Waste Management Activities

213. A covered facility receives an organic waste stream from off-site for the purposes of further waste management. The facility treats the organic toxic chemicals for destruction. This waste contains a small fraction of Section 313 metal compounds. The metal fraction of this waste is either stabilized and disposed on-site or sent off-site for disposal without stabilization. Should these Section 313 metals be considered towards the facility's otherwise use threshold?

The chemicals in the organic fraction of the waste received from off-site that undergo treatment for destruction are counted towards the otherwise use threshold. Additionally, the metals that are stabilized and disposed on-site are counted towards the otherwise use threshold. Any of the toxic chemicals in wastes received from off-site that are not treated for destruction, stabilized or disposed of on-site do not meet the definition of otherwise use and are not counted towards this threshold. Therefore, the metals fraction of the waste stream that is sent off-site for disposal is not counted towards this threshold. If, however, a threshold is exceeded for these metals elsewhere in the facility, the transfer off-site for further waste management of the parent metal should be reported in Part II, section 6.2 and 8 of the Form R. Additionally, the possibility exists for new chemicals to be created during on-site treatment, disposal, or stabilization. If a new section 313 chemical is created, it must be considered towards the facility's manufacturing threshold.

Otherwise Use; Release Reporting; Releases; Underground Injection; Waste Disposal

214. A covered toxic chemical manufacturer receives other facilities' wastes containing listed toxic chemicals and disposes of them in their deep well. Does the receiving facility need to report these toxic chemicals?

Starting with reporting year (RY) 1998, this is a reportable activity and the quantity disposed of would be applied to the otherwise use threshold. However, prior to RY 1998 the receiving and disposing of toxic chemicals would not be factored into a threshold determination because it does not fit any definition of process or otherwise use. However, even prior to RY 1998, if the manufacturing facility manufactures, processes, or otherwise uses the same listed toxic chemical above the threshold amount, the disposal of other facilities' wastes containing this listed toxic chemical would be reported as a release on the Form R even though the amount of the listed toxic chemical in these wastes was not included in the threshold determination.

DRAFT

Facility; Form R; Manufacture; Otherwise Use; Process; Releases; Testing; Waste; Waste Management Activities; Waste Treatment

215. A facility purchases an EPCRA 313 toxic chemical and uses it to treat a waste stream on-site. The toxic chemical (the "treator") chemically converts during the process of treating the on-site waste stream. Is the facility required to report the Section 313 treator toxic chemical as "treated on-site" in Part II, Sections 7A and 8.6 of the Form R?

When a facility treats a waste stream with a toxic chemical that is not a waste or part of a waste stream prior to its use as a treator, the facility should not report the toxic chemical (the treator) as "treated on-site" in Sections 7A or 8.6 of the Form R, even if it becomes chemically converted or destroyed during the treatment process; the facility should include the amount of the treator chemical used in this process toward the facility's otherwise use threshold. If, however, a facility treats a waste stream with a toxic chemical that is, itself, a waste or part of a waste stream prior to the treatment process, the facility must report the toxic chemical as "treated on-site" in Sections 7A and 8.6 of the Form R if it becomes chemically converted or destroyed during the treatment process (see: Toxic Chemical Release Inventory Reporting Forms and Instructions, Section D.7).

Activity Threshold; Ammonia; Coincidental Manufacture; Process; Waste

216. A covered facility renders byproduct animal parts and blood into protein for use as animal feed. The byproduct animal parts and blood may contain nitrogen compounds, which when they decompose generate ammonia. The ammonia is therefore incorporated into the protein product that is distributed in commerce. Is the ammonia subject to Section 313 reporting?

Yes. The ammonia is being coincidentally manufactured as a result of the decomposition of the byproduct animal parts. The ammonia is also being processed since it is incorporated into the end-product. Therefore, the ammonia in the byproducts is subject to both the manufacturing and processing thresholds under EPCRA section 313.

Container Size; Repackage

217. Does it matter for purposes of determining the processing threshold if amounts that are received in smaller containers are removed from the smaller containers and repackaged into a larger container prior to their distribution in commerce?

No. The act of transferring any amount from one unit container to another prior to distributing the material in commerce constitutes the act of processing. The size of the container does not matter.

DRAFT

Breaking the Seal; Repackage

218. Does breaking the integrity of the package that contains the toxic chemical constitute repackaging?

No. The listed toxic chemical must be transferred from one package to another in order for the listed toxic chemical to be considered repackaged.

Process; Repackage

219. A covered facility receives shipments of an EPCRA section 313 listed toxic chemical in rail cars. The listed toxic chemical is transferred from the rail cars into large tank trucks for distribution to customers. The quantity of the listed toxic chemical held in the tank trucks is approximately equivalent to the amount held in the rail cars. Would the transfer of the listed toxic chemical from the rail cars to the tank trucks be considered repackaging and therefore included in processing threshold determinations?

Yes. All activities involving the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce are to be included in the processing threshold determination for that chemical. The Agency defines processing to include '...the preparation of a chemical for distribution in commerce in a desirable form, state, and/or quantity (i.e., repackaging)...' (53 FR 4506; February 16, 1988). The act of removing a listed toxic chemical from one container and placing it in another is considered repackaging, regardless of the size of the containers involved. As such, the facility must include any amounts of a listed toxic chemical transferred from the rail cars to the tank trucks in its processing threshold for that chemical.

Lab Packs; Processing; Repackage

220. Lab packs and hazardous waste in general tend to move progressively from smaller containers to larger containers. Is this repackaging activity covered by the processing threshold?

Repackaging toxic chemicals in hazardous waste may be covered by the processing threshold. For an activity to be considered processing under EPCRA section 313, the toxic chemical must be prepared for distribution in commerce. If the listed toxic chemical is not removed or taken from the smallest unit, but is simply placed in a larger container while the contents remain in the smaller container, then the listed toxic chemical is not considered to be repackaged. If the listed toxic chemical is taken out of the smallest unit container and is transferred to another container, it is considered repackaged. However, if, after the toxic chemical has been repackaged, it is not distributed in commerce (e.g., instead of being distributed in commerce, it is sent off-site for disposal or treatment) the activity is not a covered processing activity under EPCRA section 313. It would only be considered processed if the toxic chemicals in the lab packs, after being repackaged, are sent off-site for recycling or for further use or reuse.

DRAFT

Activity Threshold; Process; Repackage

221. Does the placing of a bulk liquid containing a small percentage of a Section 313 toxic chemical into small bottles for consumer sale constitute a reportable/threshold activity of the mixture?

Yes, repackaging for distribution in commerce is a type of processing (40 CFR Section 372.3). If the bulk liquid contains a Section 313 listed non-PBT chemical in excess of the *de minimis* level or a listed PBT chemical at any concentration, the toxic chemical in the liquid would have to be factored into calculations in determining whether the processing threshold is exceeded for that toxic chemical.

Activity Threshold; Process; Repackage

222. A multi-establishment facility, with a primary NAICS code 324 operates a petroleum bulk plant, with NAICS code 424710. The bulk plant receives gasoline from tanker trucks and stores the gasoline in storage tanks on-site. The facility also loads other tanker trucks with gasoline that distribute the gasoline to service stations. Are the listed toxic chemicals in the gasoline processed, otherwise used, or neither?

Since the facility repackages the gasoline by transferring it between trucks and bulk storage containers for further distribution into commerce, the facility is processing the listed toxic chemicals in the gasoline.

Activity Threshold; MDI; Otherwise Use; Process

223. A covered facility uses methylene bis(phenylisocyanate) (MDI) as an ingredient in the making of packing foam. When blown into foam, the MDI reacts to form a polymer. This foam is then packed with metal parts and shipped from the facility. Is the facility processing or otherwise using the MDI?

The MDI would be subject to the processing threshold, since it is incorporated into a product that is further distributed in commerce.

Repackaging via Pipeline

224. A petroleum bulk plant receives petroleum via pipeline. The petroleum goes from the pipe into a storage tank and exits the facility again through the pipeline. It is then sent to another petroleum bulk plant within the same company but located on non-contiguous and non-adjacent property, which distributes the petroleum into commerce (i.e., their customers). Did the first plant repackage and therefore process the petroleum?

Yes. The petroleum received via pipeline, stored and subsequently transferred to another facility has been repackaged and the listed toxic chemicals have been distributed in commerce. Amounts of listed toxic chemicals contained in the amount repackaged must be considered toward the processing threshold.

DRAFT

Economic Benefit; Intracompany Transfer; Process

225. Company A stores oil at their Storage Facility 1. Company A transfers oil from Storage Facility 1 to their Storage Facility 2 (a separate facility for EPCRA section 313 purposes). From Storage Facility 2, the oil is distributed to customers. Does the transfer from Storage Facility 1 to Storage Facility 2 constitute processing on the part of Storage Facility 1?

Yes. Under EPCRA section 313, processing means the preparation of a listed toxic chemical after its manufacture, for distribution in commerce (40 CFR Section 372.3). Distribution in commerce includes any distributive activity in which benefit is gained by the transfer, even if there is no direct monetary gain. Listed toxic chemicals that are shipped from one facility to another facility under common ownership are considered to be distributed in commerce. Although the chemical in the product is not distributed to the general public, the preparing facility does derive economic benefit by transferring the listed toxic chemical, as both facilities are under common ownership. The amount of listed toxic chemical prepared at the facility must be counted towards the processing threshold.

Repackage

226. A covered facility receives a chemical in bulk, repackages the chemical into reusable containers that are sent to customers, who then return the containers to be refilled. How does the facility consider residual amounts of the product returned to the facility in used containers, which are then subsequently refilled and redistributed in commerce?

When the facility originally places the toxic chemical into the reusable containers, the facility is processing toxic chemicals. Because the residual amounts that are returned to the facility in the reusable containers are not transferred to other containers or packages, the residual amounts have not been repackaged. Therefore, the listed chemicals in the residual amounts do not have to be considered toward the facility's processing threshold again.

Processing; Repackaging

227. A covered facility receives a chemical in bulk and repackages it into smaller containers that are sent to consumers. Are amounts repackaged considered toward an activity threshold?

Amounts of the toxic chemical that a covered facility repackages for distribution in commerce must be considered toward the processing threshold.

DRAFT

Recycle; Repackage

228. After an EPCRA section 313 toxic chemical is spent, a covered facility removes waste containing the toxic chemical from the production process and places it into drums. The facility sends these drums containing 30,000 pounds of the toxic chemical off-site to be recycled. The facility exceeds the 25,000-pound processing threshold for this toxic chemical and is required to file a Form R for the listed toxic chemical. What is the appropriate box to check in Part I, Section 3.2 of the Form R?

All activities involving the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce are to be included in the processing threshold determination for that chemical. The act of repackaging an EPCRA section 313 toxic chemical and then transferring it off-site for recycling is considered processing. As such, facilities sending toxic chemicals in wastes off-site for recycling should check 'repackaging' in Part I, Section 3.2 of the Form R.

Activity Threshold; Process; Redistribute; Storage

229. If a person is simply storing and redistributing a toxic chemical without repackaging it, is this activity considered processing of the toxic chemical for Section 313 purposes?

No. The term process means the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce. Because the toxic chemical is not repackaged but is merely redistributed, the facility is not processing the toxic chemical.

Activity Threshold; Process; Repackage

230. A covered facility receives a shipment of five-gallon cans of paint containing a listed toxic chemical. The facility breaks up the shipment into separate five-gallon cans and packages each can in a box with a paint brush for sale. Is the listed toxic chemical repackaged and thus processed for purposes of EPCRA section 313?

No. 'Repackaging' refers to the act of removing a toxic chemical from one container and placing that toxic chemical into another container. Simply repackaging one container (that contains a toxic chemical) into another container does not constitute processing of that listed toxic chemical under EPCRA section 313. The nesting of containers is not repackaging for EPCRA section 313 purposes.

DRAFT

Breaking the Seal; Repackage

231. A facility receives a waste from off-site, samples the waste, and then sends the remaining waste off-site to be recycled without changing the packaging. Has the facility processed the listed toxic chemical in the waste?

No. Provided that the listed toxic chemical transferred to the off-site facility remains in the packaging in which it was received, it has not been repackaged. The facility has simply opened the original package for sampling and transferred the listed toxic chemical to another facility. Because no repackaging has occurred, no processing has taken place.

Activity Threshold; Energy Recovery; Off-site Transfer

232. A treatment, storage, and disposal (TSD) facility receives waste from off-site containing a listed toxic chemical, blends the waste with a fuel to increase its heat value, repackages the blended fuel in different container(s), and then transfers the waste off-site to a cement kiln that burns the waste. Is this facility manufacturing, processing, or otherwise using the toxic chemical contained in this waste received from off-site for the purposes of further waste management?

No. The repackaging and subsequent transfer off-site of EPCRA section 313 toxic chemicals in waste fuel for burning for energy recovery is not, in itself, a covered manufacturing, processing, or otherwise use threshold activity as those terms are defined in the EPCRA section 313 regulations (40 CFR Part 372). Therefore, covered facilities are not required to consider the repackaging and subsequent transfer off-site of toxic chemicals for energy recovery to any type of boiler or industrial furnace (as defined in 40 CFR Section 372.3) toward threshold calculations.

Similarly, toxic chemicals in waste that are repackaged and sent off-site for disposal or for treatment for destruction would likewise not be considered toward a facility's manufacturing, processing, or otherwise use threshold determination. Covered facilities should keep in mind, however, that if they exceed an activity threshold elsewhere at the facility for the listed chemical contained in the waste fuel, the facility should report the quantity of the toxic chemical in the waste fuel sent off-site for energy recovery in Part II, Section 6.2 and Section 8 of the Form R.

DRAFT

Chemical Conversion; Copper; Electroplating; Metal Compounds; Metals; Threshold Determination

233. In an electroplating operation, a facility uses an elemental copper anode and an electrolyte solution containing a copper compound. During the electrolytic process, elemental copper is deposited at the cathode (the item being plated). As elemental copper is plated out at the cathode, copper goes into solution at the anode forming a copper compound. For purposes of EPCRA section 313, how would the facility make threshold determinations for copper and copper compounds?

The electroplating of copper is a two-step process in which the elemental copper from the anode is converted into a copper compound in solution and the copper compound in solution is converted to elemental copper.

A constant concentration of copper compounds is thus maintained in the electrolytic solution surrounding the electrodes. In such an electrolytic cell, four separate thresholds are applicable for purposes of EPCRA section 313:

a) The amount of copper anode consumed counts towards a processing threshold for elemental copper (since its purpose is to provide copper to the cathode, via the bath).

b) The amount of copper compound generated in the electrolytic solution (as a result of oxidation of elemental copper at the anode) would count towards a manufacturing threshold for copper compounds.

c) The amount of copper compound converted to elemental copper in the electrolytic solution counts toward a processing threshold for copper compounds (since it is available for reduction at the cathode).

d) Finally, the amount of copper deposited at the cathode would count towards a manufacturing threshold for elemental copper (since elemental copper is being produced from a copper compound).

For example, a facility uses up 15,000 pounds of copper anode per year (the anode is composed of elemental copper). The elemental copper is processed by manufacturing 37,000 pounds of copper sulfate (copper sulfate ($CuSO_4$) is 40 percent copper by weight and, in this example, is the form in which copper exists in the electroplating bath). The copper sulfate is then processed by manufacturing 15,000 pounds of elemental copper. The following quantities would apply to TRI reporting thresholds:

Chemical or Chemical Category	Manufacture	Process
Elemental Copper	15,000 lb	15,000 lb
Copper Compounds	37,000 lb	37,000 lb ($CuSO_4$)

The facility would file a Form R for ‘Copper Compounds’ because it exceeds the manufacturing and processing thresholds for a copper compound.

DRAFT

Activity Threshold; Electroplating; Metal Compounds; Otherwise Use; Process

234. A covered electroplating facility uses copper cyanide as its source of copper in plating baths in their electroplating operation. Are they manufacturing, processing, or otherwise using this compound? How do they determine whether they meet the activity threshold and how are releases and other waste management activities reported for this chemical?

In this process the copper cyanide is both manufactured and processed. The copper cyanide is created in the plating solution, and the amount created should be counted towards the 25,000-pound manufacturing threshold. The copper cyanide is also being processed since the copper from the copper cyanide is plated onto an object that is to be distributed in commerce. Thus, the copper cyanide used in this process should be counted towards the processing threshold for both copper and cyanide compounds.

The copper cyanide is both a copper compound and a cyanide compound and is reportable under both the copper compounds category and the cyanide compounds category. The total weight of the copper cyanide is to be counted towards the thresholds for both categories. However, for reporting releases and other waste management activities, the total weight of the copper cyanide is to be reported under the cyanide compounds category, but only the weight of the copper is to be reported under the copper compounds category.

Chemical Qualifier; Compounds; Cyanide Compounds

235. In the Federal Register, (53 FR 4538; February 16, 1988) EPA describes cyanide compounds as X^+CN^- where $X=H^+$ or any other group where a formal dissociation may occur; examples are KCN and $Ca(CN)_2$. Are cyanide compounds that do not dissociate reportable?

Cyanide compounds that do not dissociate are not reportable. However, dissociable cyanide compounds are not limited to the simple salts. Rather, this category includes all cyanide compounds for which dissociation upon release to the environment is expected to occur.

DRAFT

Manufacturing; Multiple Activity Thresholds

236. At a mining facility, sulfuric acid aerosol is sprayed onto a copper ore pile to leach copper sulfate for further processing. How should the facility make threshold determinations for sulfuric acid?

Sulfuric acid is reportable only in aerosol form. Therefore, the facility manufactures sulfuric acid (acid aerosol) each time the acid passes through the spray mechanism. In this particular example, the acid converts to copper sulfate, which is subsequently reacted to generate sulfuric acid and is applied to the ore pile. Because the facility generates another listed toxic chemical (copper sulfate), the facility must count the amount of sulfuric acid (acid aerosol) manufactured each time it passes through the spray mechanism, and apply this amount to the manufacturing threshold of 25,000 pounds for sulfuric acid (acid aerosol), in addition to considering amounts of copper sulfate that are also manufactured. Because all the sulfuric acid (acid aerosol) manufactured is subsequently otherwise used, the facility must apply this same amount towards the otherwise use threshold of 10,000 pounds. Facilities are also directed to refer to the Guidance for Reporting Sulfuric Acid (EPA-745-R-97-007; November 1997) for further assistance.

Multiple Activity Thresholds

237. At a covered mining facility, hydrochloric acid aerosol is sprayed onto an ore pile to leach minerals for further processing. According to Guidance for Reporting Sulfuric Acid, the total volume of acid should be counted towards the manufacturing threshold of 25,000 pounds. Should this quantity also count towards the otherwise use threshold?

Yes, because the facility is otherwise using the hydrochloric acid (acid aerosol) as a leaching agent to enable minerals leached to then be processed.

Cyanide Compounds; Gold Leaching Operations; Multiple Activity Thresholds

238. A covered metal mine uses cyanide compounds in a gold leaching operation to extract gold from ore. The cyanide compound reacts with gold to form gold cyanide. The gold cyanide is then reacted to generate gold metal and sodium cyanide. The sodium cyanide is used to leach more gold from the ore pile. How should the covered metal mine consider these cyanide compounds for EPCRA section 313 threshold purposes?

In the gold leaching operation, the covered mine is otherwise using, processing, and manufacturing cyanide compounds. The cyanide compounds that react with the gold in the ore (e.g., sodium cyanide) are otherwise used. The gold cyanide manufactured in this reaction are considered towards the facility's manufacturing threshold for cyanide compounds. The gold cyanide compound is also processed as a reactant because the gold from the compound is distributed in commerce.

DRAFT

Compounds; Facility; Manufacture; Mining; Otherwise Use; Process; Reuse; Sulfuric Acid; Threshold Determination

239. A mining facility uses sodium cyanide to leach gold from an ore pile. The leaching produces a solution of gold cyanide compounds, which is further processed to extract the gold from the cyanide compounds. The remaining cyanide is converted back to sodium cyanide for reuse on the leach pile. How should the facility calculate the amount of cyanide compounds manufactured and otherwise used? Since cyanide compounds are manufactured prior to each use, should the facility use the method outlined for sulfuric acid threshold determinations? Are the cyanide compounds also processed since they are intermediates?

In this scenario, cyanide compounds are 'otherwise used,' 'processed,' and 'manufactured.' Both the gold cyanide compound and sodium cyanide are 'manufactured.' Cyanide compounds are 'processed' because part of the cyanide compound, i.e., the gold cyanide compound, is incorporated into a material (gold) that is distributed in commerce. Cyanide compounds are also 'otherwise used' because sodium cyanide is used to extract the gold but no part of the sodium cyanide compound is incorporated into a material that is distributed in commerce. The facility should not use the method outlined for the sulfuric acid threshold because the processes involving sulfuric acid are not analogous to the reaction chemistry occurring in the extraction of gold.

Multiple Activity Thresholds

240. A facility manufactures an aluminum dust that is captured in a bag house, the dust is put into a smelter, and then put back into the process where it is recast into ingots, and sold. How is the dust considered for purposes of determining thresholds and estimating releases and waste management activities?

The facility must count the amount of aluminum dust that is manufactured toward the manufacturing threshold. The amount of aluminum dust that is collected and recast into ingots and sold is incorporated into a product that is distributed in commerce. These amounts are considered to be processed and must be counted toward that processing threshold. The aluminum dust that is captured from the pollution control device and put back into the process is reported in Part II, Section 8.6 (Quantity Treated On-Site) because the aluminum dust is converted to a non-listed form of the chemical.

DRAFT

Facility; Metals; Process; Processing; Threshold Determination; Waste

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

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

Activity Threshold; Blending

242. A TSD facility receives naphthalene from off-site. The naphthalene is reacted with sodium to produce sodium naphthalene. The sodium naphthalene is reacted with PCB-contaminated oil to remove the PCB contaminants. The resulting oil, now containing naphthalene, is sent off-site for further distribution in commerce. Is the naphthalene considered to be manufactured, processed, and/or otherwise used?

Yes. The naphthalene has been manufactured, processed and otherwise used by the TSD facility. When the TSD facility reacted the naphthalene with the sodium to produce a compound capable of removing the PCB contaminants, the facility otherwise used the naphthalene. The reaction of the sodium naphthalene with the PCB-contaminated oil manufactured naphthalene as a component of the oil. Finally, the distribution of the naphthalene in the oil in commerce constitutes processing. Accordingly, the facility would have to consider all three activity thresholds; manufacturing, processing, and otherwise use.

Flotation Agent; Otherwise Use; Process; Process vs. Otherwise Use; Purpose Behind Incorporation

243. A covered coal mine uses a flotation agent containing listed toxic chemicals to clean coal. Some of the flotation agent remains on the coal, which is then distributed into commerce. The facility chooses the flotation agent for the purpose of cleaning the coal and not to add value to the coal product. Has the facility processed the amount of the listed toxic chemical that adheres to the coal from the flotation agent?

No. In this example the facility is otherwise using the listed toxic chemicals that are components of the flotation agent. Amounts of listed toxic chemicals contained in the flotation agent must be considered toward the facility's otherwise use threshold. The facility is using these listed toxic chemicals for the purpose of cleaning the coal and not for the purpose of adding value to the coal product.

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Activity Threshold; Impurity; Process; Process vs. Otherwise Use

244. A raw material contains a listed toxic chemical as an impurity. The raw material is processed at the facility, and the facility does not have any devices to remove the impurity, which is incorporated into the final product. However, the intent is not to have an impurity in a final product. Is this facility processing or otherwise using the chemical?

For Section 313 reporting purposes, as long as the toxic chemical impurity is in the raw material being received at the facility, and there is no system at the facility to remove the impurity, the facility is processing the toxic chemical.

Process; Solvents

245. A facility feeds 50,000 pounds of solvent containing 50 percent MIBK and 50 percent glycol ether into a recycling process. The facility's intent is to recover as much of the organics as possible and distribute the organics into commerce. The facility is primarily concerned with the recovery of MIBK. The product specification of the resulting solvent requires a specific concentration range for MIBK, but the amount of glycol ether in the final product does not matter. How does the facility consider amounts of glycol ether?

Given that the facility knows that glycol ether is recovered with the desirable MIBK, the facility should count all amounts of glycol ether that enter the recovery system toward the facility's processing threshold.

Impurity; Process

246. Are trace metals in ore that remain in the product and are in the same form as extracted considered processed? What if the trace metals that were extracted do not remain in the product?

Amounts of listed toxic chemicals that remain with the product (metal concentrate) that are distributed in commerce are considered processed and these amounts must be factored into the facility's processing threshold. Amounts of listed toxic chemicals in mixtures and trade name products that are processed are eligible for the *de minimis* exemption. Any trace metal or other listed toxic chemical that is completely removed from the facility's product prior to distribution and disposed, would not count toward the facility's processing threshold, but would need to be considered in release and other waste management calculations if the facility has exceeded thresholds for the listed toxic chemical elsewhere.

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Coal Mine; Ethylene Glycol; Process vs. Otherwise Use

247. A covered coal mine applies ethylene glycol to coal to prevent freezing during on-site activities. The ethylene glycol remains on the coal that is sold. However, the purchaser does not request ethylene glycol, and the ethylene glycol does not add any value to the coal. Is the ethylene glycol processed or otherwise used?

The ethylene glycol is otherwise used. The facility is using the ethylene glycol solely for the purpose of preventing the coal from freezing at the facility. However, if the facility adds the ethylene glycol to the coal to protect it from freezing during transfer, the facility has intentionally incorporated the toxic chemical into its product for distribution in commerce and, therefore, is processing the toxic chemical.

Activity Threshold; Coincidental Manufacture

248. Do toxic chemicals produced coincidentally to manufacturing, processing, or otherwise using have to be reported?

Toxic chemicals manufactured coincidentally are included in determining the quantity of the toxic chemical manufactured. In the case of coincidental manufacture of an impurity that remains in the product, below the *de minimis* level, for distribution in commerce the *de minimis* exemption may apply (40 CFR Section 372.38(a)). If, however, the impurity is removed from the final product prior to distribution in commerce, the exemption does not apply.

Byproduct; De minimis Exemption; Impurity; Mixture; Waste

249. Does the *de minimis* exemption apply regardless of whether a listed non-PBT chemical is present in a mixture as an impurity or separated out as a byproduct? Does it apply to toxic chemicals in waste?

The *de minimis* exemption may be considered for non-PBT chemicals that are manufactured as impurities that remain in the product for distribution. The *de minimis* exemption does not apply to listed toxic chemicals that are manufactured as a byproduct regardless of whether the byproduct is a waste.

Coincidental Manufacture; Metal Compounds

250. Do covered facilities need to consider the inadvertent conversion of one metal compound to another as manufacturing? For example, a pulp and paper mill inadvertently converts metal carbonates and oxides in wood to metal sulfides during pulping. Is this a covered manufacturing activity?

Yes. Manufacturing is not limited to intentional manufacturing; it also includes coincidental manufacture or, inadvertent manufacture. In general, anytime one metal compound has been converted to another metal compound, the facility must count the new metal compound towards the manufacturing threshold. The fact that the parent metal is the same in both compounds does not negate the fact that a new metal compound has been manufactured.

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Activity Threshold; Coincidental Manufacture; Wastewater Treatment

251. How can wastewater treatment products be considered as manufactured from a treatment process?

The definition of manufacture includes the coincidental generation of a listed toxic chemical as a consequence of the facility's waste treatment or disposal activities. These toxic chemicals may not be produced for commercial purposes. They are, nevertheless, created as a result of the facility's activities and they must be included in activity threshold determinations and their release or other waste management must be considered.

Activity Threshold; Adhesive; Coincidental Manufacture; Neutralization

252. A covered facility uses a caustic product in the manufacturing of an adhesive. A listed acid is added to neutralize the solution to form another listed Section 313 toxic chemical. Is this a covered activity?

Yes. The facility is coincidentally manufacturing the listed toxic chemical.

Activity Threshold; Neutralization; Otherwise Use

253. A covered facility adds a listed acid to wastewater to neutralize the wastewater prior to discharge. Is this activity manufacturing, processing, or otherwise using the toxic chemical?

Because the listed acid is not incorporated into the final product and distributed in commerce, nor is it created at the facility, the toxic chemical is otherwise used.

Activity Threshold; Process

254. A facility draws steel rods into a smaller diameter and then distributes the rods in commerce. Is this manufacture, process, or otherwise use?

This activity is considered processing because the toxic chemical remains incorporated in the final product distributed in commerce.

Activity Threshold; Lead Deposits

255. A re-manufacturer of auto engines cleans the engine parts and thereby produces a lead-containing waste (from gasoline lead deposits) which it sends off-site for disposal. Does the facility manufacture, process, or otherwise use lead compounds?

None of the EPCRA section 313 activities apply. Neither lead nor lead compounds are manufactured. Lead is not incorporated into products for distribution in commerce nor is it a manufacturing aid or a processing aid as those terms are defined. Lead in the waste would not be included for a threshold determination. The facility does not manufacture, process, or otherwise use lead compounds.

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Manufacturing Aid; Otherwise Use; Processing Aid

256. What is the difference between a manufacturing aid and processing aid?

A chemical processing aid is added directly to the reaction mixture or is present in a mixture used to aid in processing and its function is such that it does not remain in the product. Examples include catalysts, solvents, and buffers. A manufacturing aid helps to run the equipment and is never incorporated into the product. Examples include lubricants, coolants, and refrigerants. Since, in either case (manufacturing aid or processing aid), incorporation of the toxic chemical into the final product is not required for the chemical to perform its function, toxic chemicals that are used as manufacturing aids or as processing aids are considered otherwise used under EPCRA section 313.

Chemical Qualifier; Compounds; Fume or Dust

257. There are two chemicals on the list with the qualifier "fume or dust" (zinc and aluminum). What exactly is a "fume" or a "dust?"

EPA does not have a regulatory definition of a fume or a dust, but considers dusts, for purposes of reporting, to consist of solid particles generated by any mechanical processing of materials including crushing, grinding, rapid impact, handling, detonation, and decrepitation of organic and inorganic materials such as rock, ore, and metal. Dusts do not tend to flocculate except under electrostatic forces. A fume is an airborne dispersion consisting of small solid particles created by condensation from the gaseous state, in distinction to a gas or vapor. Fumes arise from the heating of solids such as lead. The condensation is often accompanied by a chemical reaction, such as oxidation. Fumes flocculate and sometimes coalesce.

Article Exemption; Fume or Dust-Fume or Dust Qualifier

258. A facility generates metal dust when it processes sheet metal. Each dust particle is actually an alloy containing more than one type of metal (e.g., chromium and aluminum). If the toxic chemical in the metal is listed with a qualifier which includes dust (e.g., aluminum), does EPA consider the dust particle the listed toxic chemical?

In this example, EPA considers metal dust particles, which contain aluminum in the dust form, a listed toxic chemical. Therefore, that weight percentage of the metal dust which is aluminum would be subject to threshold determinations and release and other waste management reporting as aluminum dust.

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Activity Threshold; Fume or Dust; Process

259. A covered facility manufactured a part of a stainless steel bar which it then distributed in commerce. The annual quantity purchased is 500,000 pounds which is 18 percent chromium and 8 percent nickel. Does the facility have to report under Section 313 for either chromium or nickel?

The facility must report for the chromium because its quantity (90,000 pounds) is above the processing threshold of 25,000 pounds. The facility would also have to report for nickel because its quantity (40,000 pounds) is also above the processing threshold.

Metal Alloy; Mixture; Threshold Determination

260. How does a facility determine the threshold for reporting of a listed toxic chemical (such as chromium) in a solid piece of steel which it processes?

Since steel is a mixture (and not a compound), the processing threshold determination is made based on the total amount of each toxic chemical present in the steel. If the toxic chemical is present in a known concentration, the amount present can be calculated by multiplying the weight of the steel by the weight percent of the listed toxic chemical (see 40 CFR Section 372.30(b)(3)). The threshold for processing chromium is 25,000 pounds.

Fume or Dust; Mixture; Process; Threshold Determination

261. Are chromium and nickel as components of stainless steel exempt from reporting if the facility is processing the stainless steel?

No. Stainless steel is a solid/solid mixture. Chromium and nickel are components of stainless steel. If the facility is incorporating the stainless steel into a product it intends to distribute in commerce, the company is processing the stainless steel as defined in Section 313. For example, if the facility makes porous metal filters from stainless steel powder or fabricates pressurized vessels, bars, or ingots of stainless steel, threshold determinations for the nickel and chromium components of the steel are required. The facility must report if the amounts processed exceed the reporting thresholds.

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Article Exemption; De minimis Exemption; Metal Alloy; Threshold Determination

262. Regarding non-PBT metals in mixtures, such as chromium in an alloy (stainless steel), how are thresholds and releases and other waste management activities accounted for in a foundry type operation where all of the metals are melted down? Could the *de minimis* and article exemptions be applied?

For threshold purposes, if the listed non-PBT chemicals in the metals are processed, otherwise used, manufactured as an impurity (that remains with the product), or imported below the *de minimis* levels, then the *de minimis* exemption may be taken for that metal in the alloy. However, the article exemption cannot be taken for this type of foundry operation since in founding, a metal is melted down and poured into a mold. Consequently, the resulting metal is not recognizable as its original form.

De minimis Exemption; Point Source Air Emissions; Releases

263. If a covered facility processes steel and releases chromium up the stack, do they have to report?

Yes, if the chromium content in the steel exceeds *de minimis* concentration levels and the reporting threshold is met, the facility is required to report under EPCRA section 313 for chromium.

Activity Threshold; Chromium; Metal Compounds; Refractory Brick

264. A glass manufacturer uses a brick in its refractory kiln that contains chromium (III) compounds. During the manufacturing process, the chromium reacts to generate chromium (VI) compounds. The chromium compounds, while being used in the kiln, become part of the glass being manufactured. All the brick in the kiln is replaced every four to five years. What activity thresholds apply to chromium in this situation?

The brick, and thus the chromium (III) compounds in the brick, are being otherwise used based on the quantity of the bricks installed within a reporting year. The chromium compounds in the bricks are also considered processed, because the chromium compounds in the brick are incorporated as an impurity into the final product (the glass) which is distributed in commerce. However, for this processing step, the *de minimis* exemption may be taken. The chromium (VI) compounds generated from the chromium (III) compounds are considered manufactured. Thus, threshold calculations should be made for all three EPCRA section 313 activity thresholds. The thresholds would be calculated based on the total weight of the chromium compounds being manufactured, processed, or otherwise used. However, only the weight of the chromium in the chromium compounds are used in release and other waste management calculations. Any releases that go up the stack or are sent off-site for waste management must be included. When the brick is replaced and disposed of, the amount of chromium that remains in the brick would also need to be included in release and other waste management calculations.

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De minimis Exemption; Solvent Recovery

265. A covered facility receives a spent solvent, recovers the solvent and sells the recovered solvent in commerce. Is the recovered solvent considered a waste, and if not, is the reusable solvent considered a product? At what point might the solvent be eligible for the *de minimis* exemption?

The recovery facility must consider the amount of the material that it feeds into the recycling operation toward the facility's processing threshold. The solvent is part of a waste (not usable in the form received) and therefore the amount processed is not eligible for the *de minimis* exemption until the recovery is complete and the solvent is no longer subject to further waste management activities. Once the recovery is complete, the solvent is no longer a waste and thus the recovery facility may take the *de minimis* exemption for amounts of non-PBT chemicals subsequently prepared for distribution in commerce. The purchasing facility considers the recovered solvent as a new product and its subsequent use of the solvent may be eligible for the *de minimis* exemption. However, if the amount of solvent processed prior to the point of which it was eligible for the *de minimis* exemption was enough to exceed a reporting threshold, the fact that the solvent subsequently became eligible for the *de minimis* exemption does not remove the reporting requirement.

Process

266. Is soldering light bulbs with lead solder considered processing of the solder?

Yes, it incorporates the solder into a product for distribution in commerce.

Activity Threshold; Otherwise Use; Process

267. A covered facility uses methanol in its gas-carburizing heat treatment of steel. The main purpose of methanol in the facility's operations is to provide the source of carbon that is deposited on the steel. Is this processing or otherwise use of the methanol?

The methanol is being processed, not otherwise used, because the methanol is the source of the carbon for the carburization activity. The methanol is being reacted, and the carbon from it is being incorporated into the steel.

Activity Threshold; Otherwise Use

268. A covered facility uses paint thinners in its operations. The thinners are evaporated or baked out of the finished painted products. Are those chemicals subject to Section 313 regulations?

If the chemical evaporates or is baked out of a finished coating, it has been otherwise used.

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Activity Threshold; Otherwise Use

269. A printing company uses a listed toxic chemical to manufacture labels. The chemical is mixed with ink and then applied to the labels. The chemical slows down the inks evaporation rate. During the drying process, the chemical is evaporated and the final product contains no trace of the toxic chemical. Does the use of the chemical in this manner constitute processing because it is used as a 'performance enhancer?'

No. The toxic chemical is considered otherwise used because the listed toxic chemical is not incorporated into the final product when it is distributed in commerce. A toxic chemical is considered a 'performance enhancer' if the toxic chemical is incorporated into the end product and improves the performance of the end product distributed in commerce.

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De minimis; Facility; Manufacture; Manufacturing; Otherwise Use; Process; Processing; Reporting Requirements

270. A facility subject to the reporting requirements of EPCRA 313 manufactures shoes that contain two toxic chemicals when they are distributed in commerce. Toxic chemical A exists as an impurity in a raw material that becomes part of the shoes. The toxic chemical remains in the product, but serves no specific function within it. Toxic chemical B is a solvent in the adhesive that is used to attach the soles of the shoes. Most of chemical B evaporates during the manufacturing process, but small amounts of this chemical remain in the shoes when they are distributed in commerce. How can a facility determine whether to apply the processing or otherwise use threshold in these situations?

If a toxic chemical component of a raw material is incorporated into a product for distribution in commerce, regardless of whether it serves a function within that product, the facility should apply the processing threshold. However, if a toxic chemical is otherwise used on-site and some portion of the chemical is incorporated into the final product, the entire amount is considered toward the facility's otherwise use threshold. None of this amount is considered towards the processing threshold.

In this particular scenario, because toxic chemical A is an impurity that is present in a raw material and that is incorporated into a product for distribution in commerce, the facility has processed that toxic chemical. The facility did not specifically add the toxic chemical to the product, but the toxic chemical was not removed from the raw material either. Therefore, unless toxic chemical A is present below its *de minimis* concentration, the entire quantity of the chemical would be subject to the 25,000-pound processing threshold. Toxic chemical B, however, is involved in a specific non-incorporative activity (as a volatile component of the adhesive). The entire quantity of toxic chemical B used in the adhesive would therefore be subject to the 10,000-pound otherwise use threshold, even if a portion of that chemical remains in the shoes that are distributed in commerce. Additional guidance on activity determinations can be found in the Toxic Chemical Release Inventory Reporting Forms and Instructions.

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Fertilizer; Release Reporting; Release to Land; Threshold Determination

271. When completing the Form R, how would a facility report the releases of a listed toxic chemical that is used as a fertilizer? Does it matter if the fertilizer is a waste or a purchased product? Would the application on-site constitute a release to land on Part II, Section 5.5 of the Form R?

Based on the information provided, the amount of the toxic chemical in the fertilizer applied to land on-site would be counted towards the otherwise use threshold unless it meets the facility grounds maintenance exemption. The toxic chemical in the fertilizer would be reported in Part II, Section 5.5 of the Form R as a release to land, regardless of whether it is a purchased product or a waste.

Fertilizer; Land Treatment/Application Farming

272. If a manufacturing facility that has a farming area applies a toxic chemical in waste generated on-site to land on-site, for use as a fertilizer, must the facility report the amount of the toxic chemical on the Form R? Should the facility also report any volatilization of the toxic chemical that occurs during land application, on the Form R?

Yes. Chemicals applied to land during use for farming are released to the environment and are to be reported as such. In addition, the chemicals are being otherwise used. Whether or not the facility intends the use during farming to be a disposal method, the facility must report the quantity of the toxic chemical in waste released to land in Section 5.5.2 (Land Treatment/Application Farming) of the Form R.

The facility must report that portion of the toxic chemical that volatilizes from the land application unit during the same reporting year in Section 5.1 (Fugitive Air Releases) of the Form R. This quantity would not be included in the releases reported to land in Part II, Section 5.5.2. The sum of the amounts released to land and to air must be included in Section 8.1 of the Form R.

Ammonia; Chemical Conversion; Fertilizer; Mining; Nitrate Compounds

273. A mining facility applies a commercial fertilizer that contains dry ammonium nitrate to the land as part of a mine reclamation project. Is the facility required to count the ammonium nitrate toward the manufacturing threshold for the ammonia listing and nitrate compounds listing when it rains on the fertilizer?

No. Ammonium nitrate is only converted to reportable chemicals when in solution (40 CFR Section 372.65) and in this case the solutions are not created until after the chemical has been released into the environment. Therefore, the facility would not have to report for this activity since facilities are not required to report on conversions that take place in the environment.

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Nitrate Compounds; Otherwise Use; Release to Land; Releases; Treatment

274. Are toxic chemicals, such as nitrate compounds from waste treatment systems, that are used for farming at a facility to be reported as a release to land and is this an otherwise use activity?

The use of listed toxic chemicals such as nitrate compounds for farming is to be reported as a release to land under EPCRA section 313. Listed toxic chemicals applied to land during use for farming constitute a release to an environmental medium (land) and are to be reported as such. This is consistent with the instructions for Section 5.5 of the Form R which state that land treatment/application farming is a disposal method that is considered a 'release to land.' Thus, whether or not this use is intended to be a disposal method, the total quantity released to land during use for farming should be reported as a release to land under Section 5.5.2 of the Form R. The amount of a listed toxic chemical used for farming at a covered facility must also to be applied towards the otherwise use reporting threshold.

Facility Maintenance Exemption; Treatment for Destruction; Waste Treatment

275. On-site wastewater treatment plant sludges which may contain trace amounts of Section 313 toxic chemicals are composted on-site on concrete pads. The finished compost is then used as daily cover for the on-site sanitary landfill and for landscaping around the site. Is this considered land treatment, land impoundment, or not a release?

Some listed toxic chemicals in the composted material may degrade such that the chemical is treated for destruction in the compost. In those cases, the listed toxic chemical should be reported as treated on-site (in Part II, Sections 7A (On-site Waste Treatment and Efficiencies) and 8.6 (Quantity Treated On-site)). If the listed toxic chemical is not destroyed, the amounts applied to the on-site sanitary landfill as cover should be reported in Part II, Section 5.5.1B (Other Landfills) and in Section 8.1a (Quantity Released) on the Form R. Although any quantities used as landfill cover would not be exempt from reporting, the amount used for landscaping on-site is exempt under the facility grounds maintenance exemption (40 CFR Section 372.38(c)(2)).

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Chemical Categories; Nitrate Compounds; Recycle; Release to Land; Waste Treatment

276. Are toxic chemicals, such as nitrate compounds, that are used as fertilizer for growing crops considered to be recycled or treated since they are taken up by the crops and re-circulated back into the environment? Can a covered facility reduce the amount of toxic chemicals reported as released to land by the amount the crops take up?

Although during such use nitrate compounds or other toxic chemicals may be taken up by plants and cycled back into the ecosystem, such use is not considered treatment or recycling under EPCRA section 313. The toxic chemicals are reported as released to land on the Form R. EPA does not allow facilities to reduce the quantity reported as released to the environment based on conversions of a chemical in the environment after the chemical has been released by the facility.

Articles Exemption; Process; Repackage; Storage Tanks

277. A car manufacturer has a central 25,000 gallon storage tank on-site. A pipe leads from the central storage tank to a fill station where the cars are filled with gas before being sent off-site to be sold. Is the processing of the toxic chemical components of the gasoline considered 'repackaging only' or 'as an article component' in Part II, Section 3.2(e) of the Form R?

The toxic chemicals in the gasoline should be reported as processed as an 'article component' because they are incorporated into the car which is an article (40 CFR Section 372.3).

Activity Threshold; Chlorine; Impurity; Process

278. In an aluminum casting process, a facility bubbles chlorine gas through molten aluminum. The chlorine reacts with impurities in the aluminum and produces a byproduct called 'dross,' which is distributed in commerce. Small quantities of unreacted chlorine are emitted during this process. What is the applicable threshold for chlorine in this process?

Because the chlorine reacts with impurities and becomes incorporated in the dross, which is distributed in commerce, the chlorine is considered processed (40 CFR Section 372.3). If the amount of chlorine processed, which includes both the chlorine incorporated in the dross and the unreacted chlorine, exceeds 25,000 pounds, a Form R must be filed and any releases or other waste management of chlorine must be reported.

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Activity Threshold; Methylenebis (Phenylisocyanate); Molds; Otherwise Use; Process

279. A facility uses a listed toxic chemical methylenebis (phenylisocyanate) to create molds from which they produce metal castings. Normally these molds are kept by the manufacturer or are broken up for reuse. Has the toxic chemical been otherwise used or processed by the facility?

The toxic chemical is otherwise used. The toxic chemical is not processed, because it does not become part of a product that is distributed in commerce.

Activity Threshold; Pesticides; Process; Toll Processor

280. An agri-chemical manufacturer produces a specialty pesticide for a farmer by blending chemicals which have been supplied by the farmer. It then applies the pesticide to the farmer's crops. Does the blending of the listed toxic chemicals received from the farmer for application to the farmer's crops constitute processing of the toxic chemicals? Does the agri-chemical manufacturer, as a 'toll processor,' have to count the listed toxic chemicals towards the threshold determination?

Yes, these activities constitute processing. The blending of the toxic chemicals and their subsequent transfer back to the farm for application to the farmer's fields constitutes processing. The origin of the processed material is irrelevant and the return of the blended toxic chemicals for application on the farmer's fields can be considered products distributed in commerce. Therefore, the processing threshold would apply. 'Toll-processing' is no different than any other processing. Assuming that the primary NAICS code of the agri-chemical manufacturer is a covered NAICS code, and they meet the employee criterion, the agri-chemical manufacturer must make threshold determinations based on the amount of any listed toxic chemical it processes as well as any other manufacture or otherwise use activities that occur at its facility.

Ammonia; Coincidental Manufacture

281. Are meat renderers who process animal waste byproducts (i.e., blood, feathers, bones, etc.) required to report the ammonia generated in the condensate water from the cooking of these byproducts?

The ammonia generated from the rendering (cooking) process is considered to be coincidentally manufactured, and thus, must be reported under EPCRA section 313 if ten percent of the amount of aqueous ammonia produced exceeds the 25,000-pound manufacturing threshold.

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Activity Threshold; Ammonia; Manufacture; Otherwise Use

282. A food processor uses ammonia in its baking processes. In the first process, aqueous ammonia is reacted to form ammonium bicarbonate. The ammonium bicarbonate is added to the dough which is baked in an oven. When baked, the ammonium bicarbonate is dissociated in the dough and the heat drives off anhydrous ammonia. Is this considered manufacturing or otherwise using ammonia?

The aqueous ammonia is reacted with another substance to form ammonium bicarbonate which is then used on-site. Therefore, the aqueous ammonia is considered to be otherwise used and is subject to the 10,000-pound otherwise use threshold. The anhydrous ammonia is being manufactured from the breakdown of the ammonium bicarbonate during the baking process which generates anhydrous ammonia, carbon dioxide, and water vapor. Thus, the amount of anhydrous ammonia generated during baking is counted towards the 25,000-pound manufacture threshold.

Activity Threshold; Ammonia; Chemical Conversion; Otherwise Use; Process

283. Ammonia, an EPCRA section 313 chemical, is used at a manufacturing facility to adjust pH levels in cheese products. During this process, the ammonia is converted into a salt which remains with the final cheese product. The cheese is then distributed in commerce. Is this considered a covered activity under EPCRA section 313, and, if so, how should it be reported on the Form R?

Ammonia used in this manner is considered processed under EPCRA section 313 and must be applied toward that threshold. The definition of process found at 40 CFR Section 372.3 affirms that a listed toxic chemical prepared for distribution in commerce is a reportable activity even if it is distributed in a different form or physical state from that in which it was originally received. All of the ammonia incorporated into the cheese is processed as a reactant and should be reported as such on the Form R.

Form R; Maximum Amount On-Site; Threshold Determination

284. In determining the maximum amount on-site and thresholds, do covered facilities count water in a solution (e.g., an aqueous solution of ammonium nitrate)?

No. Exclude the water in solutions when calculating the maximum amount of the toxic chemical on-site and in making threshold determinations.

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Activity Threshold; Process; Recycle; Waste

285. A barge repair facility (NAICS code 336) cleans barges at its facility by vacuuming out residual toxic chemicals and selling the waste to a chemical recovery company to recycle. Must the facility report for the listed toxic chemicals in waste?

It is processing these chemicals under Section 313 because if the facility distributes the toxic chemicals in the waste into commerce, they are processing the toxic chemical. Releases from activities such as spills and equipment cleaning, must be reported if the facility exceeds the processing threshold. The quantity of the toxic chemical sent off for recycling should be reported in Part II, Sections 6.2 and 8.5. If the toxic chemicals in the waste were not distributed into commerce (e.g., if the toxic chemicals were sent off-site for disposal), the facility would not be manufacturing, processing, or otherwise using the toxic chemical.

Facility; Landfill; Otherwise Use; Process; Processing; Recycling; Threshold Determination; Waste

286. An EPCRA section 313 covered facility receives a waste from offsite for the purpose of recovering the waste's silver content. The facility is only able to recover some of the silver from the waste, and the remaining waste that still contains some quantity of silver is ultimately disposed in an on-site landfill. The recovered silver is subsequently distributed in commerce. Must all of the silver in the incoming waste be counted towards the facility's processing threshold for silver, or just the amount that actually gets recovered and distributed in commerce?

All of the silver in the incoming waste must be counted toward the processing threshold. Whenever a toxic chemical is processed, the entire quantity of the toxic chemical involved in that activity must be counted toward the processing threshold for that chemical, even if only some of the toxic chemical actually becomes distributed in commerce. It is not appropriate to discount quantities of the toxic chemical that are not actually distributed in commerce (e.g., quantities of the toxic chemical in overspray, scrap, dust, unreacted material, or unrecovered material) from the threshold determination. In the above scenario, the amount of silver left over (i.e., not recovered) that is disposed onsite must also be counted toward the otherwise use threshold, because it was brought onsite for the purpose of waste management (recycling) and was then disposed at the facility.

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Activity Threshold; Otherwise Use

287. A facility received material X packaged in 50-gallon drums. Material X is immersed in methanol which acts as a packaging/coolant medium for material X during transport. As soon as the facility receives its delivery, it removes material X from the methanol, recaps the drum, and sends it back to the supplier. Should the owner/operator consider the methanol for threshold determinations and release and other waste management calculations under EPCRA section 313?

Yes. The methanol, in this instance, is being otherwise used (40 CFR Section 372.3). The owner/operator must consider the methanol used to cool material X in its threshold determinations and release and other waste management calculations.

Activity Threshold; Otherwise Use; Xylene

288. A facility uses xylene as a carrier to apply coatings to a product. The xylene is not incorporated into the product but it is necessary in order to manufacture it. Is the xylene processed or otherwise used?

The xylene is otherwise used since it is not incorporated into the product, nor is it distributed into commerce.

Naturally Occurring Chemical; Nicotine; Process

289. A cigarette manufacturer receives tobacco which naturally contains nicotine, an EPCRA section 313 toxic chemical. The manufacturer does not add or alter the concentration of nicotine in the cigarettes when processing the tobacco. Is the nicotine considered to be processed even though it is naturally present in tobacco and not added to the finished product?

Yes. There are no provisions under EPCRA section 313 that exempt naturally occurring chemicals that are known to be a part of a facility's raw material. Although the facility does not manipulate the concentration of the toxic chemical in the raw material, the facility is processing the toxic chemical as defined in 40 CFR Section 372.3. Thus, the facility would need to file a Form R or Form A for nicotine if it is processed at the facility in amounts greater than or equal to the 25,000-pound activity threshold, assuming that the facility meets the other applicability criteria found in 40 CFR Section 372.22.

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Definition of Commerce; Distribution Restricted to One Facility; Multi-Establishment

290. An electricity generating facility produces power using coal and/or oil. All of the power generated at the facility is used to support one other facility within the same company that operates off-site from the electricity generating facility. Is the electric power produced by the electricity generating facility considered to be distributed in commerce for purposes of determining if the facility is covered by EPCRA section 313?

Yes. The electricity generating facility is classified within NAICS code 221112 and combusts coal and/or oil for purposes of generating power for distribution in commerce. Supplying electricity to a facility off-site is considered generating power for distribution in commerce. For purposes of EPCRA section 313 reporting, it does not matter that the sole user of the electricity produced by the electricity generating facility is part of the same company.

Economic Benefit; Intra-Company Transfer; Process

291. A mine sends a metal concentrate for smelting to another covered facility owned by the same company. Has the mine distributed toxic chemicals in the concentrate into commerce, and therefore, processed them?

Yes. Under EPCRA process means the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce (40 CFR Section 372.3). Distribution in commerce includes any distributive activity in which benefit is gained by the transfer, even if there is no direct monetary gain. Listed toxic chemicals that are shipped from one facility to another facility under common ownership are considered to be distributed in commerce. Although the chemical in the product is not distributed to the general public, the preparing facility does derive economic benefit by transferring the listed toxic chemical, as both facilities are under common ownership.

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Economic Benefit; Formaldehyde; Intracompany Transfer; Process

292. A facility covered under EPCRA section 313 uses formaldehyde as an ingredient in feedstock. The feedstock is sent for use to another facility under common ownership. The preparing facility does not receive direct compensation for the product, nor is the product distributed to the general public. Does such a transfer of a listed toxic chemical, after its preparation, to another facility under common ownership constitute distribution in commerce and thus need to be considered in threshold determinations for reporting under EPCRA section 313?

Yes. Under EPCRA, process means the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce (40 CFR Section 372.3). Distribution in commerce includes any distributive activity in which benefit is gained by the transfer, even if there is no direct monetary gain. Listed toxic chemicals that are shipped from one facility to another facility under common ownership are considered to be distributed in commerce. Although the chemical in the product is not distributed to the general public, the preparing facility does derive economic benefit by transferring the listed toxic chemical, as both facilities are under common ownership. The amount of listed toxic chemical prepared at the facility must be counted towards the processing threshold.

Process; Steps Taken By Different Facilities

293. Facility 1 receives a spent solvent, repackages it, and sends it off-site to a recycling facility (Facility 2). Facility 2 recovers the solvent and returns it to Facility 1 who then repackages it to be distributed into commerce. Does Facility 1 count the toxic chemical in the solvent twice toward the processing threshold (i.e., when it is distributed off-site for recycling and when they distribute the recovered solvent into commerce)?

Yes. Amounts of listed toxic chemicals that are transferred off-site for recycling are considered processed and Facility 1 processed the listed toxic chemical when it was sent off-site for recycling. Facility 2 who recovers the listed toxic chemical also processed amounts recovered, which were subsequently distributed back to Facility 1. Facility 1 then receives amounts of the listed toxic chemical recovered by Facility 2 and Facility 1 repackages the listed toxic chemical and further distributes it in commerce. Therefore, Facility 1 must, once again, include these amounts toward their processing threshold. While this may seem to be a double counting of the same amounts of the listed toxic chemical, the activities are completed at each interval and are clearly taking place at multiple locations. Each activity is independently performed and there is no double counting within the same activity step.

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Activity Threshold; Process; Reclamation; Solvents

294. A reclamation facility receives waste solvents containing an EPCRA section 313 toxic chemical from a separate facility that generated the wastes (the generating facility). The reclamation facility reclaims the listed toxic chemical and returns it, as a product, to the generating facility. For the purpose of EPCRA section 313 threshold determinations, is the reclamation facility processing the listed toxic chemical?

Yes. By reclaiming the listed toxic chemical and returning it to the generator, the reclamation facility has prepared the chemical for distribution in commerce by incorporating the chemical into a product (i.e., the reclaimed toxic chemical). Therefore, the reclamation facility is processing the toxic chemical in the waste solvent it receives. Assuming the reclamation facility is a covered facility, it is required to report under EPCRA section 313 for the toxic chemical if it exceeds an activity threshold (e.g., processing) during the course of a reporting year.

Double Counting; Multiple Process Steps; Process

295. A metal fabrication facility covered by EPCRA section 313 extrudes ingots containing 20,000 pounds of copper into rods. The facility then transfers the rods containing 20,000 pounds of copper to another portion of the facility, which is completely separate from the extruding operation, for further processing, such as grinding. Has the facility processed 40,000 pounds of copper, and thus exceeded the processing threshold of 25,000 pounds per reporting year?

No. In this scenario, the facility has only processed 20,000 pounds of copper and would not be subject to reporting pursuant to 40 CFR Part 372 for this toxic chemical. For threshold purposes, facilities must count the amount of a toxic chemical that is processed during the reporting year. Facilities should not, however, double count toxic chemicals that are subject to multiple on-site processing steps before being distributed in commerce. Conversely, facilities that transfer listed toxic chemicals off-site for processing and receive the same toxic chemical back for further processing must count the listed toxic chemical twice when calculating thresholds because the listed toxic chemical is considered to be newly obtained.

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Multiple Process Steps; Process

296. How does a facility consider multiple activities within the same threshold activity, such as multiple repackaging steps, or blending followed by repackaging?

Amounts of a listed toxic chemical undergoing multiple activities on-site within a single threshold activity are counted only once during the activity sequence. For example, if a facility receives a bulk quantity of a chemical that it then places in a storage container from which amounts are subsequently blended and placed in smaller containers that are sold, the facility has prepared for distribution in commerce the entire amount of the chemical, and therefore, the facility has processed the entire amount of the listed toxic chemical.

Chemical Conversion; Metal Compounds; Process

297. The preamble to the May 1, 1997, final rule (62 FR 23834) says that extraction of ore containing toxic chemicals for subsequent distribution in commerce constitutes the processing of those listed chemicals. Does this mean that metal compounds in extracted ore are processed, even if they are later converted to different compounds prior to their actual distribution in commerce (i.e., the extracted compound is considered a process intermediate)?

Yes. Amounts of materials that undergo a processing step (extraction) as part of the facility's preparation of a material for distribution in commerce are considered processed and must be considered toward the facility's processing threshold because a part of the original metal compound is incorporated into the product which is ultimately distributed in commerce.

Activity Threshold; Compounding; Compounds; Manufacture; Process

298. The EPCRA section 313 definition of manufacture includes the term compounding. Does this mean that if a chemical is mixed with other chemicals in order to compound a product that the manufacturing threshold is to be used?

No. Compounding as used under Section 313 means that a chemical has been created, not that chemicals have been mixed together to form a new product. Thus, depending on the specifics of the use of the chemical, amounts would be counted towards the otherwise use threshold or the processing threshold, but not the manufacture threshold.

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Otherwise Use

299. A melamine formaldehyde resin containing a small amount of unreacted formaldehyde monomer is purchased by a facility, dissolved in water and applied to paper to produce a polymer-coated product. In the process of coating the paper all of the formaldehyde evaporates. Is the formaldehyde processed or otherwise used?

Since the formaldehyde is not incorporated into the product, it is otherwise used (40 CFR Section 372.3). The formaldehyde would not be counted at all if the amount is below the *de minimis* of 0.1 percent in the incoming resin mixture (40 CFR Section 372.38(a)).

Broker; Import

300. Under manufacture/import, what constitutes import? Does the threshold apply if you have a broker who imports the toxic chemical for you, stores it for you, and then ships the toxic chemical to you? What criteria apply?

Use of a broker does not negate facility 'importation' (manufacture) of a listed toxic chemical. If your facility specified that a listed toxic chemical or mixture containing a toxic chemical be obtained from a foreign source, then your facility 'imported' the toxic chemical. You are considered to have imported a toxic chemical if you have caused the listed toxic chemical to be brought into the customs territory of the U.S. and you 'control the identity of the toxic chemical and the amount to be imported.'

Facility; Import; Manufacture; Releases; Waste

301. If a federal facility's supply system imports an EPCRA section 313 chemical in excess of a threshold amount, is the facility required to report for releases and other waste management of that chemical under section 313?

Yes. Under the authority of EPCRA section 313, EPA defines "manufacture" to mean produce, prepare, compound, or import (40 CFR 372.3). If a federal facility causes more than 25,000 pounds of an EPCRA section 313 chemical to be imported, it has exceeded the "manufacture" threshold and must make release and other waste management calculations for that EPCRA section 313 chemical. A facility would "cause" an EPCRA section 313 chemical to be imported by specifically requesting a product (containing the EPCRA section 313 chemical) from a foreign source or requesting a product known to be only available from a foreign source.

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Import; Manufacture

302. Should the amounts of a chemical created and imported be added together to count towards the manufacturing threshold?

Yes. Because EPCRA section 313 defines both creation and importation as manufacturing (40 CFR Section 372.3), you must add the amounts of the chemical undergoing each activity together to determine the manufacturing threshold.

Customs Territory of U.S.; Import

303. For purposes of considering listed toxic chemicals to be imported under EPCRA section 313, are the U.S. Virgin Islands within the customs territory of the United States?

No. The U.S. Virgin Islands are not within the customs territory of the United States. The customs territory of the United States is comprised of the 50 States, the District of Columbia, and Puerto Rico. The 50 States do not include Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction. Therefore, listed toxic chemicals that come from the U.S. Virgin Islands into the U.S. customs territory would be considered imported under EPCRA section 313.

Foreign Trade Zone; Import

304. My facility imports over 25,000 lb of an EPCRA section 313 toxic chemical to be used in the U.S. to manufacture a product (e.g., used as an intermediate) or to be processed in the United States. The product is then exported in its entirety. Is the chemical subject to the EPCRA section 313 requirements?

Yes. If the facility that caused the importation meets the employee criterion, covered NAICS code criterion, and toxic chemical activity threshold, then the facility must fill out a Form R or the Alternate Certification Statement (Form A). The only exception would be if the chemical were imported for entry into 'Foreign Trade Zones (FTZ)' for reexport. However, if any portion of the chemical or the product is withdrawn from the FTZ with the intention of distribution into the U.S., then the chemicals that were used for the portion entering U.S. commerce are counted toward the activity threshold. Please remember, there are other EPA importing requirements under other environmental statutes.

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Importing Waste; Manufacture; Otherwise Use

305. A facility imports a toxic chemical in waste from outside the U.S. and treats the entire amount of the toxic chemical for destruction. Has the facility manufactured or otherwise used the toxic chemical?

Both. The facility must apply the amount of the toxic chemical toward both the manufacture and otherwise use activity thresholds. The facility caused the toxic chemical to be imported, and therefore manufactured the toxic chemical. The facility then treated the toxic chemical, which was received in waste from off-site, for destruction. Thus, the facility also otherwise used the toxic chemical.

Import; Threshold Determination; Toll Processor

306. Facility A orders 50,000 pounds of a listed toxic chemical from a foreign supplier but has that toxic chemical shipped directly to a toll processor. The toll processor then sends the formulated product containing the toxic chemical to Facility A in the same reporting year. Who is considered the importer and thus subject to the manufacture threshold for that toxic chemical?

The toll processor has not caused the listed toxic chemical to be imported. Therefore, the toll processor is not subject to the manufacturing threshold. However, if the toll processor repackages the toxic chemical before distributing it to Facility A, they are subject to the processing threshold for that listed toxic chemical. Facility A has imported the listed toxic chemical when the product is received from the toll processor. This is because Facility A has caused the listed toxic chemical to be imported and ultimately received the listed toxic chemical, even though there was some intermediate processing applied to the toxic chemical. There is no practical difference in coverage under the regulations unless the manufacturing facility does not further otherwise use or process the product. For example, if the facility only labels the product containers and ships them to customers, the facility is still subject to reporting because the act of importation is considered manufacturing.

Import; Warehouse

307. A facility imports a listed chemical, but it is imported directly to stand-alone warehouses (not owned by the facility). The facility controls the sale/distribution of these unaltered products. Should the warehouses properly report on these materials or should the facility?

The facility should count the chemical towards its manufacturing threshold only if it actually receives the toxic chemical at the facility. The warehouse is a separate facility, and may not be within a covered NAICS code. Because the warehouse has not caused the toxic chemical to be imported, it has not manufactured the toxic chemical. However, if the warehouse processes or otherwise uses the chemical above an applicable activity threshold, and meets the other EPCRA section 313 criteria, it would be required to file the Form R.

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Import; Purchasing Agent

308. The corporate office for a chemical distribution company directly purchases products which will be shipped to several of its chemical distribution facilities. The corporate purchasing department purchases one of these products, which contains a section 313 chemical, from a foreign source. The product is shipped directly to one of its chemical distribution facilities. Did the individual facility cause the importation of the section 313 chemical thereby requiring it to apply the manufacturing threshold to the quantities of this material received by the facility in the reporting year?

If the chemical distribution facility that actually received the product did not have any input regarding the quantity or identity of the toxic chemical, the facility did not cause the importation of the toxic chemical in the product and does not have to apply the listed chemical in the product to its manufacturing threshold. To be considered an importer, the facility receiving the material from a foreign source must have imported or "caused the material to be imported." If the ordering facility receives the shipment, then the ordering facility has imported the listed toxic chemicals and must consider these amounts toward their manufacturing thresholds. However, if the ordering facility, on its own initiative, directs another facility to receive the shipment, and that other facility has no input in deciding whether it will receive the toxic chemical, then the receiving facility has not imported the shipment and the ordering facility has also not imported the shipment for purposes of EPCRA section 313 because the listed toxic chemicals were not brought on-site of the ordering facility.

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Actual Receipt; Import

309. A TSD facility regulated under RCRA Subtitle C imports a waste that contains a listed EPCRA section 313 chemical. The waste is received by a transfer facility, and the transfer facility sends it to a final TSD facility. This final TSD facility did not initiate the importation. Who has imported the waste?

For purposes of EPCRA section 313 reporting, the importing facility never takes physical possession of the waste, therefore, no facility in this scenario would count amounts of listed toxic chemicals in the waste toward their manufacturing threshold based on importation. To be considered an importer the facility receiving the material from a source outside the customs territory must have imported or 'caused the material to be imported.' If the ordering facility receives the shipment, then the ordering facility has imported the listed toxic chemicals in the waste shipment and must consider these amounts toward their manufacturing thresholds. However, if the ordering facility directs another facility to receive the shipment, then the receiving facility has not imported the shipment, and neither has the ordering facility for purposes of EPCRA section 313 because the listed toxic chemicals were not brought on-site of the ordering facility. Regardless, the receiving facility would need to consider amounts received for the purpose of further waste management toward their otherwise use threshold if they treat for destruction, stabilize, or dispose the toxic chemical.

Broker; Import

310. A TSD facility regulated under RCRA Subtitle C requests certain types and quantities of waste containing toxic chemicals from an import/export broker. The broker then forwards the waste to the TSD facility for waste management. Who caused the toxic chemical to be imported?

The TSD facility caused the toxic chemical to be imported into the customs territory of the United States and must count the amount imported towards its manufacturing threshold. By ordering the waste containing listed toxic chemicals, the TSD facility 'caused it to be imported,' even though it used an import brokerage firm as an agent to obtain the toxic chemicals. This TSD facility would also need to consider amounts received for the purpose of further waste management toward their otherwise use threshold if they treat for destruction, stabilize, or dispose the listed toxic chemical.

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Import; Purchasing Agent

311. A chemical distributor arranges the importation of a material containing a toxic chemical by specific request from a customer. The material goes directly to the customer. The material never enters the boundaries of the chemical distributor's facility. Who should count the amount of toxic chemical towards the manufacturing threshold?

The customer has caused the toxic chemical to be imported into the customs territory of the United States. If the customer is a covered facility, the customer must count the amount of the listed toxic chemical imported that enters their facility toward the manufacturing threshold. The chemical distributor acted as an agent for the customer, and therefore, did not import the toxic chemical.

Contractual Relationship; Import

312. U.S. law requires that wastes produced in Mexico by an American-owned company be sent back to the U.S. for further waste management (Maquiladora waste). When the facility operating within the U.S. receives the wastes, has it manufactured the toxic chemicals contained in the waste? Because this law requires that these wastes be returned to the U.S. for further waste management, did the U.S. facility receiving these wastes cause the wastes to be imported?

Yes. The receiving facility either has a contract or an agreement in place to receive imported waste and is functioning as the importing facility. Amounts of listed toxic chemicals received in waste must be counted toward the manufacturing threshold. The receiving facility would also need to consider amounts received for the purpose of further waste management toward their otherwise use threshold, if they treat for destruction, stabilize, or dispose the toxic chemical on-site.

Broker; Import

313. A facility did not specify a source for a material broker to obtain a listed toxic chemical, but the facility learns that the only U.S. manufacturer of the chemical has gone out of business. Therefore, is the facility importing the chemical, making the facility subject to the manufacturing threshold?

Yes. The facility knows that it has caused the listed toxic chemical to be imported to the U.S. because there are no U.S. sources. Therefore, the amount of the chemical that is caused to be imported by the facility through a broker must be included within the manufacturing threshold determination for that listed toxic chemical.

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Import; Manufacture; Threshold Determination	**314. If a covered facility manufactures 19,000 pounds, processes 18,000 pounds, and imports 7,000 pounds of toxic chemical X (a non-PBT chemical) during the reporting year, is it required to report for toxic chemical X?** Yes. For the reporting year, the facility would have to report for toxic chemical X because it would have exceeded the manufacture threshold of 25,000 pounds (19,000 (manufactured) + 7,000 (imported) = 26,000). Note that importing constitutes manufacturing, and therefore, the amounts must be added together for threshold determinations.
Exemption Retention	**315. Can the exempted uses of a toxic chemical remain exempted even if other formulations, articles, or fuels with the same listed toxic chemical are not exempt?** Yes, the toxic chemical retains its exemption. Exempted uses of a listed toxic chemical do not need to be reported, even if other (non-exempted) uses of the same listed chemical trigger thresholds at the facility.
Office Supplies; Personal Use Exemption	**316. Do office supply type products require coverage under EPCRA section 313 reporting?** EPA does not intend to require covered facilities to account for listed toxic chemicals in typical office supplies such as correction fluid and copier machine fluids. Although not specifically exempted by the regulation, EPA interprets such mixtures or products to be equivalent to personal use items or materials present in a facility's cafeteria, store, or infirmary (40 CFR Section 372.38(c)(3)).
Office Supplies; Personal Use Exemption	**317. A facility meets the threshold for otherwise use of 1,1,1-trichloroethane as a cleaner. Would the release of that listed toxic chemical contained in the office supply product 'white-out' also be included?** Using office products falls within the same realm as the personal use exemption (40 CFR Section 372.38(c)(3)). The release of 1,1,1, trichloroethane in 'white-out' is exempt.

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Employee Comfort; Personal Use Exemption

318. A facility adds chlorine to its water supply system. The chlorinated water is used only for drinking purposes by employees. Is this use of chlorine reportable under EPCRA section 313?

Chlorine that is added by a facility to its water supply system to prepare potable water for consumption at the facility is exempt from reporting under the personal use exemption, which exempts as 'personal' use, by employees or other persons at the facility, the use of foods, drugs, cosmetics, or other personal items containing toxic chemicals, including supplies of such products within the facility such as in a facility operated cafeteria, store, or infirmary (40 CFR Section 372.38(c)(3)). Since chlorine is used to prepare an item (i.e., potable water) that will be used only for drinking purposes by facility employees, it is exempted from reporting under EPCRA section 313.

Facility; Otherwise Use; Personal Use Exemption; Process; Threshold Determination; Water Treatment

319. A facility subject to EPCRA section 313 uses chlorine to treat water that serves both as process water and as drinking water for the facility's employees. When making threshold determinations and release and other waste management calculations, can the facility owner or operator claim the personal use exemption for the amount of chlorine used to treat the employees' drinking water?

The personal use exemption allows a facility owner or operator to disregard quantities of toxic chemicals employed solely for personal use by employees or other persons at the facility (40 CFR Section 372.38(c)(3)). It does not apply, however, when a discrete amount of an EPCRA section 313 toxic chemical is employed both for personal use and process-related activities. Thus, in this example, the chlorine used to treat water that serves dually as employee drinking water and facility process water is not eligible for the personal use exemption. Similarly, if the facility supplies heat to its employees' offices by combusting fuel, and that fuel also powers the facility's process-related equipment, the facility owner or operator cannot claim the personal use exemption for any of the toxic chemicals present in the fuel.

Office Supplies; Personal Use Exemption

320. A covered facility uses ammonia in gas cylinders in their blueprint machines. A total of 12,000 pounds of reportable ammonia is used per year in this operation and the facility does not otherwise use or process any other quantities of ammonia. Is this use exempt from Section 313 reporting under the office supplies for personal use exemption (40 CFR Section 372.38(c)(3))?

Blueprint machines are not typical office supply items for personal use. Since the 10,000-pound otherwise use threshold is exceeded, the facility must report for the ammonia.

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Cafeteria Refrigerants; Personal Use Exemption

321. A covered facility uses listed toxic chemicals in its cafeteria refrigeration units. The units enable the cafeteria to store food that will later be served to staff of the facility. Would these chemicals need to be included in EPCRA section 313 threshold determinations?

No. Under the personal use exemption 'foods, drugs, cosmetics or other personal items containing toxic chemicals, including supplies of such products within the facility such as in a facility operated cafeteria, store, or infirmary' used by employees or other persons at the facility are exempt from threshold determinations (40 CFR Section 372.38(c)(3)). The listed toxic chemicals used in the cafeteria refrigeration units, therefore, are exempt from threshold determinations and release and other waste management reporting requirements. Non-exempt uses of the same listed toxic chemicals elsewhere at the facility, however, must be included in threshold determinations and release and other waste management reporting.

Air Conditioning; Employee Comfort; Personal Use Exemption

322. Would listed toxic chemicals used as refrigerants in a facility's air conditioning unit be exempt from EPCRA section 313 reporting under the personal use exemption (40 CFR Section 372.38(c)(3))?

Yes, if the air conditioning unit is used for the purpose of maintaining employee comfort, the listed toxic chemicals used in the unit would be exempt from EPCRA section 313 reporting under the personal use exemption. If, however, the air conditioning unit is integral to the facility's operation or activity (e.g., maintaining constant temperature and humidity for machinery or cold storage rooms), then the toxic chemicals used in the unit would not be exempt from EPCRA section 313 reporting.

Air Conditioning; Personal Use Exemption

323. Are the listed toxic chemicals used in cooling equipment for air conditioning process control rooms eligible for the personal use exemption?

No. As provided in 40 CFR Section 372.38, the personal use exemption applies to the use of listed toxic chemicals limited to: personal use, by employees or other persons at the facility, of foods, drugs, cosmetics, or other personal items containing toxic chemicals, including supplies of such products within the facility such as in a facility-operated cafeteria, store, or infirmary. This exemption is limited and does not include chemicals used in process-related activities.

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Air Conditioning; Personal Use Exemption; Process-Related

324. Would a facility be required to report on the Section 313 chemicals in an air conditioning unit that cools a mine's process operation or production room in which employees must work? In other words, because the air conditioning unit is being used in a production process, could the personal use exemption for employee comfort still apply for these activities?

No. The 'use exemption for personal uses by employees or other persons' was intended to apply to such incidental uses of toxic chemicals that may take place at a facility simply because of personal needs. The types of incidental chemical uses intended to be eligible for this exemption include foods, drugs, cosmetics, or other personal items containing toxic chemicals, including supplies of such products within the facility such as in a facility operated cafeteria, store, or infirmary. The use of chemicals to promote process-related activities, including employee access to such process-related areas that would not otherwise be possible, is not incidental to the process, and therefore, must be considered toward threshold and release and other waste management calculations.

Personal Use Exemption

325. Is the use of toxic chemicals for employee comfort only applicable in an administrative setting for the personal use exemption?

The personal use exemption is limited to chemicals used in non-process related activities, which may include administrative activities (40 CFR Section 372.38(c)(3)). Amounts of listed toxic chemicals used for administrative purposes are eligible for the personal use exemption and do not have to be considered toward threshold or release and other waste management calculations.

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Ammonia; Personal Use Exemption; Sewage

326. A facility covered under Section 313 of EPCRA has met a reporting threshold for ammonia. A sewage system within the facility collects human waste from different parts of the facility. The ammonia present in the sewage is not involved in any manufacturing, processing, or otherwise use activities at the facility. Since the facility has already exceeded an activity threshold for ammonia, are they required to report the ammonia that is emitted in the sewage?

Yes. The ammonia present in the sewage is being coincidentally manufactured as a result of the waste decomposition. Quantities of the toxic chemical that are coincidentally manufactured are not eligible for the personal use exemption. This exemption only covers the otherwise use of toxic chemicals, not their manufacture. The facility should report that it has manufactured ammonia as a by-product in Part II, Section 3.1(e). In addition, to the extent that the facility has knowledge concerning the quantity of the ammonia manufactured from the waste decomposition, they should report the quantity as transferred to a POTW in Part II, Section 6.1, and as sent off-site for treatment in Part II, Section 8.7.

Nitrate Compounds; Personal Use Exemption; Sewage

327. A facility is treating sanitary waste and, as a result of the treatment, nitrate compounds and/or ammonia are coincidentally manufactured. Are the manufactured Section 313 chemicals considered exempt under the personal use exemption?

No. Exemptions provided in 40 CFR Section 372.38 apply to the use of listed toxic chemicals. These exemptions do not include manufacturing or processing of listed toxic chemicals, even if this results from an activity where the use is exempt. If a listed toxic chemical is coincidentally manufactured during an activity where the use of a listed toxic chemical is exempt, the chemical manufactured is not exempt and amounts manufactured must be considered toward threshold and release and other waste management calculations.

Manufacture; Manufacture During Use; Otherwise Use

328. Are facilities required to consider in threshold determinations and release and other waste management calculations, amounts of Section 313 chemicals manufactured from combustion during exempt otherwise use activities (e.g., from motor vehicles, personal use, routine maintenance, intake water, and structural component)?

The exemptions defined at 40 CFR Section 372.38(c) are intended for toxic chemicals otherwise used. Amounts of toxic chemicals manufactured or processed during these ‘exempt’ activities are not exempt.

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Intake Water Exemption; Lead

329. A facility uses river water as process water. The water taken from the river contains more lead (1.0 ppb) than the water returned to the river (0.5 ppb). Is it eligible for the process water exemption? If not, is the facility treating the water?

The process water can be considered exempt because the listed toxic chemical was present as drawn from the environment (40 CFR Section 372.38(c)(5)). The facility does not need to consider lead in the process water for threshold or release and other waste management reporting.

Intake Water Exemption; Wastewater

330. If a facility uses process wastewater containing a listed toxic chemical on-site, are toxic chemicals in the wastewater exempt under the intake water exemption?

No. Since the listed toxic chemicals are not drawn from the environment, the facility must count the amount of the listed toxic chemicals toward threshold determinations and release and other waste management calculations (see 40 CFR Section 372.38(c)(5)).

Intake Water Exemption; Stormwater

331. A covered facility otherwise uses, as process water, wastewater or storm water that contains a toxic chemical. Is the facility required to count the amount of the toxic chemicals toward threshold determinations and release and other waste management calculations or would the section 313 chemicals be exempt under the intake water exemption?

The intake water exemption is specifically limited to otherwise use of toxic chemicals present in process water or non-contact cooling water that are drawn from the environment or from municipal sources. The above facility otherwise uses water in its process sequence and would not be required to account for amounts of listed chemicals contained in stormwater that is drawn from the environment. The facility, however, would have to account for amounts of listed chemicals acquired by the storm water after the storm water has run onto and off of equipment and buildings. Likewise, wastewater is not drawn from the environment and amounts of listed toxic chemicals in wastewater which are otherwise used are ineligible for the exemption and any information on amounts of listed toxic chemicals from wastewater would have to be considered toward threshold determinations and release and other waste management calculations.

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Point Source Air Emissions; Releases

332. During the manufacture of phosphoric acid, traces of the listed toxic chemical are pumped along with solid material to gypsum stacks. The phosphoric acid percolates through the stack slowly and is recirculated back to the manufacturing process. Is the manufacturer required to report the presence of the chemical in the gypsum stacks as a release?

EPA considers this to be a recirculation of the process water. The facility is not required to report the presence of the chemical in a process water recirculation system as a release (40 CFR Section 372.38(c)(5)). If process water containing the toxic chemical escapes the recirculation system and enters the environment, then it would be necessary to count those chemicals towards the activity thresholds and report such releases of the chemical.

Compressed Air; Intake Water Exemption

333. Would a listed toxic chemical present in compressed air be exempt? What if the listed toxic chemical is present in air emissions from a boiler?

A listed toxic chemical present in compressed air drawn from the environment would not have to be counted toward a threshold determination because it meets the intake air exemption (40 CFR Section 372.38(c)(5)). If that same listed toxic chemical is present in the boiler emissions air only because it was in the compressed air fed to the boiler, then it would remain exempt. However, if the listed toxic chemical is created as a result of combustion, you have coincidentally manufactured the toxic chemical and must consider it for reporting.

Disposal of Intake Water; Intake Water Exemption; Underground Mine

334. A facility dewaters its underground mine and places the water in a surface impoundment. Are toxic chemicals in the water eligible for the intake water exemption and are they exempt from release and other waste management reporting?

No, because the facility is not otherwise using the water drawn from the underground mine, the intake water exemption does not apply. In this scenario, the facility is simply disposing of the water containing these chemicals drawn from materials on-site, and therefore, the facility is not manufacturing, processing, or otherwise using chemicals and amounts of these toxic chemicals would not count toward thresholds. However, the facility is disposing of these chemicals and if a threshold is exceeded elsewhere at the facility for one of the same chemicals, then the facility would be required to report the amounts released to the surface impoundment.

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Disposal of Intake Water; Intake Water Exemption; Underground Mine

335. A facility dewaters its underground mine and injects the water into a well on-site. Are the amounts of listed toxic chemicals injected considered a release to land, or are these amounts exempt under the 'use of toxic chemicals present in process water and non-contact cooling water as drawn from the environment?' The water is not used, nor is it considered process water or non-contact cooling water.

No. The exemption for toxic chemicals contained in water drawn from the environment or from municipal sources is provided for the use of water containing these chemicals in processes and for non-contact cooling purposes. The facility is not otherwise using the water drawn from the underground mine, and therefore, the intake water exemption does not apply. The facility is simply disposing of the water containing listed toxic chemicals as drawn from on-site, and therefore, the facility is not manufacturing, processing, or otherwise using these chemicals. These amounts would not count toward thresholds. However, the facility is disposing of these chemicals and if a threshold is exceeded elsewhere at the facility for one of the same chemicals, then the facility would be required to count amounts injected as released.

Intake Water Exemption; Storm Run-Off; Wastewater

336. A covered facility collects run-off from ore piles, natural topography, waste rock piles, and other on-site features in an on-site pit. The facility precipitates metals from the collected water by adding hydroxides to the pit. Is the resulting sludge, and any discharges from the pit, exempt from release and other waste management reporting under the intake water exemption?

The intake water exemption is specifically limited to otherwise use of toxic chemicals present 'in process water and non-contact cooling water as drawn from the environment or from municipal sources.' (40 CFR Section 372.38(c)(5)) In the scenario described above, the facility is actively using hydroxides to precipitate out metals. The facility is using storm water run-off as part of its process sequence to extract desirable materials. Amounts of listed toxic chemicals contained in storm water run-off are exempt from otherwise use threshold calculations, but any new listed toxic chemicals which are manufactured from the facility's use of the storm water must be counted toward the facility's manufacturing threshold. Likewise, any toxic chemicals that are recovered and distributed in commerce must be considered toward the facility's processing threshold. The facility would also have to account for amounts of listed chemicals acquired by the storm water after the storm water has run onto and off of equipment and buildings.

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Employee Comfort; Intake Water Exemption; Personal Use Exemption

337. Do we have to count the chlorine in the city water we use? Are water treatment chemicals such as chlorine covered?

You are not required to account for amounts of a listed toxic chemical present in water that you draw into your facility from the environment or municipal sources (40 CFR Section 372.38(c)(5)). For example, chlorine present in water taken from municipal sources does not have to be considered for threshold determinations and release and other waste management estimates. Any chlorine you use to treat process water used in your facility, however, counts toward the otherwise use threshold determination. However, if you use the chlorine to treat drinking water for personal use at the facility the chlorine is exempt under the personal use exemption from threshold and release and other waste management calculations (40 CFR Section 372.38(c)(3)).

Intake Water Exemption

338. A covered facility draws drinking water from an on-site well. The water contains a Section 313 chemical as a contaminant. Must the facility count the amount of the contaminant in its threshold determinations?

No. The listed toxic chemicals in the water would be exempt from Form R reporting under either the personal use exemption if the water is for the employees' consumptive use on-site (40 CFR Section 372.38(c)(3)).

Intake Water Exemption; Intake Water Exemption-Processing of Intake Water

339. A covered facility dewaters its underground mine and sells the water which contains reportable toxic chemicals to other facilities. Are toxic chemicals in the water exempt from threshold determinations?

No. If a facility sells water that it extracts from its underground mine, it is processing the water and any listed toxic chemicals contained in the water must be considered toward threshold determinations and release and other waste management calculations.

Facility Maintenance Exemption; Process Equipment Maintenance

340. How is routine janitorial maintenance defined in the exemption list? Is equipment maintenance included?

Equipment maintenance such as the use of oil or grease is not exempt. The routine janitorial and facility grounds maintenance exemption is intended to cover janitorial or other custodial or plant grounds maintenance activities using such substances as bathroom cleaners, or fertilizers and pesticides used to maintain lawns (40 CFR Section 372.38(c)(2)).

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Facility Maintenance Exemption; Process Equipment Maintenance

341. An EPCRA section 313 toxic chemical is used to clean a process-related tower at a manufacturing facility. Is the use of the chemical exempt from threshold and release and other waste management calculations under the routine janitorial and facility grounds maintenance exemption of 40 CFR Section 372.38(c)(2)?

No. Materials used to maintain process-related equipment at a facility (e.g., cleaners and lubricants) are not exempt under Section 372.38(c)(2). Because the tower is process-related, the exemption does not apply. This exemption only applies to the use of products that are specifically used for routine janitorial or facility grounds maintenance.

Facility Maintenance Exemption; Recreational Use; Swimming Pool

342. A facility maintains a swimming pool on the facility site for recreational use by the facility employees. Chlorine is used to treat the swimming pool water. Is the chlorine so utilized by the facility subject to threshold and release and other waste management calculations under EPCRA section 313?

No. The chlorine used to treat the swimming pool water is exempt from threshold and release and other waste management calculations under the exemption found at 40 CFR Section 372.38(c)(2) for use of products for routine janitorial or facility grounds maintenance.

Facility Maintenance Exemption; Facility Maintenance Exemption-Similar in Type or Concentration; Manufacture

343. An EPCRA section 313 covered facility uses 55-gallon drums of paint containing a listed toxic chemical to paint lines on the roads. Paint is also used to maintain road signs and facility building signs. Would the listed toxic chemicals in the paint be exempt from EPCRA section 313 reporting requirements under the facility grounds maintenance exemption found at 40 CFR Section 372.38(c)(2)?

The facility grounds maintenance exemption in 40 CFR Section 372.38(c)(2) applies to the use of products used for routine janitorial or facility grounds maintenance. This exemption includes both individually packaged products (e.g., cans of paint) and substances in bulk containers (e.g., 55-gallon drums of paint). Therefore, if the paint in the drums used to maintain the roads and the signs is similar in type and concentration to consumer products, the listed toxic chemicals in the paint would be exempt from EPCRA section 313 reporting requirements. However, if the paint is used for process-related roads or equipment, such as airstrips at federal facilities, the exemption would not apply.

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Coincidental Manufacture; Facility Maintenance Exemption; Facility Maintenance Exemption-Similar in Type or Concentration

344. A covered facility has an ornamental pond on-site. Does the addition of listed toxic chemicals to an ornamental pond on a facility site qualify for the routine janitorial or facility grounds maintenance exemption (40 CFR Section 372.38(c)(2))?

Yes. The facility grounds maintenance exemption applies. However, the facility owner/operator should also be aware that the coincidental manufacture of other toxic chemicals may result (e.g., nitrate compounds) and, any listed chemicals manufactured must be applied to the manufacturing threshold.

Facility Maintenance Exemption

345. It appears that janitorial type chemicals are exempt. Does this mean that if I use formaldehyde as a disinfectant in a sterile area in excess of the threshold, it is exempt?

No. The use of the disinfectant described in the question seems to be process-related and is therefore not exempt. Also, 'janitorial type chemicals' are not exempt; rather, toxic chemicals used for routine janitorial or facility grounds maintenance are exempt.

Facility Maintenance Exemption; Otherwise Use

346. A covered facility uses a contact cleaner to clean relays that are used to control lights. For Section 313 purposes, is this use exempt as part of routine janitorial grounds maintenance or must the amount of the listed toxic chemical in the cleaner used be included in an applicable threshold?

The use of the cleaner is not exempt because it is not a routine janitorial use and does not relate to facility grounds maintenance (40 CFR Section 372.38(c)(2)). The use is integral to the production processes of the facility. Therefore, the amounts of the listed toxic chemicals in the cleaner must be included in the calculation of otherwise use for the facility.

Cooling Towers; Facility Maintenance Exemption; Otherwise Use

347. Are pesticides which are used to control algae in cooling water towers exempt?

No, such pesticides would not all fall under the routine maintenance exemption. The otherwise use threshold would apply.

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Facility Maintenance Exemption; Pesticides

348. Would a facility that exterminates insects using pesticides containing listed toxic chemicals need to report for the listed toxic chemicals?

If the pesticides are used as part of routine facility maintenance and are not process-related, they would be exempt under the facility grounds maintenance exemption (40 CFR Section 372.38(c)(2)). If the pesticides are used for the comfort of the facility personnel, the listed toxic chemicals would be exempt under the personal use exemption (40 CFR Section 372.38(c)(3)). However, if the pesticides are used to support the facility's process, neither exemption would apply, and a covered facility would need to consider the otherwise use of the listed toxic chemical in the pesticides in making threshold determinations. If the otherwise use threshold is exceeded, the facility should report the application of pesticides in Section 5.5.4 (Other Disposal).

Ancillary Use; Dust Suppressant; Facility Maintenance Exemption

349. Does a listed toxic chemical that is applied to a road as a dust suppressant qualify for the routine facility grounds maintenance exemption (40 CFR Section 372.38(c))?

The application of a dust suppressant that contains listed toxic chemicals to land surfaces at the facility is beyond the scope of the 'facility grounds maintenance' exemption. Listed toxic chemicals contained in mixtures used as dust suppressants are not eligible for the 'facility grounds maintenance' exemption. The original intent of the facility grounds maintenance exemption was to provide facilities relief from tracking such ancillary uses of chemicals involved with such routine activities as janitorial cleaning supplies, fertilizers, and pesticides that are similar in type and concentration to consumer products.

Dust suppressants are not products that are generally considered similar to consumer products. The large-scale use of dust suppressants likely to occur at a mining extraction facility is considered integral to the facility's process operations and of such a magnitude that amounts of listed toxic chemicals used for dust suppression are not eligible for the 'facility grounds maintenance' exemption.

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Facility; Fertilizer; Otherwise Use; Pesticides; Waste

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

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

Mobile Equipment; Stationary Equipment; Structural Component Exemption

351. Would the structural component exemption apply to welding rods used to maintain process equipment? Would the structural component exemption apply to welding rods used to maintain non-process related equipment (40 CFR Section 372.38(c)(1))?

No, welding rods used to maintain process equipment are not exempt. However, if the same rods are used solely to maintain the facility (such as in the repair of a door frame) then the facility maintenance exemption would apply.

Paint; Solvents; Structural Component Exemption

352. Are solvents and other listed toxic chemicals in paint used to maintain a facility exempt?

Yes. Painting to maintain the physical integrity of the facility is consistent with the structural component exemption (provided that it is used to paint passive structures), even though the solvents in the paint do not become part of the structure (40 CFR Section 372.38(c)(1)).

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Paint; Structural Component Exemption

353. A covered facility routinely paints the exterior of on-site buildings. The solvent in the paint is an EPCRA section 313 toxic chemical. The paint brushes used to paint the buildings are cleaned with a solvent that is also an EPCRA section 313 toxic chemical. Is the solvent used to clean the brushes subject to threshold determinations and release and other waste management calculations under Section 313?

The structural component exemption set out at 40 CFR Section 372.38(c)(1) applies to the solvent in the paint used to paint the facility. It also applies to the solvent used to clean the paint brushes since this is part of the painting process. Likewise, any paint and cleaning solvent residues would not be subject to threshold determinations and release and other waste management calculations.

Fuel; Structural Component Exemption

354. An EPCRA section 313 covered facility uses a fuel-powered paint sprayer for the sole purpose of painting the facility's structure. The listed toxic chemicals within the paint used to maintain the facility's appearance are exempt from EPCRA section 313 threshold determination and release and other waste management reporting requirements under the structural component exemption (40 CFR Section 372.38(c)(1)). The fuel used to power the paint sprayer also contains listed toxic chemicals reportable under EPCRA section 313. Must the listed toxic chemicals in the fuel be applied toward the otherwise use threshold?

No. The listed toxic chemicals are exempt from EPCRA section 313 threshold determinations and release and other waste management reporting requirements. Although the structural component exemption most commonly applies to toxic chemicals incorporated into a facility's physical structure, the exemption also extends to toxic chemicals whose sole use derives from or is associated with an exempt use. Examples of toxic chemicals exempt in this manner include solvents used to clean paint brushes that were used to paint a facility's structure and fumes generated from the welding of non-process related pipes during installation at a facility. Be aware that the combustion of fuels may coincidentally manufacture Section 313 toxic chemicals. Such coincidental manufacture is not eligible for *de minimis* limitations (see the directive on the *de minimis exemption* in GuideME) or the structural component exemption and amounts produced must be compared against the manufacturing threshold. The EPA publication, Toxic Air Pollutant Emissions Factor - A Compilation of Selected Air Toxic Compounds and Sources (EPA 450/2-90-011) contains emissions factors for many specific compounds emitted during fuel combustion.

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Paint; Pipes; Structural Component Exemption

355. Is the painting of process equipment to meet OSHA standards exempt from Form R threshold determinations and release and other waste management calculations under the structural component exemption?

No. Painting process pipes would not qualify for the structural component exemption because the exemption only applies to non-process related equipment (40 CFR Section 372.38(c)(1)).

Paint; Pipes; Structural Component Exemption

356. Are listed toxic chemicals contained in paint that is used to paint processing equipment subject to threshold determination and release and other waste management reporting?

Yes. Paint used on process-related equipment would not qualify for the structural component exemption. Amounts of listed toxic chemicals used to paint process-related equipment must be considered toward threshold determinations and release and other waste management calculations.

Pipes; Structural Component Exemption

357. Are the listed toxic chemicals contained in process-related equipment, such as piping, eligible for the structural component exemption?

No. If pipes are process-related, the structural component exemption does not apply and the facility may have to consider toward the facility's threshold determination, amounts of listed toxic chemicals contained in process-related pipes that are put into use during the reporting year. And the facility would have to include release and other waste management amounts in calculations where applicable.

Facility; Otherwise Use; Process; Releases; Threshold Determination; Waste

358. A Navy facility purchases wood pilings treated with creosote tar to support piers used for docking ships. Gradually, the creosote, an EPCRA section 313 chemical, is released from the pilings into the water. For purposes of complying with EPCRA section 313, is the creosote exempt from threshold determinations and release reporting under the "structural component" exemption?

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

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

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Pipes; Structural Component Exemption

359. Does the structural component exemption (40 CFR Section 372.38(c)(1)) cover the small amounts of abraded or corroded metals from pipes and other equipment that become part of process streams?

If the pipes are not process-related, the structural component exemption would apply and the listed toxic chemicals contained in the pipes would not need to be considered in threshold determinations and release or other waste management calculations. If the pipes are process-related, the structural component exemption does not apply, and if the facility exceeds a threshold for the listed toxic chemical, any releases and other waste management of the listed toxic chemical should be reported.

Active/Passive Degradation; Structural Component Exemption

360. The structural component exemption under EPCRA section 313 covers the small amounts of abraded/corroded metals from pipes and other non-process related facility equipment (40 CFR Section 372.38 (c)(1)). Does the structural component exemption apply to equipment which regularly suffers abrasion, such as grinding wheels and metal working tools? What criteria can a facility use to decide which pieces of equipment are structural components and which are not?

The EPCRA section 313 structural components exemption would not apply to grinding wheels and metal working tools. These items are intended to wear down and to be replaced because of the nature of their use. The structural component exemption applies to passive, non-process related structures, such as pipes for potable water not related to the facility's process. The abrasion/corrosion includes normal or natural degradation, such as occurs in pipes, but not active degradation, such as occurs in a grinding wheel.

Aluminum Oxide; Structural Component Exemption; Threshold Determination

361. A foundry uses aluminum oxide in grinding wheels as well as in the refractory brick that lines the furnace. Must the facility count the aluminum oxide in the brick toward the reporting threshold, or is the brick exempt as part of the structure of the facility?

The aluminum oxide in the brick must be counted toward the otherwise use threshold if it is a fibrous, man-made form of aluminum oxide. It does not meet the structural component exemption because it is a material that is, in essence, a replaceable insulation liner that is part of the process. If releases from the brick amount to less than 0.5 lb over the course of the reporting year, the article exemption may apply.

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Structural Component Exemption

362. Does material contained in the structure of a building need to be reported?

No. Structural materials not associated with the process are exempt from reporting. They are exempt from threshold determinations and release and other waste management calculations and also from the maximum quantity on-site.

Article Exemption; Cement Kiln Equipment; Structural Component Exemption

363. Can some equipment used in the production processes of cement kiln manufacturers (e.g., grinding balls, hammers, kiln chains, mill liners and lining bars, and cooler grates and side wall liners) qualify for the structural component exemption or the article exemption?

The structural exemption does not apply to these uses of toxic chemicals. EPA believes that grinding balls, hammers, kiln chains, mill liners and lining bars, and cooler grates and side wall liners are all integral components of the process activities at the facility. Therefore, these items would not be eligible for the structural component exemption.

The article exemption may apply to these items. The article exemption is meant for the processing or otherwise use of manufactured items that: are formed to a specific shape or design during manufacture; have end use functions dependent in whole or in part upon its shape or design and do not release a toxic chemical under normal conditions of processing or use of that item at the facility (February 16, 1988; 53 FR 4507). The grinding balls, hammers, kiln chains, mill liners and lifting bars, and cooler grates and side wall liners are being otherwise used by the facility. Therefore, if these pieces of equipment meet the three criteria above throughout their use during the calendar year, the exemption may be taken.

Activity Threshold; Facility; Form R; Process; Releases; Structural Component Exemption

364. Would paving activities (e.g., the use of asphalt or cement) at a facility qualify for the structural component exemption (40 CFR 372.38(c)(1))?

The use of toxic chemicals in asphalt or cement to make and maintain process-related roads and driveways (e.g., a driveway leading to a loading dock) at a TRI-covered facility is not eligible for the structural component exemption (40 CFR §372.38(c)(1)). However, the use of toxic chemicals present in asphalt used to pave employee parking lots at a TRI-covered facility is considered non-process related and is eligible for the structural component exemption. Placing asphalt or cement containing TRI toxic chemicals on the ground at a facility is considered a release of the toxic chemicals. If the paving activity did not qualify for the exemption and the facility exceeds an activity threshold, such releases must be documented in Sections 5 and 8 of the Form R.

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Article Exemption; Structural Component Exemption

365. If a covered facility stores a listed toxic chemical on-site, and then uses it by installing it in the facility, is the facility required to consider the listed toxic chemical (a component) for EPCRA section 313?

When the listed toxic chemical is installed as a passive structural component (a component not related to the facility's process), then the structural component exemption applies to the toxic chemical in the component (40 CFR Section 372.38(c)(1)). If the toxic chemical is in a process-related component, the structural component exemption does not apply. However, if there are less than 0.5 lb of releases of the toxic chemical over the course of the year, it may qualify for the article exemption.

Copper; Facility; Process; Structural Component Exemption; Threshold Determination; Waste

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

No. EPCRA section 313 chemicals that are incorporated into the structural components of a federal facility (e.g. the copper in copper pipes) or that are used to ensure or improve the structural integrity of a structure are exempt from threshold determinations and release and other waste management calculations because of the "structural component" exemption (40 CFR 372.38(c)(1)). If, however, these new structures or modified structures are process-related equipment, then the structural component exemption would not apply.

Degreasers; Otherwise Use; Structural Component Exemption

367. Are degreasers employed in plant maintenance shops exempt under the structural component exemption (40 CFR Section 372.38(c)(1))?

No, degreasers used in plant maintenance do not meet the structural component exemption. The listed toxic chemicals in the degreasers would be considered towards the facility's otherwise use threshold.

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Active Degradation; Electroplating; Structural Component Exemption

368. As part of the equipment involved in a hard chrome plating process, lead anodes conduct a current to parts being plated. The lead anodes do not provide a metallic ion to the plating process, but only act as bus bars to conduct the electrical current. The anodes require replacement over time due to erosion just like other pieces of electrical supply equipment. The anodes are solidly connected to the electrical supply system for the sole purpose of conducting electricity. Are the anodes considered a structural component of the facility and therefore, exempt from reporting under the structural components exemption (40 CFR Section 372.38(c)(1))?

No, the lead anodes are not considered exempt as a structural component since they play such an integral role in an electrochemical process. The erosion which the anodes undergo is not the same as other electrical supply equipment since the degradation is specifically caused by contact with process chemicals in a plating bath.

Asbestos; Structural Component Exemption

369. A facility is removing asbestos insulation for disposal. Is this activity covered by the structural component exemption?

The removal for disposal of friable asbestos insulation is not considered to be the manufacture, process, or otherwise use of friable asbestos. Since friable asbestos is not being otherwise used in this activity, the structural component exemption cannot be taken. However, if the facility does manufacture, process, or otherwise use friable asbestos in excess of the thresholds elsewhere at the facility, this type of off-site transfer would be reportable in Part II, Sections 6.2 and 8.1.

Anti-freeze; Gasoline; Motor Vehicle Exemption

370. Please verify that any motor vehicle operated by the facility, whether licensed or not, is eligible for the exemption listed in 40 CFR Section 372.38(c)(4). This includes forklifts and automobiles. Also, please verify that gasoline, lubricants, oils and antifreeze are all considered to be substances subject to this exemption.

The motor vehicle exemption does not include all motor vehicles in any use at the facility. The exemption only applies to the otherwise use of the toxic chemical. It does not apply to processing or manufacturing of toxic chemicals. For example, this exemption would not apply in the case of an automobile manufacturing plant. As part of the production of vehicles, such a facility would be incorporating the toxic chemicals into an article for distribution in commerce. Another example of a nonexempt activity would be the manufacture of combustion byproducts from motor vehicles. The motor vehicle exemption does apply to components of gasoline (e.g., benzene); lubricants and oils; and antifreeze used to maintain and operate a motor vehicle employed at the facility.

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Motor Vehicle Exemption

371. Are toxic chemicals used to maintain fleets of large earth-moving vehicles at mining facilities exempt from threshold determinations and release or other waste management reporting?

Yes. Listed toxic chemicals used to maintain motor vehicles owned and operated by the facility are eligible for the motor vehicle exemption (40 CFR Section 372.38(c)(4)).

Motor Vehicle Exemption

372. A single company owns many facilities which are required to report under Section 313. The company stores gasoline at one of the facilities. The gasoline is used by trucks from all of the facilities, which come to the off-site central location for fuel and then leave. Is the gasoline in the storage tank exempt because it is used to maintain motor vehicles even though the vehicles are operated by different facilities?

The motor vehicle exemption only applies to the otherwise use of toxic chemicals in motor vehicles that are stationed at the facility that holds the gasoline. Since the facility with the gasoline storage unit is incorporating toxic chemicals into trucks which are then sent back to another facility, the facility storing the gasoline is processing the toxic chemicals. Therefore, the gasoline used to fuel off-site trucks would not be exempt from reporting pursuant to 40 CFR Section 372.38(c)(4). Instead, the facility should consider the toxic chemicals in the gasoline towards their processing threshold. The facilities that have their trucks fueled at another station may be eligible for the motor vehicle exemption for the toxic chemical in the gasoline otherwise used on-site.

Motor Vehicle Exemption; Non-Motorized Barge

373. Are chemicals used to maintain a non-motorized barge stationed at a facility eligible for the motor vehicle maintenance exemption?

Listed toxic chemicals used to maintain a non-motorized barge are not eligible for the motor vehicle maintenance exemption because the barge is not a motor vehicle. Toxic chemicals used to maintain the non-motorized barge must be factored into threshold determinations and release or other waste management calculations. Additionally, listed toxic chemicals used to operate machinery positioned on the barge, such as dredging equipment or cranes, are similarly not eligible for the motor vehicle exemption.

Facility; Releases; Waste

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

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

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Motor Vehicle Exemption; Railcars; Tractor Trailers

375. Does the motor vehicle exemption apply to railcars, which contain no motors; e.g., maintenance of railcars or tractor trailers?

Chemicals such as paint and lubricants used to maintain railcars are not eligible for the motor vehicle maintenance exemption. Tractor trailers or railcars are not themselves motor vehicles and listed toxic chemicals contained in mixtures used to maintain them are not eligible for the motor vehicle maintenance exemption.

Jet Fuel; Motor Vehicle Exemption

376. An airplane manufacturer uses JP4, a jet fuel, to move the planes around the facility. Can this fuel be considered exempt under the 'maintenance of motor vehicles used at the facility' exemption?

Amounts of fuel used only at the facility to transport vehicles on the facility's property do not have to be counted towards thresholds and can be included under the motor vehicle exemption. If the jet fuel is in the planes when they leave the site to be sold or distributed in commerce, then the facility is considered to be processing the jet fuel and the listed chemicals in the fuel are subject to threshold determinations and release and other waste management calculations.

Ethylene Glycol; Facility; Motor Vehicle Exemption

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

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

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EO 13148; Facility; Fuel; Manufacture; Manufacturing; Motor Vehicle Exemption; Otherwise Use; Process; Processing; Solvents

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

The motor vehicle exemption is applicable only to the "otherwise use" of an EPCRA section 313 chemical. This exemption includes EPCRA section 313 chemicals found in gasoline, diesel fuel, brake and transmission fluids, oils and lubricants, antifreeze, batteries, cleaning solutions, and solvents in paint used for touch-up, as long as the products are used to maintain the vehicle operated by the facility. The motor vehicle exemption does not apply to the manufacturing or processing of EPCRA section 313 chemicals. EPCRA section 313 chemicals manufactured during the combustion of gasoline, for instance, is not an exempt activity. EPA encourages federal facilities to play a leadership role, as advocated by Executive Order 13148, by not claiming the motor vehicle exemption.

Motor Vehicle Exemption; Used Motor Oil

379. How does a facility that collects a quantity of used motor oil from motor vehicles owned and operated by the facility consider amounts of the used oil that are sent off-site for recycling?

Amounts of releases (including disposal) or other waste management practices associated with an exempt otherwise use of listed toxic chemicals are also exempt from release or other waste management calculations, provided the facility does not conduct a subsequent non-exempt activity involving the chemical.

Laboratory Activity Exemption; QA/QC Activities

380. Does EPCRA section 313 reporting include laboratory chemicals?

Yes. However, the quantity of a listed toxic chemical manufactured, processed, or otherwise used in a laboratory under the supervision of a technically qualified person is exempt from threshold determinations and release and other waste management calculations. This exemption includes laboratories performing quality control activities including those located in covered facilities (40 CFR Section 372.38(d)).

Nitric Acid; Otherwise Use

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

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

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Laboratory Activity Exemption; TSCA; Technically Qualified Individual

382. 40 CFR Section 372.38(d) lists uses of listed toxic chemicals in laboratories which are exempt from threshold determination and release and other waste management reporting. It states: 'if a toxic chemical is manufactured, processed, or otherwise used in a laboratory at a covered facility under the supervision of a technically qualified individual, as defined in Section 720.3(ee) of this title,' it is excluded from 313 reporting requirements. What does this reference for technically qualified individuals include?

Section 720.3(ee) is found in the Toxic Substances Control Act (TSCA) regulations (40 CFR Section 720.3(ee)) and defines 'technically qualified individual' as a person or persons who, because of education, training or experience, or a combination of these factors, is capable of understanding and minimizing risks associated with the substance, and is responsible for safe procurement, storage, use, and disposal within the scope of research.

Laboratory Activity Exemption

383. If a facility has covered activities and exempted laboratory activities on the same site, does the site have to include the exempted laboratory activities in the threshold determinations?

No. The facility does not need to consider listed toxic chemicals used in exempt laboratory activities when making threshold determinations and release and other waste management calculations (40 CFR Section 372.38(d)).

Laboratory Activity Exemption

384. 40 CFR Section 372.38(d) states that if an EPCRA section 313 toxic chemical is manufactured, processed, or otherwise used in a laboratory at an EPCRA section 313 covered facility, the chemical does not have to be counted for threshold determinations and release and other waste management calculations. Must the threshold activity or release and other waste management activities take place in a laboratory or laboratory setting in order to be eligible for the laboratory activity exemption?

For toxic chemicals to be exempted from reporting under the laboratory activities exemption, the activities must take place inside the laboratory. (40 CFR Section 372.38(d)(3).

Laboratory Activity Exemption; NAICS; NAICS Code

385. Does a pilot plant within a covered NAICS code have to report or is it covered by the laboratory activities exemption?

A pilot plant within the appropriate NAICS codes is a covered facility if it meets the employee and chemical threshold criteria. Pilot plants are not covered by the laboratory activities exemption (40 CFR Section 372.38(d)(2)).

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Laboratory Activity Exemption; Specialty Chemical Production

386. What is meant by 'specialty chemical production' as an exception to the laboratory activities exemption?

Specialty chemical production refers to listed toxic chemicals produced in a laboratory setting that are distributed in commerce.

Laboratory Activity Exemption; QA/QC Activities

387. Does the exemption for laboratory activities also cover quality control labs?

There is no specific 'quality control lab' exemption. Rather, the exemption applies to activities in a laboratory in which a listed toxic chemical is manufactured, processed, or otherwise used under the supervision of a 'technically qualified individual' (40 CFR Section 372.38(d)). This exemption can cover activities in quality control labs.

Laboratory Activity Exemption; Quality Control; Samples

388. If a covered facility takes a sample from its process stream to be tested in a laboratory for quality control purposes, are releases of an EPCRA section 313 chemical from the testing of the sample in the laboratory exempt under the laboratory activities exemption?

Yes, provided that the laboratory at the covered facility is under the direct supervision of a technically qualified individual as provided in 40 CFR Section 372.38(d). The laboratory exemption applies to the manufacture, process, or otherwise use of listed toxic chemicals and any associated release or other waste management amounts that take place in a qualified laboratory.

Laboratory Activity Exemption; QA/QC Activities

389. A facility sends materials that are sampled from processing operations to a laboratory off-site for quality control purposes. Are these quantities exempted under the laboratory activity exemption, provided that they are handled by a technically qualified individual (40 CFR Section 372.38(d))?

No. The laboratory exemption applies to toxic chemicals that are manufactured, processed, or otherwise used in an on-site laboratory under the direction of a technically qualified individual. Amounts of toxic chemicals sent to off-site laboratories are not eligible for this exemption and these amounts must be considered toward the facility's threshold determination.

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Facility; Manufacture; Process; Testing; Threshold Determination; Waste; Waste Management Activities; test

390. An EPCRA section 313 chemical is used in an experiment in a laboratory located at a federal facility. The chemical then is sent to a laboratory at a second facility to continue the experiment. Both facilities conduct the experiments in a manner that meets the laboratory activities exemption for the EPCRA section 313 chemical. Can the EPCRA section 313 chemical be moved from one facility to another to continue an experiment and remain exempt under the laboratory activities exemption for threshold determinations and release and other waste management activities?

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

Facility; Laboratory exemption; Manufacture; Otherwise Use; Process; Processing; Threshold Determination; Waste

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

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

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Laboratory Activity Exemption; Quality Control; Samples

392. A TSD facility regulated under RCRA Subtitle C takes a sample from a process stream (i.e., waste stream), that has already undergone treatment, to be tested in a laboratory for quality control purposes. The waste is tested in a laboratory under the supervision of a technically qualified individual. The TSD facility then places the sample back into the treated waste stream before being sent off-site for disposal. Provided the TSD facility exceeds an activity threshold for the toxic chemical, is the TSD facility required to report the off-site transfer of the sample in Part II, Section 6.2 of the Form R?

No. The portion of the waste released (including disposed) that is manufactured, processed, or otherwise used in a laboratory under the supervision of a technically qualified individual is eligible for the laboratory activities exemption (40 CFR Section 372.38). Amounts sampled by the on-site laboratory do not have to be included in the facility's off-site transfer figures provided that the waste sample does not undergo any further non-exempt otherwise use or processing activity before leaving the facility.

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Off-site Transfer; RCRA-empty; Release Reporting; Releases

393. A covered facility sends a 55-gallon drum containing less than one inch of a listed toxic chemical off-site for disposal. For purposes of the RCRA hazardous waste regulations, the container is considered an empty container as defined in 40 CFR Section 261.7 (i.e., RCRA-empty). Must the facility report the listed toxic chemical contained in the RCRA-empty container as an off-site transfer for purposes of disposal on the Form R even though it is not considered to contain hazardous waste under RCRA?

Yes. The definition of an empty container pursuant to 40 CFR Section 261.7 does not apply to EPCRA section 313. Even though the residue remaining in a container rendered RCRA-empty is no longer considered a hazardous waste under federal RCRA regulations, it is still considered a toxic chemical under EPCRA section 313. The status of a listed toxic chemical as a nonhazardous waste under RCRA has no impact on the applicability of EPCRA regulations on that chemical.

Under EPCRA Section 329, the term release is defined as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any toxic chemical." In Part II, Section 8.1 of the Form R, EPA requires facilities to report all releases of listed toxic chemicals, except those quantities released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes. Disposal of a RCRA-empty container which contains any amount of a listed toxic chemical is generally reportable in Section 8.1 when transferred from or disposed at an EPCRA section 313 covered facility. If, however, the facility has total reportable amounts of a non-PBT chemical not exceeding 500 pounds, it may be eligible for the higher alternate reporting threshold in 40 CFR Section 327.27.

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Laboratory Activity Exemption; Quality Control; Samples

394. A TSD facility regulated under RCRA Subtitle C takes a sample from a process stream (i.e., waste stream) to be tested in a laboratory for quality control purposes. The waste is tested in a laboratory under the supervision of a technically qualified individual. The TSD facility then places the sample back into the process stream where it undergoes further treatment and is destroyed. Provided the TSD facility exceeds an activity threshold for the toxic chemical, is the TSD facility required to consider the amount of the toxic chemical treated for destruction as part of the facility's otherwise use of the listed toxic chemical, as well as report any amount in Part II, Sections 5 and B of the Form R as appropriate?

Yes. Despite the fact that the toxic chemical may have been eligible for the laboratory exemption, amounts of the listed toxic chemicals were returned to a process stream and subject to subsequent manufacture, process, or otherwise use activities. Activities performed involving listed toxic chemicals subsequent to an exempted activity must be considered toward threshold determinations and release and other waste management calculations. Since the sample was placed back into the process stream and subsequently otherwise used (i.e., destroyed), amounts of the listed toxic chemical must be considered toward threshold determinations and release and other waste management calculations.

Laboratory Activity Exemption

395. If a pilot plant is contained within a laboratory, assuming the rest of the laboratory deals with research and quality control, must the facility calculate the threshold based on the entire lab, or just on the chemicals used for the pilot plant?

The facility would only be required to consider the pilot plant portion of the laboratory, assuming the remainder of the laboratory is under the supervision of a technically qualified individual (see 40 CFR Section 372.38(d)(2)).

Laboratory Activity Exemption

396. A facility manufactures 'prototype' vehicles (buses, etc.) for research and development. They otherwise use solvents that contain listed toxic chemicals in excess of the activity threshold. Are the listed toxic chemicals exempt under the laboratory activity exemption?

Yes, if the listed toxic chemicals contained in the solvents are manufactured, processed, or otherwise used in a laboratory at a covered facility under the supervision of a technically qualified individual, then they are exempt from threshold determinations and release and other waste management reporting (40 CFR Section 372.38(d)).

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Laboratory Activity Exemption; Product Testing; QA/QC Activities

397. A facility tests specific components of a machinery line. Its functions include testing for durability of engines, hydraulic systems, power trains, electrical systems and transmissions; building prototypes of products; and qualitative and quantitative analytical testing of materials in a chemical laboratory. Since these activities are test, development, and research oriented, is the facility eligible for the laboratory activity exemption (40 CFR Section 372.38(d))?

Equipment and component testing is equivalent to laboratory activities and thus is eligible for the laboratory activity exemption as long as listed toxic chemicals are manufactured, processed, or otherwise used in a laboratory at a covered facility under the supervision of a technically qualified individual.

Laboratory Activity Exemption; Product Testing

398. Are the following marine engine testing operations that use listed Section 313 toxic chemicals exempt under the laboratory activities exemption: (a) testing of 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?

While all of the noted operations are considered 'product testing' and as such are potential candidates for the laboratory exemption, only those listed toxic chemicals that are manufactured, processed, or otherwise used in a laboratory at a covered facility under the supervision of a technically qualified individual (40 CFR Section 372.38(d) are exempt. Therefore, if these conditions are met, the testing of production engines intended for sale in specialized engine test cells and testing engines for research and development purposes in specialized engine test cells would be eligible for the exemption. However, the testing and research in open water bodies would not qualify because these activities are not being performed in a laboratory.

Laboratory Activity Exemption; Testing Required for Permit

399. Are trial burns conducted in an incinerator for permitting purposes at TSD facilities exempt under the laboratory activity exemption, if conducted under the supervision of a technically qualified individual?

No. The listed chemicals associated with trial-burns required for permitting purposes at TSD facilities are not conducted in laboratories. For activities to be exempt from threshold determinations and release and other waste management calculations under the laboratory activity exemption, the toxic chemicals must be manufactured, processed, or otherwise used in a laboratory at a covered facility under the supervision of a technically qualified individual (40 CFR Section 372.38(d)).

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Laboratory Activity Exemption; Laboratory Support Activity

400. The owner/operator of a newspaper has a photography laboratory on-site that produces the pictures that appear in the newspaper. The laboratory does not perform product testing or analysis for the newspaper. The primary function of the photography laboratory is to develop film to be used in the newspaper. Will this photo laboratory meet the laboratory activity exemption under EPCRA section 313 (40 CFR Section 372.38(d))?

No. The laboratory activity exemption, 40 CFR Section 372.38(d), is primarily for laboratories that perform auxiliary functions for the manufacturing or processing activities at the facility. The photography laboratory does not perform an auxiliary function, but performs activities which are essential to the manufacturing of the newspaper, i.e., they make a product (photographs) that is used in the manufacture of another product (newspaper), and therefore these activities are not exempt from reporting under EPCRA section 313.

Laboratory Activity Exemption; Samples

401. A covered facility prepares a product that contains a listed toxic chemical for sample distribution. The sample product is prepared on a small scale and is distributed to potential customers for trial use. Would the amount of toxic chemical processed in the preparation of these samples be exempted from threshold determinations and release and other waste management calculations under the laboratory activities exemption (40 CFR Section 378.38(d))?

No. Amounts of listed toxic chemicals that are manufactured, processed, or otherwise used in conjunction with the preparation of trial samples are not excluded from threshold determinations and release and other waste management calculations under the laboratory activities exemption.

Facility; Manufacture; Otherwise Use; Process; Releases; Threshold Determination

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

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

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Laboratory Activity Exemption; Manufacture; Thresholds

403. A company manufactures 26,000 pounds a year of a listed toxic chemical, 2,000 of which are manufactured and used in an on-site laboratory under the supervision of a technically qualified individual. Should the 2,000 pounds be counted toward determination of the manufacturing threshold under EPCRA section 313, or will this manufacturing activity be exempt under the laboratory activity exemption (40 CFR Section 372.38(d))?

The 2,000 pounds are exempt from the threshold determination for manufacturing under the laboratory activities exemption (40 CFR Section 372.38(d)) because the listed toxic chemical was manufactured in a laboratory under the supervision of a technically qualified individual. The facility will count only 24,000 pounds of the manufactured chemical toward its applicable manufacturing threshold.

Laboratory Activity Exemption; Laboratory Support Activity; Release Calculation; Threshold Determination

404. A covered facility operates several on-site laboratories and shops (e.g., machine shops, glass blowing shops) that support the laboratory activities. Assuming the activities in the laboratories are exempt under 40 CFR Section 372.38(d), are the listed toxic chemicals used in the shops also exempt from threshold determinations and release and other waste management calculations? If the shops also support some nonexempt laboratory activities, would they be required to account for the fraction of chemicals used for nonexempt purposes?

In either case the listed toxic chemicals used in the shops would not be exempt from threshold determinations and release and other waste management estimates. The fact that the shops support exempt laboratory activities does not exclude the listed toxic chemicals used in the shops from threshold determinations and release and other waste management estimates. The laboratory activities exemption in Section 372.38(d) applies to toxic chemicals that are manufactured, processed, or otherwise used for certain purposes (such as research or quality control) in a laboratory under the supervision of a technically qualified individual. This exemption does not exempt the facilities themselves, it only exempts those listed toxic chemicals that are manufactured, processed, or otherwise used in a laboratory during certain laboratory activities, from threshold determinations and release and other waste management estimates required under EPCRA section 313. Specifically, Section 372.38(d)(3) states that the exemption does not apply to 'activities conducted outside the laboratory.'

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Activity Threshold; Laboratory Activity Exemption; Otherwise Use

405. A facility manufactures firefighting and fire protection equipment. The facility has a training school on how to use that equipment. As part of the training school, on-site fires are set using gasoline containing benzene, a listed toxic chemical. For Section 313 threshold determinations, would this be an otherwise use of benzene, or would this use be exempt as product testing under the laboratory exemption? (40 CFR Section 372.38(d))

The benzene would be considered otherwise used for the Section 313 threshold determination since the benzene is being used in a non-incorporative activity in order to train individuals to use equipment. The laboratory activity exemption is intended to cover activities in a laboratory (e.g., product testing) under the supervision of a technically qualified individual. Training is not considered product testing nor research and development and thus would not be exempt under the laboratory activities exemption.

Facility; Manufacture

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

No. Training is not an activity that falls under the laboratory activities exemption (see 40 CFR Section 372.38(d)).

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Laboratory Activity Exemption

407. A covered facility produces copper panels (e.g., circuit boards). A high percentage of these copper panels are produced as prototypes for facility research and development. The remainder of the copper panels are incorporated into products distributed in commerce. During production, all the copper panels are produced identically, in the same process, in the same facility, under the direct supervision of technically qualified individuals. Is the quantity of copper compounds manufactured and otherwise used for research and development eligible for the laboratory activity exemption and therefore excluded from threshold determinations?

All copper compounds and any other toxic chemicals created or otherwise used during the production of the copper panels are considered towards the manufacturing or otherwise use thresholds. At this point in the panel production, the toxic chemicals manufactured or otherwise used in the entire panel production process are not eligible for the laboratory activities exemption. Those toxic chemicals in the panels distributed in commerce should also be considered towards the processing threshold. The toxic chemicals in the panels tested for research and development purposes become eligible for the laboratory activities exemption while the panels are being tested on-site under the supervision of a technically qualified individual in a laboratory setting.

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Laboratory Activity Exemption; Process

408. After otherwise using an EPCRA section 313 toxic chemical in a laboratory setting under the supervision of a technically qualified individual, a covered facility sends the toxic chemical in waste off-site to be recycled. The facility also processes the same chemical elsewhere but below the processing threshold. The facility is eligible for the laboratory activity exemption for the amount of the listed toxic chemical otherwise used, processed, and manufactured in the laboratory and amounts of the listed toxic chemical released from the laboratory. (40 CFR Section 372.38(d)) Is the facility required to count the amount of the listed toxic chemical sent off-site for recycling from the laboratory toward the processing threshold?

Covered facilities manufacturing, processing or otherwise using a toxic chemical in a laboratory setting under the supervision of a technically qualified individual, need not consider those quantities of the toxic chemical when determining EPCRA section 313 chemical activity thresholds and calculating releases and other waste management amounts. The facility is eligible for the laboratory activity exemption for the amount of listed toxic chemical otherwise used, processed, and manufactured in the laboratory and amounts of the listed toxic chemical released or otherwise managed as waste from the laboratory. The covered facility is not required to count the amount of listed toxic chemical laboratory waste sent off-site for recycling toward the processing threshold. Any other non-exempt quantities of the toxic chemical manufactured, processed or otherwise used on-site, however, should be considered towards the appropriate threshold to see if the facility triggers reporting for that toxic chemical.

Byproduct; Chemical Categories; De minimis; De minimis Exemption; Facility; Import; Manufacture; Manufacturing; Mining; Mixture; Otherwise Use; Owner/Operator; Process; Processing; Releases; Threshold Determination; Waste; Waste Management Activities

409. What is the *de minimis* exemption?

The *de minimis* exemption allows covered facilities to disregard certain minimal concentrations of listed non-PBT chemicals in mixtures or trade name products when making threshold determinations and release and other waste management determinations. The *de minimis* exemption does not apply to the manufacture of a listed toxic chemical except if that listed toxic chemical is manufactured as an impurity and remains in the product distributed in commerce below the appropriate *de minimis* level or is imported below *de minimis* concentrations. The *de minimis* exemption does not apply to a byproduct manufactured coincidentally as a result of manufacturing, processing, otherwise use, or any waste management activity. The *de minimis* exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

When determining whether the *de minimis* exemption applies to a listed non-PBT chemical, the owner/operator should consider only the concentration of the listed toxic chemical in mixtures and trade name products. If the listed

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non-PBT chemical in a mixture or trade name product is manufactured as an impurity or imported, processed, or otherwise used and is below the appropriate *de minimis* concentration level, then the quantity of the listed toxic chemical in that mixture or trade name product does not have to be applied to threshold determinations nor included in release or other waste management calculations. If a listed non-PBT chemical in a mixture or trade name product meets the *de minimis* exemption, all releases and other waste management activities associated with the listed toxic chemical in that mixture or trade name product are exempt from EPCRA section 313 reporting. It is possible to meet an activity (e.g., processing) threshold for a toxic chemical on a facility-wide basis, but not be required to calculate releases or other waste management quantities associated with a particular mixture or trade name product because that mixture or trade name product contains the non-PBT chemical below the *de minimis* level.

Once a listed toxic chemical concentration is above the appropriate *de minimis* concentration, threshold determinations and release and other waste management calculations must be made, even if the chemical later falls below the *de minimis* level in the same process stream. Thus, all releases and other quantities managed as waste that occur after the *de minimis* level has been exceeded are subject to reporting. If a listed toxic chemical in a mixture or trade name product above the *de minimis* level is brought on-site, the *de minimis* exemption never applies.

The *de minimis* concentration level is consistent with the OSHA Hazard Communication Standard requirements for development of Safety Data Sheets (SDSs). The *de minimis* level is 1.0 percent except if the listed toxic chemical is an OSHA-defined carcinogen. The *de minimis* level for OSHA-defined carcinogens is 0.1 percent. For mixtures or other trade name products that contain one or more members of a listed Section 313 toxic chemical category, the *de minimis* level applies to the aggregate concentration of all such members and not to each individually. The list of toxic chemicals in the publication Toxic Chemical Release Inventory Reporting Forms and Instructions for the current reporting year contains the *de minimis* values for each of the non-PBT chemicals and chemical categories. This *de minimis* exemption applies solely to mixtures and other trade name products. EPAs long-standing interpretation has been that mixture does not include waste. Therefore, the *de minimis* exemption cannot be applied to toxic chemicals in a waste.

De minimis Exemption; Trade Name Product

410. Please explain the *de minimis* concentration limitation under Section 313, and its application to mixtures and trade name products (40 CFR Section 372.38(a))?

The *de minimis* exemption allows covered facilities to disregard certain

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minimal concentrations of listed non-PBT chemicals in mixtures or trade name products when making threshold determinations and release and other waste management determinations. The *de minimis* exemption does not apply to the manufacture of a listed toxic chemical except if that listed toxic chemical is manufactured as an impurity and remains in the product distributed in commerce below the appropriate *de minimis* level or is imported below *de minimis* concentrations. The *de minimis* exemption does not apply to a byproduct manufactured coincidentally as a result of manufacturing, processing, otherwise use, or any waste management activity. The *de minimis* exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

When determining whether the *de minimis* exemption applies to a listed non-PBT chemical, the owner/operator should consider only the concentration of the listed toxic chemical in mixtures and trade name products. If the listed non-PBT chemical in a mixture or trade name product is manufactured as an impurity or imported, processed, or otherwise used and is below the appropriate *de minimis* concentration level, then the quantity of the listed toxic chemical in that mixture or trade name product does not have to be applied to threshold determinations nor included in release or other waste management calculations. If a listed non-PBT chemical in a mixture or trade name product meets the *de minimis* exemption, all releases and other waste management activities associated with the listed toxic chemical in that mixture or trade name product are exempt from EPCRA section 313 reporting. It is possible to meet an activity (e.g., processing) threshold for a toxic chemical on a facility-wide basis, but not be required to calculate releases or other waste management quantities associated with a particular mixture or trade name product because that mixture or trade name product contains the non-PBT chemical below the *de minimis* level.

Once a listed toxic chemical concentration is above the appropriate *de minimis* concentration, threshold determinations and release and other waste management calculations must be made, even if the chemical later falls below the *de minimis* level in the same process stream. Thus, all releases and other quantities managed as waste that occur after the *de minimis* level has been exceeded are subject to reporting. If a listed toxic chemical in a mixture or trade name product above the *de minimis* level is brought on-site, the *de minimis* exemption never applies.

The *de minimis* concentration level is consistent with the OSHA Hazard Communication Standard requirements for development of Safety Data Sheets (SDSs). The *de minimis* level is 1.0 percent except if the listed toxic chemical is an OSHA-defined carcinogen. The *de minimis* level for OSHA-defined carcinogens is 0.1 percent. For mixtures or other trade name products that contain one or more members of a listed Section 313 toxic chemical

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category, the *de minimis* level applies to the aggregate concentration of all such members and not to each individually. The list of toxic chemicals in the publication Toxic Chemical Release Inventory Reporting Forms and Instructions for the current reporting year contains the *de minimis* values for each of the non-PBT chemicals and chemical categories.
This *de minimis* exemption applies solely to mixtures and other trade name products. EPA's long-standing interpretation has been that mixture does not include waste. Therefore, the *de minimis* exemption cannot be applied to toxic chemicals in a waste.

Byproduct; De minimis Exemption

411. A small quantity of a listed toxic chemical is manufactured in a waste stream. Are facility owners/operators required to include the amount of the listed toxic chemical present in the waste stream as part of the threshold determination if the concentration of the listed toxic chemical in the waste stream is below the *de minimis* level?

Yes. This *de minimis* exemption applies solely to non-PBT chemicals in mixtures. EPA's long-standing interpretation has been that mixture does not include waste. Also, generally, *de minimis* does not apply to listed toxic chemicals that a facility manufactures. The *de minimis* exemption cannot be applied to listed toxic chemicals manufactured as a byproduct.

Coincidental Manufacture; De minimis Exemption; Impurity

412. A facility adds a chemical to water for pH control that results in the coincidental manufacture of another toxic chemical. This chemical is then applied to coal that is further distributed in commerce. Is the generated chemical considered an impurity and eligible for the *de minimis* exemption?

No, under EPCRA section 313, an impurity refers to a chemical that is coincidentally manufactured as a result of the manufacture, process, or otherwise use of another chemical, but is not separated from that chemical and remains primarily with the product or mixture. Because the listed toxic chemical is manufactured during the treatment of water and not during the processing of the primary product or mixture, it is not considered an impurity. In this case, the facility should consider amounts of chemicals manufactured toward the manufacturing threshold, to the extent that the facility has information on the amount of a toxic chemical that is manufactured. In addition, to the extent that the water and the toxic chemicals that are applied to the coal are intended to be incorporated into the coal product, the chemical manufactured in the water treatment process may also be processed.

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De minimis Exemption; Release Reporting

413. If a covered facility has process streams with less than 1 percent (or 0.1 percent for carcinogens) of a listed non-PBT chemical, do fugitive releases from these streams have to be included in release calculations?

The *de minimis* exemption applies to process streams when a starting material for the process is a mixture containing less than 1 percent (or 0.1 percent) of a listed non-PBT chemical. If the process stream is exempt under *de minimis*, releases from the stream are not reported on the Form R.

Chemical Categories; Coincidental Manufacture; De minimis Exemption

414. A covered facility produces a non-listed inorganic heavy metal oxide. The ores used as raw materials for the production of the metal oxide contain EPCRA section 313 toxic chemicals in small concentrations. During production, these impurities are chemically converted from oxides to sulfates or chlorides, separated from the main product stream, and discharged in wastes. At no point in the process does the concentration of an EPCRA section 313 toxic chemical (i.e., the sum of the concentrations of compounds falling into any listed chemical category) ever exceed the appropriate *de minimis* concentration. Can the *de minimis* exemption apply to these activities? Because the toxic chemicals being coincidentally manufactured are in the same EPCRA section 313 category, is the conversion considered manufacturing?

The *de minimis* exemption does not apply in this instance. The *de minimis* exemption does not apply to chemical byproducts manufactured under Section 313. Additionally, any EPCRA section 313 toxic chemicals manufactured during the facility's production process, even if the toxic chemicals are created from toxic chemicals in the same EPCRA section 313 category, must be considered towards the facility's manufacturing threshold. Therefore, the facility must consider all the EPCRA section 313 listed metal sulfates and chlorides created as a result of its production process for threshold determinations and release and other waste management reporting.

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Compound Category; De minimis Exemption; Delimited Category

415. When determining the *de minimis* level for members of an EPCRA section 313 category, the total weight of all the members of the category in the mixture must be counted and compared to the applicable *de minimis* level. How would a facility determine the *de minimis* level for a mixture containing members of a category, such as the arsenic compounds category, where there are different *de minimis* levels within the category?

For categories in which there are different *de minimis* levels within the category, two calculations are done. First, the weight of all members of the category in the mixture that have a 0.1 percent *de minimis* is determined and compared to the 0.1 percent *de minimis* level. Second, the weight of all members of the category in the mixture (both those with 0.1 percent and 1.0 percent *de minimis*) is determined and compared to the 1.0 percent *de minimis*. If only the first *de minimis* calculation is exceeded then only those chemicals with the 0.1 percent *de minimis* must be included in threshold and release and other waste management determinations. Therefore, category members with the 1.0 percent *de minimis* would be excluded from threshold and release and other waste management determinations if only the first *de minimis* calculation is exceeded. If the second *de minimis* calculation is exceeded then all of the category members in the mixture must be included in threshold determinations and release and other waste management calculations. The *de minimis* exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

De minimis Exemption; Mixed Isomer; Xylene

416. For calculating *de minimis* for xylene (mixed isomers), should the isomers be aggregated to determine if the weight percent is less than one?

Yes. To determine the *de minimis* for xylene (mixed isomers), the one percent would be applied to the aggregated isomer's weight percent in the mixture. For example, a mixture contains 30 pounds each of the three isomers, and 9,910 pounds of Chemical Z. The total xylene would be 90 pounds. That 90 pounds would constitute less than one percent of the total weight of 10,000 pounds, and would therefore, be exempt.

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Concentration Range; De minimis Exemption

417. A covered facility uses a chemical mixture that contains a listed Section 313 non-PBT chemical. The concentration of the listed toxic chemical is given as a range on the Safety Data Sheet (SDS). If the maximum and minimum concentrations are above and below the *de minimis* concentration level, how can the facility determine quantities for Section 313 compliance?

The amount of the listed toxic chemical in the mixture that is at or above the *de minimis* level, and therefore counts towards the threshold, can be assumed to be proportional to the ratio of the amount at or above *de minimis* concentration to the amount of the total concentration range. The concentration of the chemical in the mixture that is not exempt is the average of the *de minimis* level and the maximum concentrations.

For example, assume that a facility manufactures 10 million pounds of a mixture containing 0.25–1.20 percent of a toxic chemical that is subject to a 1 percent *de minimis* level. The quantity of the mixture subject to reporting is:

$$\frac{10{,}000{,}000\,lb \times (1.20 - 0.99)}{1.20 - 0.25} = 2{,}210{,}526\,lb$$

non-exempt mixture

This 2,210,526 pounds of non-exempt mixture is multiplied by the average concentration above the *de minimis*, which is 1.1 percent, or

$$\frac{1.20 + 0.99}{2} = 0.011$$

$$2{,}210{,}526 \times 0.011 = 24{,}316\,lb$$

In this example, the amount of chemical that counts toward a threshold is 24,316 pounds.

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Concentration Range; De minimis Exemption

418. A covered facility processes a mixture of chemicals which includes a non-carcinogenic listed non-PBT chemical present between concentrations of 0.5–1.0 percent, as stated on the SDS provided with the mixture. Is the listed toxic chemical in the mixture eligible for the *de minimis* exemption? If not, how would a facility make a threshold determination for a toxic chemical whose concentration ranges from below the *de minimis* level to the *de minimis* level?

A listed toxic chemical with a concentration range that has an upper bound equal to the *de minimis* level is not exempt from reporting under EPCRA section 313. The exception applies only if the chemical concentration is below the *de minimis* level. The amount of the listed toxic chemical in the mixture that is at or above the *de minimis* level, and therefore counts towards the threshold, is proportional to the ratio of the amount at or above the *de minimis* concentration to the amount of the total concentration range. The concentration of the chemical in the mixture that is not exempt is the average of the *de minimis* level and the maximum concentration, which in this case is the same. The fraction of the listed toxic chemical that is not exempt is the fraction that is at the *de minimis* level, i.e., 1 percent. The fraction that is exempt is that below the *de minimis* level, which is 0.5 percent – 0.9 percent (one significant figure).

For example, assume that a facility manufactures 10 million pounds of a mixture containing 0.5-1.0 percent of a toxic chemical that is subject to a 1 percent *de minimis* exemption. The quantity of the mixture subject to reporting is:

$$\frac{10{,}000{,}000\,lb\,x\,(1.0-0.9)}{(1.0-0.5)} = 2{,}000{,}000\,lb$$

non-exempt mixture

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De minimis Exemption; Mixture; Threshold Determination; Xylene-Xylene (Mixed Isomers)

419. Xylene mixed isomers are present in two of a facility's refined products. For EPCRA section 313 reporting, may the isomers be reported separately? For a mixture of the isomers, how are thresholds and *de minimis* to be determined? Reported separately, the facility exceeds thresholds but is below *de minimis* concentrations.

All of the xylene isomers are individually listed under EPCRA section 313. In addition, there is a listing for xylene (mixed isomers) that covers any combination of xylene isomers. When the threshold and *de minimis* concentration for each isomer in the mixture are exceeded independently, the facility may report under the individual isomer listings or under the mixed isomers listing. When the threshold and/or *de minimis* for each isomer in the mixture are not exceeded independently, but are exceeded collectively, the facility should report under the CAS number for xylene (mixed isomers). Therefore, if a covered facility otherwise uses a mixture containing 8,000 pounds of ortho-xylene, 4,000 pounds of meta-xylene, and 2,000 pounds of para-xylene, the facility would report as xylene (mixed isomers) because it exceeded the 10,000-pound otherwise use threshold for xylenes (mixed isomers).

De minimis Level; De minimis Exemption

420. How do we determine whether the *de minimis* level for a Section 313 listed toxic chemical should be 1 percent or 0.1 percent?

The *de minimis* levels are dictated by determinations made by the National Toxicology Program (NTP), Report on Carcinogens, the International Agency for Research and Cancer (IARC) Monographs, or 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administrations. Toxic chemicals listed as carcinogens or potential carcinogens under NTP (classified as a known or reasonably anticipated to be human carcinogens), IARC (classified as 1, 2A or 2B), or 29 CFR Part 1910, Subpart Z, have a 0.1 percent *de minimis* concentration level. EPA generally refers to these chemicals as the 'OSHA carcinogens.' All other toxic chemicals have a 1 percent *de minimis* concentration level. EPA periodically reviews the latest editions of the IARC and the NTP reports, as well as 29 CFR Part 1910, Subpart Z, to see if a listed chemical's status has changed and updates the EPCRA section 313 lists accordingly.

The list of toxic chemicals in the publication Toxic Chemical Release Inventory Reporting Forms and Instructions for the current reporting year contains the *de minimis* values for each of the toxic chemicals and chemical categories. The list is also available from the EPCRA hotline and on the EPA's TRI website at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-listed-chemicals. Although not required to do so, EPA prepares this list as a courtesy to the reporting public.

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Carcinogen; De minimis Level; De minimis Exemption

421. What is the basis for determining that a toxic chemical is subject to the 0.1 percent *de minimis* level rather than the 1.0 percent *de minimis* level, and when do changes in toxic chemical *de minimis* levels take effect?

In the final rule (53 FR 4500, Feb. 16, 1988) that implements the reporting requirements of EPCRA section 313, EPA adopts a *de minimis* exemption which permits facilities to disregard *de minimis* levels of listed non-PBT chemicals for threshold determinations and release and other waste management calculations. The regulations adopt a 0.1 percent *de minimis* level for chemicals that are carcinogens, as defined in 29 CFR Section 1910.1200(d)(4), as follows:

"(4) Chemical manufacturers, importers and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

(I) National Toxicology Program (NTP), Report on Carcinogens (latest edition);

(ii)International Agency for Research on Cancer (IARC) Monographs (latest editions); or

(iii)29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration."

Therefore, once a chemical's status under NTP, IARC, or 29 CFR Part 1910, Subpart Z, indicates that the chemical is a carcinogen or potential carcinogen, the reporting facility may disregard levels of the chemical below the 0.1 percent *de minimis* concentration, provided that the other criteria for the *de minimis* exemption are met. For convenience purposes, EPA refers to these chemicals as the "OSHA carcinogens."

If in reporting year "A," IARC or NTP classifies a chemical as a probable or known carcinogen (thus lowering the EPCRA section 313 *de minimis* concentration from 1.0 to 0.1 percent), the lower *de minimis* concentration for the purposes of reporting would be applicable starting with reporting year "A+1." For example, vinyl acetate was classified as a group 2B chemical by IARC in 1995, so the lower *de minimis* level of 0.1 percent applied starting with the 1996 reporting year (i.e., it was effective as of January 1, 1996, for reports due July 1, 1997).

Suppliers would need to notify their customers of such changes with the first shipment in the year in which the change is applicable to reporting. If, as in the vinyl acetate example, the classification changes in 1995, then the supplier would notify customers with the first shipment on or after January 1, 1996.

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Toluene; Toxic Chemical List

422. On June 10, 2011, the National Toxicology Program (NTP) released its 12th Report on Carcinogens (RoC), which outlines chemicals that may pose a hazard to human health by virtue of their carcinogenity. Has EPA added any of the new chemicals from the 12th RoC to the EPCRA §313 TRI toxic chemical list?

On November 7, 2013, EPA published a final rule adding ortho-nitrotoluene to the list of EPCRA §313 chemicals (78 FR 66848). After reviewing the 12th RoC, EPA concluded that ortho-nitrotoluene meets the EPCRA section 313(d)(2)(B) statutory listing criteria because it is "reasonably anticipated to be a human carcinogen." This final rule is effective November 29, 2013, and will apply for the 2014 reporting year (reports due July 1, 2015).

Additional information regarding the final rule, including the Federal Register notice, is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/addition-ortho-nitrotoluene-0.

De minimis Exemption; Manufacture; Threshold Determination; Wastewater Treatment

423. If a facility manufactures 900,000 gallons per day of a toxic chemical at a 0.5 percent concentration in a wastewater treatment system, is this quantity to be considered for threshold determinations and release and other waste management calculations?

Since the chemical is manufactured at the facility as part of a waste treatment process, the *de minimis* exemption does not apply and the toxic chemical must be considered for both threshold determinations and release and other waste management calculations.

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Communities; Compounds; PACs; PBT Chemicals; Toxic Chemical List

424. In 2005, the National Toxicology Program (NTP) released its 11th Report on Carcinogens (RoC), which outlines chemicals that may pose a hazard to human health by virtue of their carcinogenity. Has EPA added any of the chemicals from the RoC to the EPCRA §313 TRI toxic chemical list?

On November 26, 2010, EPA expanded the TRI toxic chemical list by adding 16 chemicals classified as "reasonably anticipated to be a human carcinogen" by the National Toxicology Programs (NTP) Report on Carcinogens (75 FR 72727). After reviewing the NTPs report, EPA believes that these 16 chemicals meet the EPCRA §313(d)(2)(B) statutory listing criteria because they can reasonably be anticipated to cause cancer in humans. Twelve of the chemicals were listed individually, while the remaining four were added to the polycyclic aromatic compounds (PACs) category. The PACs category is a category of special concern because PACs are persistent, bioaccumulative, toxic (PBT) chemicals, and as such, they are likely to remain in the environment for a very long time, are not readily destroyed, and may build up or accumulate in the body.

This rulemaking to expand the TRI toxic chemical list is a part of EPAs ongoing efforts to provide communities with more complete information on chemicals. The revised toxic chemical list is effective starting with reports due July 1, 2012, for Reporting Year 2011.

Ammonia; De minimis Exemption

425. A covered facility places ammonium chloride in water, and manufactures aqueous ammonia for use on-site. Does the *de minimis* exemption apply to this activity?

No. The facility cannot take the *de minimis* exemption for this activity because the facility manufactured aqueous ammonia. The *de minimis* exemption does not apply to the manufacture of a non-PBT chemical, unless the toxic chemical is manufactured as an impurity and remains in the product distributed in commerce. Since the facility used the aqueous ammonia on-site and the ammonia is not an impurity that remains in a product distributed in commerce, the *de minimis* exemption does not apply.

De minimis; De minimis Exemption; Manufacture; Manufacturing; Waste

426. A chemical is manufactured in a waste stream. The waste stream is then applied to a product for distribution in commerce. Can the *de minimis* exemption be taken for the toxic chemicals manufactured in the waste stream that are distributed with the product?

No. For the purposes of calculating the 'manufacturing' threshold, the *de minimis* exemption cannot be applied to listed toxic chemicals in waste or listed toxic chemicals 'manufactured' in waste.

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De minimis Exemption

427. A covered facility receives chlorine in 100-ton tank car quantities in concentrations above the 1 percent *de minimis* level. The chlorine is transferred to a bleaching vessel to make a bleaching mixture, where its concentration drops below the *de minimis* level. Does the *de minimis* exemption apply?

No. The mixture received by and initially processed by the facility contains chlorine above the *de minimis* concentration level. Because the mixture contained chlorine in a concentration above the 1 percent *de minimis* level, the *de minimis* exemption does not apply. The facility must consider the total weight percent of the chlorine in the mixture toward a threshold determination. Any amounts of the listed toxic chemical that are ultimately released or otherwise managed as waste as a result of this processing activity should be reported regardless of the concentration of the chlorine in the waste stream.

De minimis; Facility; Form R; Off-site Transfer; Otherwise Use; Releases; Reporting Requirements; Threshold Determination; Toluene; Waste

428. A federal facility "otherwise uses" toluene, an EPCRA section 313 chemical, in two ways. In one "otherwise use," toluene is in a product below the *de minimis* level, and is therefore exempt from threshold determinations and release reporting under EPCRA section 313. In the second "otherwise use," toluene is in a product in an amount greater than the *de minimis* level and is used in excess of the 10,000-pound "otherwise used" threshold. Because the facility must prepare a Form R for toluene, must the facility report all of the releases and off-site transfers in the report, including those that qualified for the *de minimis* exemption?

No. If a facility has multiple uses of a single EPCRA section 313 chemical, and one of those uses meets the criteria for an exemption, then the quantity of the EPCRA section 313 chemical that meets the criteria for the exemption is exempt from threshold determinations and release and other waste management reporting requirements. In the above example, the facility must file a Form R for toluene and must report all releases and other waste management of toluene that result from all non-exempt uses of the chemical.

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De minimis Exemption; Otherwise Use; Sewage; Waste stream

429. A covered metal mining facility receives sewage sludge from off-site for use in soil reclamation. Is the application of sewage sludge to land considered an otherwise use? Are the toxic chemicals used in the soil reclamation activity eligible for the *de minimis* exemption, and if so, how are amounts reported (e.g., released to land)?

The metal mine is otherwise using the listed toxic chemicals contained in the sewage sludge as a soil building material. However, because the listed toxic chemicals contained in the sludge are being applied to land, the facility is managing the sewage sludge as a waste. Therefore, in this example, amounts of listed toxic chemicals being otherwise used are not eligible for the *de minimis* exemption. Amounts of listed toxic chemicals are reported as a release to land. The otherwise use of listed toxic chemicals, such as nitrate compounds for farming, is to be reported as a release to land in Section 5.5 of the Form R.

De minimis Exemption; Otherwise Use

430. A metal mining facility receives ash that it directly incorporates in concrete which it then uses on-site to form cement blocks. Is this direct use of ash eligible for the *de minimis* exemption?

The use of ash as a component of a mixture (concrete) that is otherwise used on-site to construct cement blocks constitutes an otherwise use of a material containing listed toxic chemicals and such amounts must be counted toward the facility's otherwise use of those chemicals. In this case, the ash is not considered a waste because it is not managed as a waste. Thus, the listed non-PBT chemicals contained in the ash are eligible for the *de minimis* exemption if they do not exceed the *de minimis* concentrations.

De minimis Exemption; Metal Compounds

431. Does the *de minimis* exemption apply to the parent metal component of a compound in a mixture for Section 313 reporting?

No. For threshold determinations, the weight percent of the whole compound in the mixture is used. In general, the *de minimis* value for compounds is one percent, unless the particular compound is itself an OSHA carcinogen and then the *de minimis* level is 0.1 percent. The *de minimis* exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

De minimis Exemption; Treatment Processes; Wastewater Treatment

432. Is the creation of listed chemicals in waste treatment processes exempt if the concentration is less than the *de minimis* level?

No. The manufacture of a Section 313 chemical during a waste treatment process is not covered by the *de minimis* exemption.

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De minimis Exemption; Waste

433. A raw material contains less than the *de minimis* level of a listed non-PBT chemical. During processing of the listed toxic chemical, its concentration remains below *de minimis*. However, the concentration of the listed toxic chemical in the waste stream that results from that processing activity is above the *de minimis* concentration level for that toxic chemical. The waste stream containing that listed toxic chemical is disposed in an on-site landfill. Should the toxic chemical handled in the process line be included in the facility's threshold determination? Do the quantities of the listed toxic chemical in waste streams that are generated from this process require reporting? What about the listed toxic chemical present in the waste stream that is above the *de minimis* level?

No. The *de minimis* exemption can be applied to the listed non-PBT chemical in the raw material that is processed. Because the *de minimis* exemption can be taken, the quantities processed do not have to be applied to the processing threshold for that toxic chemical at the facility and quantities of the listed toxic chemical that are released or otherwise managed as waste as a result of this specific processing activity are exempt from release and other waste management calculations. The exemption applies even if the listed toxic chemical is concentrated above the *de minimis* level in the waste stream resulting from that processing activity.

Ash; De minimis

434. A covered facility combusts coal in a combustion unit. The coal contains a non-PBT chemical below *de minimis* amounts. During combustion, chemicals are manufactured. The ash containing the toxic chemicals is generated from the combustion of the coal. The ash is then sold to another facility for direct reuse in the manufacture of concrete blocks. If the toxic chemicals in the ash are below the appropriate *de minimis* concentration, are they eligible for the *de minimis* exemption?

The toxic chemical in the coal being combusted should be considered towards the facility's otherwise use threshold and this activity is eligible for the *de minimis* exemption. The toxic chemicals that are manufactured as a result of the combustion process are byproducts and therefore not eligible for the *de minimis* exemption. The chemicals in the ash that is sold for direct reuse off-site are considered processed. After combustion, when the facility is preparing the toxic chemicals in ash for distribution in commerce, the non-PBT chemicals are eligible for the *de minimis* exemption.

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De minimis Exemption; Waste

435. A covered facility otherwise uses a toxic chemical that is above the *de minimis* concentration in a mixture. How does the *de minimis* exemption apply to listed toxic chemical residues from this use contained within used or spent containers that the facility sends off-site for disposal?

The *de minimis* exemption cannot be applied to quantities of the listed toxic chemical in used or spent containers that are sent off-site for disposal because these quantities are being managed as a waste and the *de minimis* exemption does not apply to wastes. The *de minimis* exemption can be applied to a listed non-PBT chemical in a mixture or trade name product that is processed, otherwise used, manufactured as an impurity (that remains with the product), or imported, provided that the listed toxic chemical is present in the mixture or trade name product below the *de minimis* concentration level.

De minimis Exemption

436. A facility is taking part in an experimental shale oil extraction process. When the shale is extracted, concentrations of a non-PBT chemical are present in trace amounts in the shale far below the *de minimis* concentration. Does the *de minimis* exemption apply?

Yes, the *de minimis* exemption applies to the listed non-PBT chemical present in the shale (40 CFR Section 372.38(a)).

Article Exemption; Threshold Determination

437. Are articles exempt from threshold determinations in normal processing, otherwise use, or disposal?

An article would be exempt from threshold determinations if the article meets the criteria for exemption. The article must be a manufactured item: (1) which is formed to a specific shape or design during manufacture; (2) which has end use functions dependent in whole or in part upon its shape or design; and (3) which does not release a toxic chemical under normal conditions of processing or otherwise use of the item at the facility or establishments. If an item retains its initial thickness or diameter in whole or in part, as a result of normal processing or otherwise use, then it meets the first part of the definition. Disposal of materials that are recognizable as the processed article is not considered a release or management of a waste containing a listed toxic chemical from an article, and thus, does not negate the article status.

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Article Exemption; Threshold Determination

438. Are metal articles exempt from threshold determinations under normal processing or otherwise use?

The fact that an item is metal is irrelevant because metals do not have special status under the article exemption. If the metal article meets all the criteria for the article exemption during normal processing and otherwise use, then it would be exempt from threshold determinations and release and other waste management calculations.

Article Exemption; Recycle; Threshold Determination

439. A covered facility manufactures 'non-article' metal items. If all wastes from the manufacturing process are recycled, are the items still subject to threshold determinations?

If a 'non-article' metal item is processed but all wastes are recycled, the item is still subject to threshold determinations and release and other waste management calculations. The toxic chemicals therein must be applied to the appropriate thresholds.

Article Exemption; Article Releases; Half Pound Policy

440. Please clarify the Agency's half pound policy for the article exemption.

The Agency has adopted a 'round to the nearest pound policy.' If the amount of a listed toxic chemical in releases from processing or otherwise using all like items is equal to or less than a half pound, this amount can be rounded to zero. Thus, the exemption would be maintained. The half-pound limit does not apply to each individual article, but applies to the sum of all amounts released during processing or otherwise use of all like items over the entire reporting year. If the listed toxic chemical that is released exceeds a half pound and is completely recycled/reused, on-site or off-site, then the item may still maintain its status as an article.

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Facility; Form R; Lead; Like Articles; Otherwise Use; PBT Chemicals; Process; Processing; Threshold Determination; Waste; normal conditions

441. EPCRA section 313 chemicals contained in articles that are processed or otherwise used at a covered facility are exempt from threshold determinations and release and other waste management calculations. One criterion that must be met for a chemical to be exempt as part of the article is that the item does not release a toxic chemical under normal conditions of processing or use. If a facility processes articles containing lead, a persistent, bioaccumulative, and toxic (PBT) chemical, and the processing of all like items results in a total release of 0.4 pounds during the reporting year, can the facility round this release to 0?

There is no need to round the 0.4 pound release quantity to zero. If the processing or otherwise use of all like items results in a total release of 0.5 pound or less of the chemical, the items retain their article status. This means that for purposes of filling out a Form R release report, the facility has the option to: 1) not count the quantities of toxic chemical contained in the like articles towards threshold determinations; and 2) not count the 0.5 pound or less total release quantity (in this example the 0.4 pound quantity) of the toxic chemical that occurred from the processing or otherwise use of all like articles towards the quantities released or otherwise managed as waste. This applies to PBT toxic chemical (e.g. lead) and all other chemicals included on the TRI list of toxic chemicals.

Article Exemption; Manufacture

442. Does the article exemption in the Section 313 rule apply to preparation (i.e., manufacture) of the article? What about processing or otherwise using that article?

The article exemption applies to the normal processing or otherwise use of an article. It does not apply to the manufacture of an article. For example, the manufacture of articles such as tableware is not exempt. Toxic chemicals processed into articles produced at a facility must be factored into threshold determinations and release and other waste management calculations.

Article Exemption; End Use Function

443. A facility manufactures lead came (i.e., slender, grooved, lead rods). A lead billet is placed into a press and pushed through a die to produce a unique form. The facility processes 100,000 pounds of lead came. Is this process exempt from reporting under the article exemption?

The article exemption does not apply. The lead billet does not qualify as an article because it does not have an end use function other than to be of a size and shape convenient to further processing, and the end product is significantly different in shape and dimension from the starting material. Since the facility processes more than 100 pounds of lead, the facility must report for this toxic chemical.

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Article Exemption; Manufacturing Article

444. A covered facility uses sheet metal to manufacture metal desks. When manufacturing the desks, the operator welds and solders some of the sheet metal together. Must the facility include the toxic chemicals in the welding rods, solders, and the metals being joined for its threshold determination? Does the metal desk meet the article exemption?

If 0.5 pounds or less of the toxic chemical is released from all like articles in the reporting year and the overall thickness or diameter of the sheet metal is not changed when processed into the desk, the sheet metal would retain its article status. The desk itself would not meet the criteria for the article exemption because the exemption does not apply to the manufacture of articles. Also, because air emissions are generated from the welding and soldering rods when they are used, the owner/operator must assess the entire amount of the toxic chemical in the rods for processing threshold purposes.

Article Exemption; Facility; Lead; Manufacturing; Otherwise Use; Process; Storage; Waste; articles exemption

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

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

Article Exemption; Components of Product

446. A covered facility has a condenser that consists of many individual copper tubes. These copper tubes must be replaced periodically and are often replaced individually. Can each of the copper tubes be considered an article under Section 313?

Each tube may be considered an article. However, for amounts of listed toxic chemicals to be exempt from threshold determinations and release and other waste management calculations under the article exemption, releases of all listed toxic chemicals for all ‘like’ articles must not exceed 0.5 pounds (see the Toxic Chemical Release Inventory Reporting Forms and Instructions). In this example, releases from all the replaced copper tubes must not exceed 0.5 pounds for the reporting year for the amounts not to be considered. If the tubes are ineligible for the exemption, then amounts of listed toxic chemicals contained in the tubes replaced (put in service) during the reporting year must be counted towards thresholds.

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Facility; Otherwise Use; Process; Processing; Releases

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

The 0.5 pounds/year release cut-off value applies to aggregate releases from the same type of item being processed or otherwise used in any manner at the facility. This value applies to the total aggregate releases of the EPCRA section 313 chemical from both steps of the process. Therefore, to reach the 0.5 pounds/year value, a facility should add any releases from grinding to those from cutting.

Aluminum; Facility; Manufacture; Otherwise Use; Process; Processing; Threshold Determination; Waste; articles exemption; normal conditions

448. EPCRA §313 chemicals contained in articles are exempt from threshold determinations and release and other waste management calculations. However, a manufactured item can only be considered an "article" so long as (i) the item was formed to a distinct shape or design during manufacture, (ii) the item has end use functions dependent in whole or in part upon its shape or design, and (iii) the item does not release a toxic chemical under normal conditions of processing or other use. If a facility has an aggregate release of greater than 0.5 pounds of a TRI chemical from the processing or otherwise use of an item and all like items, then the item and all like items do not qualify as "articles," and all toxic chemicals contained in the items are ineligible for the articles exemption. If two items are made from different materials or formed to different shapes or designs, are they considered like items?

Items made from two different types of materials are not considered like items. In other words, the eligibility of items made from one type of material for the exemption does not affect the eligibility of items made from another type of material for the articles exemption. For example, stainless steel tubes and aluminum tubes are not considered like items. Therefore, if stainless steel tubes meet all of the criteria for the exemption, they would continue to qualify for the exemption even if the aluminum tubes do not qualify.

Similarly, items that have been formed to a distinct shape or design during their manufacture are not considered to be like items with respect to items that have been formed to a different shape or design. For example, steel sheets, plates, coils, and tubes would not be considered like items.

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Article Exemption; Article Releases; Welding Rods

449. Our facility uses welding rods for equipment maintenance. Can these be considered articles?

One of the three qualifying criteria for the article exemption (40 CFR Section 372.3), states that an article 'does not release a toxic chemical under normal conditions of processing or otherwise use of that item at the facility or establishment.' When the welding rod is used, a listed toxic chemical is released. Therefore, the welding rod cannot be considered an article.

Facility; Process; Releases; Threshold Determination; Waste; articles exemption

450. A TRI-covered facility welds two metal items together that independently meet the definition of an article as defined in 40 CFR §372.3. No releases occur from the joined metal items themselves, but there may be releases from the welding rods. Would the welding process negate the article status for the two metal items?

The article status of the metal items is not negated by the toxic chemical releases from the welding rods. The joined metal parts may be considered articles, and only the welding rods must be considered when making threshold determinations and releases and waste management calculations. However, if more than 0.5 pound of a toxic chemical is released from all like items, the item(s) would not qualify for the articles exemption.

Article Exemption

451. A covered facility uses a die block to manufacture items. When the block becomes worn and needs adjustments such as shaving and melting to restore its shape, how does the facility report on releases resulting from that activity?

If, upon shaving and melting the die block, the diameter or thickness are not retained in whole or in part or toxic chemicals are released in an amount which exceeds 0.5 pounds for all like items in a reporting year, then the block would no longer qualify for the article exemption and the facility would have to perform threshold determinations and report releases and other waste management of the listed toxic chemical. When threshold determinations are made, the facility must consider the weight of the toxic chemical contained in the entire block for threshold determinations. However, only quantities in like articles that do not meet the article definition and were placed into use within the reporting year would be considered towards thresholds. Those items in use from previous years would not be considered in the threshold determinations for the current reporting year.

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Article Exemption; Change in Diameter/Thickness

452. A mine's electrorefining operation uses an anode containing a toxic chemical. The anode is meant to degrade, and the thickness changes over the entire anode. Is this anode eligible for the article exemption?

No. Since the item did not retain its original thickness in whole or in part, the anode is not considered an article.

Article Exemption; Fume or Dust-Fume or Dust Qualifier

453. A company processes a galvanized sheet metal containing elemental zinc, not a zinc compound. When the sheet metal is processed it generates zinc dust, all of which is captured and sent off-site for recycling. The sheet metal is formed to a specific shape and its end use functions depend in whole on its shape during end use. Can the company claim an exemption because the sheet metal remains an article, or must it do a threshold determination for zinc because it has coincidentally manufactured zinc in the dust form?

Elemental zinc is listed with a qualifier, fume or dust, and is only reportable in the form of fume or dust. Thus, the zinc in the sheet metal would not count toward the threshold determinations since it is not in the fume or dust form. The zinc that is generated (in the form of fume or dust) as a result of the sheet metal processing is reportable and would be counted toward the 25,000-pound threshold determination for manufacturing, regardless of the sheet metal's article status.

Article Exemption; Reportable Release

454. I am a power tool manufacturer and we use copper, a listed toxic chemical. We receive copper plates and shave the rough edges off them. All of the shavings are vacuumed and sold to a scrap metal facility which makes ingots and sells them. Is the copper plate an article? How do I consider the shavings?

Because all of the copper released from the plate is collected and reused, no reportable release has occurred and the article exemption is maintained. If the copper is disposed of, on the other hand, the plates lose the article status.

Article Exemption; Glass

455. If glass is purchased (with about a 20 percent lead content) and its form is physically changed to make light bulbs, is that considered processing or does the article exemption apply?

The article exemption does not apply because: (1) the end use of the glass is not dependent on the specific shape or design of the glass entering the process-the glass is melted and reshaped, and/or (2) emissions result from heating of the glass during processing.

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Article Exemption; Light Bulbs

456. A facility subject to EPCRA section 313 crushes light bulbs and uses the crushed glass in their process. The light bulb stems are not used in the process and are disposed. There is a lead 'button' in each light bulb stem which is disposed. Is this button considered an article and therefore exempt from threshold and release and other waste management calculations under 40 CFR Section 372.38(b)?

No, the lead buttons from crushed light bulbs would not be considered articles and the lead would not be exempt from threshold determinations and release and other waste management calculations. The lead in these buttons would not be counted toward any threshold. The facility would only be required to report the release of lead buttons if a threshold for lead was exceeded by a covered activity or other waste management elsewhere at the facility.

Article Exemption; Article Releases

457. A covered facility processes sheet metal that contains a listed toxic chemical. When processed, some pieces of the sheet metal are cut generating shavings which contain the listed toxic chemicals and which are not 100 percent recycled. Specifically, more than 0.5 lb is released from all like items during the reporting year, and therefore, the sheet metal does not meet the article exemption criteria. Must the facility consider the amount of the listed toxic chemical in the entire piece of sheet metal for threshold determinations or may the facility consider just the amount of listed toxic chemical in the area of the sheet metal that is cut?

All of the listed toxic chemical in the entire piece of cut sheet metal must be counted toward the shavings or the processing threshold, not just the weight of the listed toxic chemical in the section of the item on which work is done. The weight of the listed toxic chemical in the entire piece of sheet metal is used; the exemption cannot apply to a portion of the article.

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Article Exemption; Chromium; Facility; Manufacture; Otherwise Use; Process; Processing; Releases; normal conditions

458. EPCRA §313 chemicals contained in articles that are processed or otherwise used at a covered facility are exempt, as long as the item was formed to a distinct shape or design during manufacture, the item has end use functions dependent in whole or in part upon its shape or design, and the item does not release a toxic chemical under normal conditions. If a facility has an aggregate release of greater than 0.5 pounds of a TRI chemical during the processing or otherwise use of an article, then the exemption is negated for the article and all like items. A manufactured item contains nickel and chromium. If there are releases of more than 0.5 pounds of nickel but less than 0.5 pounds of chromium, do the manufactured item and all like items still qualify for the article exemption for chromium?

If the manufactured item and all like items release more than 0.5 pounds of any toxic chemical, then those items lose their article status for all toxic chemicals contained in the items. Therefore, because the facility released more than 0.5 pounds of nickel, the manufactured item loses the article status for all TRI toxic chemicals, including chromium. The item would only qualify for the article exemption if the processing or otherwise use of all like items resulted in a total release of 0.5 pounds or less of nickel and 0.5 pounds or less of chromium.

Article Exemption; Compounds; Wire

459. I use copper wire in one of my products. I cut it and bend it and then heat seal it into a glass bulb. How do I consider the copper wire for Section 313 reporting?

First, the wire would remain an article if during the manufacture of the glass bulbs no toxic chemicals are released, and if the wire meets the other two criteria of the article exemption (i.e., it is formed to a specific shape or design during manufacture and it has end use functions dependent in whole or in part upon its shape or design). If the wire is not an article, then for an element such as copper, both copper metal and copper compounds are subject to EPCRA section 313 reporting. Determine the form of the copper in the wire first. If it is pure copper wire, the entire weight of the entire wire must be used. If it is an alloy, the weight percent of the toxic chemical times the entire wire weight must be used. If there are multiple copper compounds, the entire weight of each copper compound must be used for the processing threshold determination.

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Article Exemption; Wire

460. We cut copper wire into segments which are then wound around a motor part. The ends are not stacked and our engineer determined that no copper is released. Is the wire still an article?

Cutting the wire into segments and winding it around a motor part do not negate the exemption since the diameter and thickness of the wire is not changed. The copper wire remains an article as long as no toxic chemicals (or less than 0.5 lb for all like items over the entire reporting year) are released during use. Since your engineer determined no copper is released, the article exemption does apply and the copper wire does not have to be considered for threshold determinations and releases and other waste management calculations.

Article Exemption; Wire

461. Copper wire at a facility is cleansed by dipping it into a sulfuric acid solution. This acidic solution etches away a portion of the surface of the wire. The etched copper reacts with the acid to form copper sulfate. The wastestream containing the copper sulfate is sent directly to a POTW and no other releases of copper occur on-site to any other environmental media. Is the article exemption (40 CFR Section 372.38(b)) negated for the copper wire?

The transfer of the copper sulfate to the POTW constitutes a release from the article. The release from the copper wire in the form of a copper compound would negate the article exemption for the copper wire. If the facility exceeds an activity threshold for the copper wire, a report must be filed for copper. In addition, if the 25,000-pound manufacturing threshold is exceeded for the copper sulfate, a report must also be filed for copper compounds. If a threshold for copper and copper compounds is individually met, the facility may file one report for both.

Article Exemption; Sheet Metal

462. I run a metal fabrication facility, under NAICS code 332. If I cut the metal sheets and send the shavings off-site for reuse, can I consider the metal sheets articles?

Yes. If the only thing separated from the metal sheets during cutting are shavings, and if all the shavings are sent off-site for reuse, and the thickness of the metal sheet is not completely altered during processing, then the metal sheets are still considered articles and are exempt. If cutting results in shavings or other waste materials from the sheets, and if these shavings are completely captured and sent either on-site or off-site to be either recycled or reused, then the item (in this case, metal sheets) can retain the article exemption, given that the other criteria for exemption are met.

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Article Exemption; Article Releases; Polyurethane Foam

463. A facility buys and sells rigid polyurethane insulating foam containing a fluorocarbon in higher than the *de minimis* concentration. The facility cuts the foam and packages it to be sold and distributed in commerce. Does the facility need to report the fluorocarbon, a Section 313 chemical, released to the air as a result of cutting polyurethane foam?

Fluorocarbon in foam pieces that are cut counts toward the processing threshold. If the threshold is met, the facility must report all releases and other waste management of fluorocarbon as a result of cutting polyurethane foam and any diffusion of fluorocarbon in polyurethane foam to the environment under normal storage conditions. Note that the polyurethane foam may meet the article exemption if 0.5 pounds or less of fluorocarbon, from all like items, is released during processing and the foam maintains a specific shape or design.

Article Exemption; Sheet Metal

464. Does the article exemption apply to flat rolled sheet metals, if they are used in operations which typically produce scrap but no release?

Assuming the scrap metal pieces are recognizable as the original piece, the article exemption does apply to these metals if the forming process caused 0.5 pounds or less of releases of a listed toxic chemical from all like items or the items retain the thickness of sheet metal in whole or in part. Once an operation is performed on a metal that causes a release which is not recycled and which exceeds 0.5 pounds for the reporting year (for example, from operations such as heating, grinding, or welding), the article exemption no longer applies and releases must be reported when listed chemicals in a sheet metal are processed in quantities greater than the processing threshold.

Article Exemption; Article Releases

465. A metals working plant machines, cuts, forms, and joins plate, cylinder, and other purchased metal alloy parts. Alloys of nickel and chromium, above *de minimis* levels, are processed in amounts that exceed 50,000 pounds per year. Does the article exemption apply since emissions from operations such as welding represent only a small fraction of the total metallic component of the surface area processed?

Releases greater than 0.5 lb/yr of the chemicals contained in mixtures, including alloys, during fabrication operations disqualifies the item processed from the article exemption. Releases include the chemical component of fumes, dust, grindings, and turnings generated from metal fabrication activities. However, wastes generated in a form recognizable as the processed article (e.g., pieces of a plate or cylinder) are exempt from release and other waste management calculations.

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Article Exemption; Bar Stock

466. Is bar stock that is used to make precision tuned parts an article and thus exempt from Section 313 reporting? The bar stock is processed to produce parts that in whole or in part retain the basic dimensional characteristic of the bar stock. The production of the part itself is dependent upon the specific shape and dimension of the bar stock and there are no releases during processing.

Bar stock is an article if its basic dimensional characteristics are maintained in whole or in part in the finished product and if processing the bar stock does not result in releases. If the end product is totally different in diameter or thickness from the bar stock, the bar stock would not be an article.

Article Exemption; Bar Stock

467. Can covered facilities which extrude copper bars or rods into wire treat the bar or rod as an article?

No. If you are completely changing the shape or form of an item during processing, the article exemption no longer applies. An article has end use functions dependent in whole or in part upon its shape or design during end use. The end use function is dependent upon the copper being in the shape of the wire, so the copper bar cannot be considered an article. Also, in the above example the thickness or diameter of the entire item has been altered.

Articles Exemption; Copper; Facility; Manufacture; Normal Conditions; Otherwise Use; Process; Testing

468. A company incorporates a material comprised of copper granules into roofing products, such as asphalt shingles. The copper granules are produced by milling and sorting bulk copper slag down to particle size ratios prescribed by the American Society for Testing and Materials (ASTM) to enhance the protection of the roofing product. Are the copper granules eligible for the articles exemption under EPCRA section 313?

In order for an item to qualify for the articles exemption, it must be a manufactured item that is formed to a specific shape or design during manufacture, has end use functions dependent in whole or in part upon its shape or design, and does not release a toxic chemical under normal conditions of processing or otherwise use of the item (40 CFR Section 372.38(b)). Under TRI, particles, including granules, are not eligible for the articles exemption because they are not formed to a specific shape or design during manufacture (53 FR 4507; February 16, 1988). Therefore, the facility would need to count the toxic chemicals in the copper granules toward the processing threshold.

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Article Exemption; Manufacturing Article; Plastic Bottles

469. A manufacturer of plastic bottles makes the bottles by blow-molding a mixture of plastic resin and polymer pellets that contain lead chromate (a toxic chemical) and fillers. Once the bottles are made, they are checked for flaws (i.e., a quality assurance check). Any bottles that do not pass the quality assurance test are placed in the facility dumpster and are subsequently disposed of in the local municipal landfill. Do these substandard bottles meet the article exemption and thereby exempt the lead chromate from being a release of a listed toxic chemical under Section 313?

No. The manufacture of articles is not exempt. Thus, the lead chromate that is sent to the landfill is considered a release of lead chromate since the substandard bottles that are disposed of are waste from the manufacturing process.

Article Exemption; Lead

470. A ship building facility incorporates lead bricks as ballast into the ships it distributes in commerce. The lead bricks remain permanently with the ship. They could be considered articles and therefore be exempt from reporting. However, the facility infrequently cuts some of the bricks, generating lead dust, which it collects and sends to an off-site lead reprocessor. How should the facility report? What should be counted towards the threshold if the lead bricks are not considered articles?

If all of the lead is recycled or reused then the lead dust does not have to be counted as a release. Therefore, the cut bricks retain their article status. If while cutting the bricks, there are releases which are not recycled and that exceed 0.5 pounds for a year, then the cut bricks would not be considered articles. In this case, count only the lead in bricks actually processed toward the threshold determination. Any amounts of toxic chemicals sent off-site for recycling would be reported appropriately on the Form R.

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Otherwise Use; Refractory Brick; Threshold Determination

471. Refractory brick containing lead is installed in a reaction vessel. Is the lead in the brick considered otherwise used for purposes of EPCRA section 313? Also, are releases of lead from the brick during the previous reporting year subject to release reporting on the Form R if no new bricks are added during the reporting year?

The lead contained in the bricks is considered otherwise used since it is not incorporated into the final product. The facility would count the amount of lead in the bricks that are added to the reaction vessel only for the year in which the bricks are installed. In answer to the second question, if the 100-pound threshold is exceeded, then all releases and other waste management of lead would be reported from both the newly added bricks and those installed in previous years. Neither the lead contained in the refractory bricks in the inventory (i.e., not yet installed), nor the lead in place, contained in bricks (i.e., installed in a previous year) are to be included in threshold determinations for the reporting year in question. If no bricks are installed during the reporting year, and lead is not used elsewhere at the facility, then a report would not be required.

Article Exemption; Disposal; Lead; Process; Recognizable As An Article

472. A covered manufacturing facility produces neon signs by bending leaded glass tubing. The facility uses enough tubing annually to process in excess of 100 pounds of lead, an EPCRA section 313 toxic chemical. When signs are formed from glass tubing, the diameter of the tubes remains unchanged and lead is not released during the heating or bending process, qualifying the tubes for the article exemption. If a discrete number of glass tubes are broken and discarded during the year, under what circumstances would disposal of the broken tubes constitute a release that negates the article exemption, and how would the facility calculate the amount of lead used in their operation?

Disposal of the glass does not necessarily constitute a release which automatically negates the article exemption. For the tubing to meet the definition of an article when discarded, the diameter of the tubing must remain intact and unchanged. As a result, shards of glass no longer qualify as articles. If more than 0.5 pounds of lead is released and not recycled, then the article exemption would not apply to this glass tubing.

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Article Exemption; Article Releases; Lead Bricks; Steel Plates

473. During the construction and repair of ships, small quantities of a listed toxic chemical are emitted in the form of fumes when steel plates are being welded together. The steel plates are formed to a specific shape during manufacture and their end use function is dependent upon their shape. Are these steel plates articles and should the amount of toxic chemical (fumes from the steel plates) emitted from the steel plates during the welding process be included in determining the threshold?

If the processing or otherwise use of all like manufactured items results in the release of 0.5 pounds or less of a toxic chemical, EPA will allow this quantity to be rounded to zero and the steel plates may be exempt as articles. If the listed toxic chemical that is released exceeds 0.5 pounds over a calendar year and is completely recycled or reused, on-site or off-site, then these steel plates may also be exempt as articles. Any amount that is not recycled or reused will count toward the 0.5 pound per year cut-off value.

Article Exemption; Release Reporting; Releases

474. A covered facility builds and repairs ships. During its welding operations, the facility uses a filler material to bind steel plates. This welding operation releases minor quantities of a toxic chemical. How are estimates of toxic chemical releases to be made?

If releases of the toxic chemical from the steel plate processing are recycled or reused or if the total amount released is 0.5 pound or less for the reporting year, then the releases are exempt from reporting under the article exemption

If the article exemption does not apply, the covered facility must include releases from the welding operation if thresholds are exceeded. EPA has developed tables to be used in estimating releases of metal in fumes for various types of welding and one for cutting mild steel. These tables can be found in Clarification and Guidance for the Metal Fabrication Industry (1998 version).

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Article Exemption; Batteries

475. How should a facility owner/operator handle the reporting requirement for listed toxic chemicals found in industrial and commercial batteries under EPCRA section 313 that it uses on-site? What if the facility manufactures the batteries?

An already manufactured item (e.g., maintenance-free batteries) containing a listed toxic chemical may be considered an article if the facility uses the item as intended and the listed toxic chemical is not emitted during its processing or otherwise use. If the facility services the item by replacing the listed toxic chemical, the amount of the listed toxic chemical added during the reporting year must be counted toward the threshold determination. For facilities which manufacture batteries, lead that is incorporated into a lead acid battery is processed to manufacture the battery, and; therefore, must be counted toward threshold determinations and release and other waste management calculations. The article exemption does not apply to the manufacture of an item. However, the use of the battery elsewhere in the facility may not have to be counted. Disposal of the battery after its use does not constitute a release.

Article Exemption; Batteries; Process

476. If an automobile manufacturer receives finished car batteries and places these batteries into the cars they sell, must the automobile manufacturer report the lead which is incorporated in the battery?

If the car battery is completely sealed while present at the facility, it would be considered an article, and thus would be exempt from EPCRA section 313 reporting. If lead is released from the batteries under normal processing at the facility, as might occur during maintenance of the battery, the release would negate the article exemption. If the exemption is negated, the amount of lead and any other toxic chemical in these non-article batteries would be applied toward the processing threshold to determine if the facility must report.

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Article Exemption; Facility; Lead; Manufacturing; Otherwise Use; Process; Processing; Threshold Determination; Waste

477. A manufacturing facility uses a forklift as a piece of equipment to assist in production. A lead acid battery is used as a means to power the forklift. Are there any exemptions that might apply in this situation, allowing the lead in the battery to be excluded from threshold calculations under TRI?

The use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility is exempt from threshold determinations and release and other waste management reporting under EPCRA §313. This would include batteries, as long as the battery is used to maintain the vehicle operated by the facility. In order to be considered a motor vehicle, the equipment cannot be stationary. Motor vehicles include forklifts, as well as cars, trucks, some cranes, locomotive engines, and aircraft. This exemption only applies to the otherwise use of the batteries, not to manufacturing or processing.

Alternatively, if the battery is completely sealed while present at the facility, it would be considered an article, thus making it exempt from EPCRA §313. This exemption can be considered in both otherwise use and processing situations but cannot be used to exempt a chemical from the manufacturing threshold. If lead is released from the batteries under normal processing conditions at the facility, as might occur during maintenance of the battery, the release would negate the article exemption.

If the battery in the forklift is not exempt, either by way of the motor vehicle or article exemption, then the reportable toxic chemicals present in the battery must be considered in the facility's threshold calculations.

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Article Exemption; Catalyst

478. A facility uses a catalyst containing a listed toxic chemical in a fixed bed reactor. The catalyst is in the form of cylindrical or trilobed extrudates (pellets) in a specific size. It is used to promote a chemical reaction and is not physically altered during use. The spent catalyst is sent to a reclaimer for eventual reuse. Can the catalyst be exempted as an article under Section 313?

No. Although the catalyst is manufactured to a specific shape or design, and has end use functions dependent upon its shape during end use, EPA believes that releases occur during transfer operations. Therefore, the article exemption does not apply. Such catalysts usually contain dust size material that is not the same size and shape of the pellets. The likely releases would be dust emissions and potential spills that occur during charging and removing the catalyst from the reactor. Such operations are part of the normal conditions of processing and otherwise use that must be considered under the article definition. The intent of EPCRA is to capture all releases, whether they are intentional or not. The spent catalyst sent off-site for recycling does not itself constitute a release that invalidates the article exemption, as long as all of the toxic chemical is recycled. The facility should also consider whether any on-site regeneration of the catalyst results in the toxic chemical being released in waste streams.

Article Exemption

479. A covered facility processes a metal item containing nickel. The finished product retains in part the dimension characteristics of the original item and all the metal shavings resulting from the process are sent off-site for recycling. Since the Pollution Prevention Act requires reporting of recycled amounts of a listed toxic chemical, does that mean the material is not an article?

The Pollution Prevention Act requirements do not affect the article status of the metal item. If all of the releases from the article are sent off-site for recycling, the item would still be exempt as an article. If this is the only occurrence of nickel in the facility, the facility would not have to report for nickel.

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Article Exemption; Article Releases; Sheet Metal

480. A covered facility processes metal sheets containing nickel in a four-step process: (1) sheets are cut with a laser saw (releasing nickel fumes); (2) pieces are further ground to their final shape (releasing grindings); (3) ground pieces are sent off-site for heat treatment; and (4) heat treated pieces are returned to a facility where holes are bored (producing turnings) and the resultant pieces are assembled into the final product. How are releases reported?

Although the pieces are sent off-site in step 3, they are returned to the process as essentially the same material. Thus, the activity is to be treated as a continuous process activity. If there is scrap material which is recognizable as the original form of the article, and if releases from steps 1, 2, and 4 (collectively), which are not recycled, do not exceed 0.5 pounds for the entire reporting year, then the metal sheets could be exempt as articles.

Article Exemption; PCB; Transformer: PCBs

481. A covered facility uses PCB transformers. Are these considered to be articles, and therefore exempt from reporting under Section 313?

PCB transformers are considered to be articles, as long as PCBs are not released from the transformers during normal use or if the facility does not service the transformer by replacing the fluid with other PCB-containing fluid.

Article Exemption; Article Releases

482. I process a plastic pipe which contains formaldehyde (3 percent by weight). I also know how much formaldehyde is released when I process the pipe. Do I need to report these emissions?

If the quantity of the formaldehyde released during processing of all like items exceeds 0.5 pounds per year, the facility cannot take the article exemption for the pipe and all formaldehyde incorporated into the pipe should be counted toward the processing threshold. The facility should report if the processing threshold is exceeded. If the quantity of formaldehyde released during processing of the pipes is 0.5 pounds or less per year, the facility would not have to report because it is part of an article.

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Article Exemption; Facility-Facility Reporting; Metals

483. Are there recommended methods for determining if the 0.5 lb release limit is exceeded from a metal stamping operation?

EPA recommends that facilities use one or more of the following for performing release and other waste management calculations of EPCRA Section 313 chemicals: monitoring data, mass balance, emissions factors, and engineering calculations. If all wastes generated from stamping operations (including fume, dust, sludge and scrap pieces) are recycled or reused and the facility's total releases will be equal to or less than 0.5 lb limit for each toxic chemical per year, the article exemption may apply. If releases (including disposal) of a toxic chemical are more than 0.5 lb, the article exemption is negated for that chemical and all quantities of that chemical in the metal sheets should be included in threshold determinations and release and other waste management calculations.

Article Exemption; Processing Determination; Sheet Metal; Threshold Determination

484. A covered facility uses plastic containing di-(2-ethylhexyl) phthalate (DEHP) to wrap its products. The plastic is cut by a hot wire, a process during which minute quantities of DEHP are released. Is the plastic exempt from reporting and from supplier notification because it can be considered an article?

The plastic wrap containing DEHP is not exempt as an article because quantities of DEHP are released during the cutting process. If a facility releases 0.5 pounds or less of DEHP during the reporting year from all like items, this amount can be rounded to zero and therefore would be exempt. If the facility can reasonably document that none of its customers are likely to release more than 0.5 pounds, no supplier notification is required.

Coal Mining; Extraction Exemption; Surface Mining

485. A covered coal mine uses material containing listed toxic chemicals (waste rock, ash, etc.) in its surface mining operation to replace excavated land. Is this activity considered extraction and; therefore, eligible for the coal mining extraction exemption (40 CFR Section 372.3)?

No. The otherwise use of waste rock, ash, or other material in surface mining to replace excavated land is a reclamation activity. The otherwise use of these materials for reclamation is not considered part of extraction, and amounts of listed toxic chemicals contained in these materials must be considered toward threshold determinations and release and other waste management calculations.

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Metal Mining; Otherwise Use; Overburden; Regrading; Waste Rock

486. A covered metal mining facility is required by other environmental laws to regrade (i.e., recontour) their overburden and/or waste rock piles. Is the covered facility required to consider the amounts of listed toxic chemicals in the pile toward their otherwise use threshold?

Provided that materials remain within the same disposal unit, the facility is not conducting a threshold activity, nor is the facility releasing materials that would have to be considered for reporting. If the facility regrades the material outside of the disposal unit, for use as road building material for example, then the facility is otherwise using the previously disposed material and would have to consider amounts of listed toxic chemicals contained in these materials for threshold determinations and release and other waste management calculations.

Coal Mining; Extraction Exemption

487. In the final rule (62 FR 23834; May 1, 1997), EPA provided an exemption for coal extraction activities. Can a coal mining facility assume that all activities prior to beneficiation, or in other words all activities that take place before the coal enters a processing plant, are exempt under the extraction exemption?

No. In the final rule (62 FR 23834), EPA specifically exempted coal mining extraction activities. EPA defines coal extraction (for purposes of determining which activities are eligible for the extraction exemption), to mean the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and to encompass all extraction-related activities prior to beneficiation. EPA defines beneficiation as the preparation of ores to regulate size (including crushing and grinding) of the product, to remove unwanted constituents, or to improve the quality, purity, or grade of a desired product. Based on these definitions, certain beneficiation activities, such as crushing or grinding, may occur before coal enters a processing plant, and these activities are not exempt under the extraction exemption.

Coal Mining; Extraction Exemption

488. Which of the following coal mining activities included in the coal mining extraction exemption under 40 CFR Section 372:

a) Crushing for transport only.

b) Land disposal or discharge of oily water pumped from underground (e.g., the oil that comes from the conveyor belt carrying the coal to the surface and ultimately to the coal preparation plant).

c) Screening of coal to remove waste rock that has fallen into the coal product. (This screening occurs at the surface before transportation.)

d) Coal mine reclamation activities:

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- Ash received from off-site for use as roadfill, or structural support underground;
- Waste overburden and non-waste fertilizer for land application; and
- Waste rock used during reclamation.

In terms of identifying which activities are considered part of the coal extraction exemption, EPA has made the following determinations: listed toxic chemicals involved in the transportation of coal, and reclamation of the extraction site are not considered 'extraction-related' activities. While these activities may involve listed toxic chemicals, existing exemptions should greatly reduce and simplify the type and amount of reporting required by covered facilities that conduct these activities. Crushing and grinding are beneficiation steps as provided in 40 CFR Section 261.4(b)(7), which was referenced in the final rule. The following items specifically address the activities raised in the above question:

a) Crushing for transportation is not considered part of extraction and amounts of listed toxic chemicals involved in these activities must be considered toward threshold determinations and release or other waste management calculations.

b) Land disposal of materials including waste rock, ore, and oily water from underground coal extraction activities are considered part of extraction activities and would therefore not be subject to threshold determinations and release and other waste management calculations.

c) Coal product screening activities involve grading of coal after it has been crushed, both of which are considered beneficiation steps, and; therefore, would not be considered part of extraction.

d) Ash or other materials used for structural support during extraction activities would be considered part of extraction and would be eligible for the extraction exemption. Otherwise use of ash, overburden, waste rock or fertilizer for reclamation are not considered part of extraction, and amounts of listed toxic chemicals contained in these materials must be considered toward threshold determinations and release and other waste management calculations.

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Metal Mining; Overburden Exemption

489. Are listed toxic chemicals in overburden displaced at a covered metal mine subject to reporting under EPCRA section 313? What about toxic chemicals used in removing overburden?

No. Listed toxic chemicals that are constituents of overburden, as defined in the May 1, 1997, final rule (62 FR 23834), which are manufactured, processed, or otherwise used are not subject to threshold determinations or reporting for releases and other waste management activities (40 CFR Section 372.38(h)). However, listed toxic chemicals used in removing overburden during metal mining activities are not eligible for the overburden exemption.

De minimis; Overburden; Process; Waste Rock

490. How should covered facilities consider consolidated rock that overlies an ore body and unconsolidated/consolidated materials that do not overlie an ore body but do not meet the classification as waste rock? Are these materials considered waste rock (i.e., *de minimis* exemption does not apply) for threshold determinations and release and other waste management calculations or, are they considered processed materials eligible for the *de minimis* exemption?

For covered metal mining facilities, unconsolidated material that overlies a deposit of useful materials or ores is eligible for the 'overburden exemption' and does not have to be considered toward threshold determinations, or release and other waste management calculations. This exemption does not apply to consolidated material or unconsolidated/consolidated materials that do not overlie a deposit of useful material and which may be displaced or otherwise managed during extraction. Similar to waste rock that is separated from the useful more mineralized material at the point of extraction, amounts of these materials are not considered toward any threshold activities. However, these materials are not exempt from release and other waste management reporting and must be included if thresholds are exceeded elsewhere at the facility for the same listed toxic chemicals.

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De minimis Exemption; Petroleum Refining

491. In petroleum refining processes, mixtures such as crude oils, petroleum products, and refinery process streams may contain trace amounts of listed toxic chemicals. During the refining process, these mixtures may undergo beneficiation activities which would result in the listed toxic chemicals being concentrated to levels that exceed the *de minimis* levels. Would the *de minimis* exemption apply to these processes?

The *de minimis* exemption would apply to the non-PBT chemicals until they are concentrated above the applicable *de minimis* level. For purposes of threshold determinations and release and other waste management calculations, the facility would account for a listed toxic chemical from the first point in the process in which the concentration of the toxic chemical meets or exceeds the applicable *de minimis* level for that toxic chemical, in the process mixture.

Air Releases; De minimis Exemption; Storage Tanks

492. As a petroleum refiner, do we have to estimate air releases of chemicals from storage tanks containing crude oil if the concentration of the chemical is below *de minimis* level? We understand that the amounts of these chemicals would be counted towards threshold since, after storage, we are extracting and purifying them to concentrations above *de minimis*.

Facilities that receive chemicals into the plant at concentrations below *de minimis* have to report releases and other waste management activities from that point in the process when the chemical's concentration exceeds *de minimis* level. This facility would not have to report air emissions from their crude oil tanks for the chemicals present in oil below *de minimis*. For those above *de minimis*, they must report releases and other waste management activities. The *de minimis* exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

Chemical Name; Trade Name

493. Can common or trade names other than those listed in the regulations be used for submissions?

No. EPA has provided a list of standard chemical names and Chemical Abstract Service Registry numbers (CAS numbers) for all chemicals that must be reported. The regulations require the use of these standard names. Many Form Rs submitted previously could not be processed because unlisted CAS numbers or names were used.

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Chemical Category; Delimited Category; PACs; Release Reporting; Threshold Determination

494. The EPCRA section 313 toxic chemical list contains delimited chemical categories. A delimited category includes a finite number of chemicals specifically designated by EPA to be included as part of that category. Are threshold determinations and release and other waste management calculations for these three delimited chemical categories different than threshold determinations and release and other waste management calculations for other EPCRA section 313 listed chemical categories?

Threshold determinations are made in the same manner for both delimited and nondelimited categories. If a covered facility manufactures, processes, or otherwise uses more than one member of a listed chemical category, the total volume of all the members of the category must be counted towards the applicable activity threshold (40 CFR Section 372.27(d)). If an activity threshold is exceeded, the owner or operator of the facility is required to report under EPCRA section 313. The report must cover all non-exempt activities at the facility involving members of the category.

For reporting on delimited categories, only the members that are specifically listed as part of the category are subject to EPCRA section 313 reporting. When reporting other nondelimited chemical categories, any unique chemical substance that contains the named category compound as part of that chemical's structure, or any compound meeting the specified molecular formula, is subject to threshold determinations.

In 1999, (64 FR 58666, October 29, 1999), EPA classified the PACs category as a PBT chemical category and lowered the reporting threshold to 100 pounds. In addition, EPA added two members to this category: benzo(j,k)fluorine (fluoranthene) and 3-methylcholanthrene. EPA has developed guidance to facilitate accurate reporting for PACs entitled Guidance for Reporting Toxic Chemicals: Polycyclic Aromatic Compounds Category, accessible from GuideME at: https://ofmpub.epa.gov/apex/guideme_ext/f?p=guideme:gd-list. The guidance contains a list of Chemical Abstract Service (CAS) numbers for the individual chemicals within the PACs category and a CAS number list of some mixtures that might contain chemicals within the PACs category. The dioxin and dioxin-like compounds category was also classified as a PBT chemical category and a reporting threshold of 0.1 gram was established. EPA has also developed guidance to facilitate accurate reporting for dioxin and dioxin-like compounds; Guidance for Reporting Toxic Chemicals with the Dioxin and Dioxin-like Compounds Category is available on GuideME at: https://ofmpub.epa.gov/apex/guideme_ext/f?p=guideme:gd-list.

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Compounds; Dioxin and Dioxin-like Compounds; Lead; Lead Compounds; PACs; PBT Chemicals; Pesticides

495. What should I know about persistent bioaccumulative toxic (PBT) chemicals?

Starting in 2000, EPA established more stringent reporting thresholds for persistent bioaccumulative toxic (PBT) chemicals originally on, or added to, the TRI chemical list. PBT chemicals are of particular concern not only because they are toxic, but also because they remain in the environment for long periods of time, are not readily destroyed, and build up or accumulate in body tissue. The TRI PBT chemicals include dioxin and dioxin-like compounds, lead and lead compounds, mercury and mercury compounds, polycyclic aromatic compounds (PACs), polychlorinated biphenyls (PCBs), hexabromocyclododecane (HBCD), and certain pesticides, among other chemicals. For more detailed information about PBT chemicals under the TRI program, visit https://www.epa.gov/toxics-release-inventory-tri-program/persistent-bioaccumulative-toxic-pbt-chemicals-rules-under-tri.

Chemical Deletion; New Chemical; States; Toxic Chemical List; Tribes

496. Who has been granted authority to add or delete chemicals from the TRI toxic chemical list under EPCRA section 313?

Pursuant to EPCRA section 313(d), only EPA has the statutory authority to add or delete chemicals from the TRI toxic chemicals list. However, EPCRA section 313(e)(2) allows states and tribes to petition EPA to add or delete chemicals. If EPA receives a petition from a state or tribe that requests the addition of a particular chemical, EPA would have 180 days to respond with either the initiation of a rulemaking to add the chemical to the list or an explanation of why the petition does not meet the requirements to add a chemical to the list. If EPA does not respond within 180 days of receipt of a state or tribe's petition to add a chemical, the chemical would be added to the list pursuant to EPCRA section 313(e)(2). Within 180 days of receipt of a state or tribe's petition to delete a chemical, EPA would either initiate a rulemaking to delete the chemical or explain why EPA denied the petition; however, unlike the analogous process for petitions to add a chemical, the chemical would not be deleted within 180 days if EPA failed to respond to the petition.

In addition, pursuant to EPCRA section 313(e)(1), any person may petition EPA to add or delete a chemical from the list of TRI toxic chemicals. If EPA receives a petition by a private citizen to add a chemical and EPA fails to respond within 180 days, the chemical would not necessarily be added. This result distinguishes citizen petitions to add a chemical from petitions to add a chemical by a state or tribe.

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Chemical Conversion; Threshold Determination

497. Some toxic chemicals released into the environment react to form other toxic chemicals, for example, phosphorus (a listed toxic chemical) oxidizes in air to form phosphorus pentoxide (not a listed toxic chemical). Which should be reported, the transformed toxic chemical or the source toxic chemical? How would the report(s) be prepared if both the source and resulting toxic chemical are listed?

Report releases of the listed toxic chemical. The facility is not responsible for reporting a toxic chemical resulting from a conversion in the environment (e.g., outside of a facility air stack).

Acids; Neutralization; Release Reporting; pH

498. A strong mineral acid solution is neutralized (i.e., the pH of the solution is adjusted to pH 6 or greater) before release to surface waters. How do we report this release on the Form R?

For purposes of EPCRA section 313 reporting, a discharge of pH 6 or above contains no reportable amount of mineral acid. The facility owner/operator should report zero, not NA, in Part II, Section 5.3 of the Form R.

Acid Aerosol; Hydrochloric Acid; Sulfuric Acid; Treatment for Destruction

499. A waste stream containing aerosol forms of hydrochloric and sulfuric acid goes up a stack. Before exiting the stack, the waste stream passes through a scrubber where the acid aerosols are captured in an aqueous solution. How is this to be reported under Section 313?

When a scrubber is used to remove sulfuric or hydrochloric acid aerosols prior to or in a stack, the acid aerosols are usually converted to the non-aerosol form. The non-aerosol forms of sulfuric and hydrochloric acid are not reportable under EPCRA section 313 because the qualifier to the sulfuric acid and hydrochloric acid listing includes only acid aerosol forms. Sulfuric and hydrochloric acid as discrete chemicals have not actually been destroyed by the scrubber, but the form of these acids reportable under EPCRA section 313 has been destroyed. Therefore, since sulfuric or hydrochloric acid aerosols removed by scrubbers are converted to non-reportable forms, the quantity removed by the scrubber can be reported as having been treated for destruction. However, all of the sulfuric acid or hydrochloric acid aerosols that are produced prior to or after the scrubber count towards that manufacturing threshold, and any acid aerosols that are not removed by the scrubber and continue out of the stack must be reported as a release to air.

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Acid Aerosol; Acid Reuse System; Sulfuric Acid

500. A covered facility subject to EPCRA section 313 generates aerosol sulfuric acid in excess of 25,000 pounds in a calendar year. The aerosol sulfuric acid passes through a scrubber that removes and condenses the aerosol sulfuric acid. The resulting liquid sulfuric acid then undergoes chemical conversion in an on-site treatment unit. How must the owner or operator account for these activities in Part II, Sections 7 and 8 of the Form R?

When a scrubber is used to remove sulfuric acid aerosols prior to entering or in a stack, the acid aerosols are usually converted to the non-aerosol form.

The non-aerosol forms of sulfuric acid are not reportable under EPCRA section 313 because the qualifier to the sulfuric acid listing includes only acid aerosol forms (40 CFR Section 372.65). Sulfuric acid is not actually being destroyed by the scrubber, but the form of sulfuric acid that is reportable under EPCRA section 313 is being destroyed. Therefore, since sulfuric acid aerosols removed by scrubbers are converted to a non-reportable form, the quantity removed by the scrubber can be reported as having been treated for destruction under Part II, Section 7 and should be included in Section 8.6, (Quantity Treated On-Site). Since the condensed sulfuric acid (i.e., the liquid sulfuric acid) is a non-aerosol form, it is not reportable under EPCRA section 313 and no reporting of other waste management activities for these non-aerosol forms is required.

Acid Aerosol; Acid Reuse System

501. How are sulfuric and hydrochloric acid aerosols that are generated over and over again in acid reuse systems to be reported under Section 313?

When solutions of sulfuric acid and hydrochloric acid are aerosolized the manufacture of a listed chemical (sulfuric acid or hydrochloric acid aerosols) has occurred. This is a result of the qualifier to the sulfuric acid and hydrochloric acid listings, which excludes non-aerosol forms and limits the reporting to aerosol forms only. The addition of the acid aerosol qualifier has an impact on certain processes that, prior to the addition of the qualifier, would not have been considered as the manufacturing of a listed chemical. Acid reuse systems that use aqueous solutions of sulfuric acid or hydrochloric acid to generate acid aerosols, use the acid aerosols, condense them back into solution, and then reuse the acid solution again and again are impacted by the addition of the acid aerosol qualifiers. In such processes, the continuous reuse of the acid solutions generates very large quantities of acid aerosols that technically should be counted towards the manufacture (the generation of the acid aerosol is the manufacture of sulfuric or hydrochloric acid (acid aerosol)) and otherwise use thresholds. This may result in many facilities greatly exceeding the manufacture and otherwise use reporting thresholds that, prior to the addition of the qualifier, would not have exceeded thresholds.

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While it is technically correct to apply all of the quantities of acid aerosols generated in such systems towards the manufacture and otherwise use reporting thresholds, EPA did not intend to increase the reporting burden as a result of the addition of the acid aerosol qualifiers. In addition, under EPA's general approach to reuse systems, a listed toxic chemical is not counted toward thresholds each time it is reused but only once per reporting period. This approach would apply to sulfuric acid or hydrochloric acid reuse systems were it not for the aerosol qualifiers. Therefore, EPA is providing the following guidance to reduce the reporting burden for covered facilities that operate such processes and to bring the treatment of such systems into alignment with EPA's general approach to reuse.

Rather than having covered facilities count all quantities of acid aerosol generated in such systems towards the manufacture and otherwise use thresholds, EPA will allow facilities to apply the total volume of acid in these systems only once to these thresholds. For example, if an acid reuse system starts the year with 2,000 pounds of acid and 500 pounds is added during the year then the total amount applied towards acid aerosol thresholds would be 2,500 pounds.

This reflects a one-time per year counting of all of the acid molecules as being in the acid aerosol form rather than counting them over and over again each time the acid aerosol form is generated and subsequently used. Since in these acid reuse systems the acid aerosols are manufactured and then otherwise used the 10,000-pound otherwise use threshold would be the threshold that triggers reporting from such systems.

This guidance applies only to acid reuse systems and the reporting of sulfuric acid and hydrochloric acid aerosols under EPCRA section 313. This guidance does not apply to any other types of processes or to any other listed chemical.

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Activity Threshold; Reuse System

502. In 1999, a covered facility's sulfuric acid reuse system starts the year with 4,000 pounds of sulfuric acid, and the facility adds 8,000 pounds to the system. How should the facility make threshold determinations for sulfuric acid (acid aerosol)?

The method for estimating amounts of sulfuric acid (acid aerosol) and hydrochloric acid (acid aerosol) for threshold purposes is unique as compared to other listed toxic chemicals. In the above question, the facility should apply 12,000 pounds towards the manufacturing and otherwise use thresholds. To determine the amount manufactured in an acid reuse system, the facility should calculate the total volume of acid in the system. The total volume of acid is the sum of the reporting year's starting amount and the amount added during the reporting year. Because all the sulfuric acid aerosol manufactured is subsequently otherwise used, the 12,000 pounds are also applied to the otherwise use threshold of 10,000 pounds. Therefore, the facility exceeds the otherwise use threshold and must file a Form R or Form A. Facilities are also directed to refer to the Guidance for Reporting Sulfuric Acid (EPA-745-R-97-007; November 1997).

Acid Aerosol; Acids; Sulfuric Acid

503. Would a sulfuric acid drip system that is in contact with an ore leach pile (described as analogous to a gardener's drip hose) be manufacturing sulfuric acid in an aerosol form?

No, the sulfuric acid does not become airborne; so it is not an aerosol form of sulfuric acid and, therefore, not a reportable toxic chemical under EPCRA section 313 (40 CFR Section 372.65).

Fuming Sulfuric Acid; Oleum; Sulfuric Acid

504. A covered facility uses fuming sulfuric acid. This particular chemical is not listed as reportable under Section 313 of EPCRA, but it is chemically similar to sulfuric acid, which is reportable. Should the facility report if it meets threshold amounts and is a covered facility?

Fuming sulfuric acid, more commonly known as oleum, is a mixture of sulfuric acid and sulfur trioxide. The facility must report on the acid aerosol forms of the sulfuric acid portion of the mixture in accordance with Section 372.30(b) if this portion exceeds the applicable threshold. The facility should also note that sulfur trioxide reacts rapidly with water to form sulfuric acid. Any sulfuric acid aerosol formed from sulfuric trioxide at the facility must be counted toward the manufacturing threshold.

DRAFT

Chemical Conversion; Coincidental Manufacture; Combustion Byproducts; Hydrochloric Acid; Sulfuric Acid; Threshold Determination

505. A utility boiler, located at a covered facility, burns residual oil. As a result of the burning operation, the facility emits sulfur dioxide (SO_2), sulfur trioxide (SO_3), and particulate sulfates through a point source. Once emitted, the sulfur trioxide readily reacts with water vapor (both in air and in flue gases) to form a sulfuric acid mist. For purposes of EPCRA section 313, must the facility report on the generation of sulfuric acid?

The sulfuric acid formed in the chemical reaction of sulfur trioxide and water that often occurs in the air after releasing sulfur trioxide is not included in threshold determinations. The facility owner/operator is not responsible for tracking or reporting on the formation of a listed toxic chemical once a chemical is released from a facility. However, if the reaction of sulfur trioxide and water takes place prior to being emitted (e.g., in the stack), the facility would be required to factor the quantity of sulfuric acid mist generated towards the manufacturing threshold. If the threshold is exceeded, the facility owner/operator must report all releases and other waste management estimates of sulfuric acid aerosols from the facility.

Coincidental Manufacture; Hydrochloric Acid

506. Must a facility report itself as a manufacturer of hydrochloric acid aerosols, if the hydrochloric acid aerosol is formed in the stack?

Yes, assuming thresholds are exceeded, the facility must report for hydrochloric acid aerosol. It is irrelevant where at the facility the acid aerosol forms.

Coincidental Manufacture; Combustion Byproducts; Hydrochloric Acid; Metal Compounds

507. A covered facility has a coal-fired boiler. The combustion of the coal generates aerosol forms of hydrochloric acid as a byproduct. Should the aerosol forms of the HCl emissions be reported under EPCRA section 313?

Yes. In the combustion of coal, the facility will be coincidentally manufacturing aerosol forms of hydrochloric acid, as well as hydrofluoric acid and sulfuric acid. The combustion of coal will also result in the coincidental manufacture of new metal compounds. The facility must submit a Form R if it manufactures more than a threshold amount of any of these listed toxic chemicals.

DRAFT

Acid Aerosol; Chemical Qualifier; Coincidental Manufacture; Hydrochloric Acid

508. Hydrochloric acid, also known as hydrogen chloride (CAS number 7647-01-0), is a toxic chemical under EPCRA section 313. Hydrochloric acid can exist in both aqueous solution and in a gaseous, anhydrous form. On July 25, 1996, EPA modified the listing of hydrochloric acid to include only acid aerosols including mists, vapors, gas, fog and other airborne forms of any particle size (61 FR 38600). Does the modified listing of hydrochloric acid refer to both the aqueous and the anhydrous forms of this chemical?

Yes. The CAS number 7647-01-0 identifies both aqueous and anhydrous forms of hydrochloric acid. The listing modification also applies to both aqueous and anhydrous forms of hydrochloric acid.

Estimating Releases

509. How should a facility estimate sulfuric acid drifting (aerosol) out of a cooling tower? There is no accepted procedure/guidance for how to best estimate this sulfuric acid drift. Is this reportable?

Amounts of sulfuric or hydrochloric acid aerosols that drift from process steps are considered a release and are reportable provided the facility has exceeded thresholds. Facilities must use their best readily available information in developing estimates. This information may come from a variety of sources, and to assist facilities in determining what is reportable for sulfuric acid aerosols, EPA has published a guidance document entitled, EPCRA section 313 Guidance for Reporting Sulfuric Acid (EPA-745-R-97-007; November 1997). Facilities may also find equipment operating specification information useful in developing threshold determinations and release and other waste management calculations.

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Concentration Range; Waste Treatment; pH

510. Listed acids such as nitric acid are commonly used throughout the manufacturing sector as product ingredients, reactants, and chemical processing aids. Often, listed acids are present in aqueous waste streams that are neutralized on-site. If the listed acid is neutralized on-site, EPCRA section 313 requires an indication on the Form R of the range of concentration of the listed toxic chemical in the influent waste stream. These concentrations are expressed in percentages, parts per million (ppm), or parts per billion (ppb). If the pH of a waste steam containing a listed mineral acid is quantified, can the pH data be used to calculate the total mineral acid concentration in the influent waste stream?

In cases where only one acid is present in solution, the total mineral acid concentration can be derived by using the pH value of the solution and the molecular weight and ionization constant of the acid. In order to assist the regulated community in EPCRA section 313 reporting, EPA derived a table that lists the total acid concentration for each listed mineral acid at different pH values (Estimating Releases and Waste Treatment Efficiencies for Mineral Acid Discharges Using pH Measurements (EPA 745/F-97-003), June 1991). The concentrations are expressed in pounds per gallon (lb/gal) and can be converted to the appropriate units for reporting purposes. The concentration that must be reported is based on the amount or mass of the toxic chemical in the waste stream compared to the total amount or mass of the waste stream. For example, assume that a facility treats, by neutralization, a waste stream containing nitric acid (HNO_3) in which the pH of the influent stream is 4. A pH of 4 corresponds to a concentration of 0.000052 pounds of HNO_3 per gallon of waste stream (Estimating Releases and Waste Treatment Efficiencies for Mineral Acid Discharges Using pH Measurements, Table 1). The amount of HNO_3 in the influent waste stream can be converted using the following calculation:

Influent waste stream:

$$(0.000052\,lb/gal)\times(1\,gal/3.78\,L)\times(453{,}000\,mg/lb)$$

$$¿\,6.2\,mg/L\,of\ HNO3\in the\ wastestream$$

Since mg/L of solutions or dispersions of a chemical in water is equivalent to ppm, 6.2 ppm of HNO_3 is the concentration in the influent waste stream.

The Form R requires a range of influent concentration, thus the facility should select the appropriate range code and enter that value in the Range of Influent Concentration column in Part II, Section 7A, the On-Site Waste Treatment Methods and Efficiency section of the Form.

DRAFT

Concentration; Nitric Acid	**511. How should nitric acid (CAS number 7697-37-2) be reported under Section 313? It does not exist in a pure or anhydrous form. Commercial nitric acid is produced at a concentration of 70 percent nitric acid in water.** The listed CAS number for nitric acid specifically relates to the molecular formula HNO_3. Therefore, facilities are required to count the amount of nitric acid in solutions toward thresholds and release and other waste management calculations. If 100 pounds of 70 percent nitric acid is released, the release should be reported as 70 pounds of nitric acid.
Compounds; Metal Compounds; Metals; Threshold Determination	**512. For Section 313 reporting, a catalyst contains 61 percent total nickel, which includes 26 percent nickel metal and 35 percent nickel contained in compounds. Should the threshold determination be based on the 61 percent total nickel?** No. The 61 percent total nickel cannot be used in the threshold determinations. Nickel compounds are a listed toxic chemical category; therefore, the full weight of nickel compounds (not just the 35 percent nickel contained in the compounds) must be used in the threshold determination for nickel compounds. A separate threshold determination is required for the nickel metal since nickel is a separately listed toxic chemical under Section 313.
Compound Category; Compounds; Concentration Range; Electroplating; Metal Compounds; Waste Treatment; pH	**513. A covered facility uses chromium compounds in its electroplating operation, and as a result, a hexavalent chromate compound is generated. Are the hexavalent chromate compounds reportable under Section 313?** The hexavalent chromate compounds are members of a reportable toxic chemical category, chromium compounds, and have been manufactured by the oxidation/reduction reaction that occurred in the electroplating operation. As a result, the total amount of the hexavalent chromate compounds produced must be included in the manufacturing threshold for chromium compounds.
Chromium; Compounds; Metal Compounds	**514. Are chromium compounds (e.g., chromic acid CAS number 11115-74-5 or chromic acetate CAS number 1066-30-4) reportable under Section 313?** All chromium compounds are reportable. They must be aggregated together for purposes of threshold and maximum amount on-site calculations. However, release and other waste management amounts should be for the chromium metal portion only (see 40 CFR Section 372.25(h)).

DRAFT

Compounds; Form R Submissions; Lead; Lead Compounds; Metal Compounds; Metals

515. A covered facility has determined that it needs to report under EPCRA section 313 for both elemental lead and lead compounds. Can this facility file one Form R that takes into account both the releases and other waste management activities of lead and lead compounds, or is it required to report separately?

If a covered facility exceeds thresholds for both the parent metal and compounds of that same metal, it is allowed to file one joint Form R (e.g., one report for both lead compounds and elemental lead). EPA allows this because the release and other waste management information reported in connection with metal compounds will be the total pounds of the parent metal released and otherwise managed as a waste.

Compounds; Lead; Lead Compounds; Metal Compounds; Release Reporting

516. A covered facility processes both elemental lead and lead compounds. The facility exceeds the 100 pounds per year processing threshold for lead compounds, but not for elemental lead, and must submit a report for lead compounds only. When calculating releases and other waste management activities from the lead compounds, the owner/operator is only required to account for the weight of the parent metal released (40 CFR Section 372.25(h)). Should the facility account for both releases of lead from activities involving lead compounds and releases of lead from activities involving elemental lead?

No. In the case when an activity threshold is exceeded only for lead compounds, the report is only required to be based on the releases and other waste management estimates of lead, the parent metal, from lead compounds only. Releases and other waste management estimates of lead resulting from activities involving elemental lead need not be included in the release and other waste management calculations. Conversely, if the facility were to exceed an activity threshold for only elemental lead, the report would only have to be based on releases and other waste management estimates from activities involving elemental lead only.

Coincidental Manufacture; Compounds; Fume or Dust; Processing

517. A covered facility processes aluminum and zinc. These two toxic chemicals are listed under Section 313 with the qualifier "fume or dust." Is this processing operation subject to reporting?

If the processing of these substances generates (i.e., manufactures) any fume or dust or if the two substances were processed or otherwise used, at any time, as a fume or dust, the activities would be reportable under EPCRA section 313. The manufacturing, processing, or otherwise use of these substances in fume or dust form would be subject to threshold determinations.

DRAFT

Aluminum; Chemical Qualifier; Coincidental Manufacture; Fume or Dust-Fume or Dust Qualifier; Fumigants; Manufacture; Molds

518. A covered facility has purchased in excess of 100,000 pounds of aluminum material in block form to make a mold which stays on-site. When making the mold, fumes and dust are byproducts. Do we report these as the toxic chemical?

Aluminum appears on the list of toxic chemicals as 'aluminum (fume or dust).' You must determine if you manufacture, process, or otherwise use aluminum fume or dust. In this case you do not process or otherwise use the fume or dust, but you do manufacture aluminum fume or dust coincidentally as a byproduct of making molds. Therefore, you must report for aluminum (fume or dust) if you exceed the 25,000-pound manufacture threshold for the reporting year.

Activity Threshold; Fume or Dust; Ingots; Process

519. A facility melts aluminum ingots, reshapes them, and injects them into die to form parts which it then distributes in commerce. Does the 25,000-pound processing threshold apply to the amount of molten aluminum processed?

For the reporting year, the 25,000-pound threshold applies to the amount of aluminum fume or dust generated at the facility, not the aluminum in molten (liquid) or solid form. Therefore, the facility must determine whether they manufacture or process more than 25,000 pounds of aluminum fume or dust during their processing operation.

Ammonia; Chemical Qualifier; Fume or Dust

520. A facility uses aluminum in its manufacturing operations. These operations involve welding, diecasting, buffing, and grinding. Is the facility subject to Section 313 reporting for this use of aluminum?

Because aluminum has a fume or dust qualifier, aluminum would be reportable under EPCRA section 313 if a fume or dust were generated (i.e., manufactured) during welding, diecasting, buffing, grinding, or other operations above 25,000 lb. If the aluminum is incorporated into a product in a fume or dust form, the processing threshold must also be considered.

DRAFT

Aluminum; Combustion Byproducts; Treatment for Destruction

521. At a covered facility, vapor is generated from molten aluminum. Upon exposure to the air at the temperatures present in the furnace, the aluminum vapor partially oxidizes and condenses to form aluminum fume. All stack emissions from the furnace are released as non-fibrous aluminum oxide. Should the release from this melting furnace be counted as aluminum fume or should the amount released be reported as zero since it is no longer a reportable toxic chemical?

The facility is manufacturing aluminum fume, a listed EPCRA section 313 toxic chemical. In the furnace, the fume is then passively converted to non-fibrous aluminum oxide, a non-listed chemical. The facility is not actively destroying the aluminum fume. Therefore, the facility is not treating the toxic chemical for destruction. If the covered facility generates more than 25,000 pounds of aluminum fume during the course of the year, it would meet the manufacturing threshold for this chemical and would be subject to EPCRA section 313 reporting. Since there are no releases of the reportable chemical, the facility should report zero for release and other waste management activities for aluminum fume.

Aluminum; Chemical Qualifier; Compounds; Fume or Dust; Metal Vapors

522. A covered facility coats materials with aluminum using the vacuum deposition process. Is the facility subject to the reporting requirements under Section 313 for aluminum fume?

No. In vacuum deposition, the aluminum is converted to the vapor state under low pressure. The vapor then condenses on the material that is being coated. A metal fume consists of finely divided particulate dispersed in a gas. Because a metal fume and a metal vapor are different physical forms of a metal, metal vapor is not considered to be a type of fume. However, any aluminum fume that is produced as a result of the condensation of the metal vapor should be applied to threshold determinations for aluminum.

Aluminum; Chemical Qualifier; Coincidental Manufacture; Compounds; Fume or Dust

523. A covered facility manufactures aluminum cookware. It generates aluminum dust of various particle sizes during polishing and edging of the cookware. The facility collects the larger particles of aluminum dust by wet cloth. Does the facility consider only smaller dust particles that escaped for reporting purposes?

Aluminum in the form of dust is a listed Section 313 toxic chemical. All of the aluminum dust (no size limit) generated should be considered toward the manufacturing threshold. Provided the covered facility meets the activity threshold for aluminum fume or dust, the amount of the aluminum dust particles that escape the facility's collector system should be reported as released.

DRAFT

Aluminum Oxide; Chemical Qualifier; Fibrous Forms

524. A facility was advised by one supplier that aluminum oxide, CAS number 1344-28-1, is a listed toxic chemical under Section 313. The facility was advised by another supplier that this toxic chemical was on the toxic chemical list in error. Is aluminum oxide included on the toxic chemical list and therefore potentially reportable under Section 313?

Only fibrous forms of aluminum oxide are reportable under Section 313. Other forms of aluminum oxide are not subject to reporting (55 FR 5220, February 14, 1990).

Aluminum Oxide; Chemical Qualifier; Fibrous Forms

525. A dinnerware manufacturer wants to know if she has to report aluminum oxide in her clay, which is a raw material for her product.

Aluminum oxide in clay is usually part of another compound or mineral, such as kaolin, and is not present as a listed toxic chemical. In addition, it is unlikely the clay contains man-made, fibrous forms of aluminum oxide. Naturally occurring aluminum oxide, known as corundum, has a separate CAS number, 1302-74-5, and is not reportable.

Aluminum Oxide; Chemical Qualifier; Fibrous Forms

526. Are aluminosilicates reportable as aluminum oxide (fibrous forms)?

Aluminosilicates, aluminoborosilicates, zeolites, aluminum silicate hydroxides, and other related materials are either naturally occurring or are prepared by fusion at high temperatures. As a result, these materials are not considered to be fibrous forms of aluminum oxide under Section 313 and are not subject to reporting.

Aluminum Oxide; Mixture; Zeolite

527. For Section 313 purposes, is zeolite considered to be a mixture that contains aluminum oxide or is it considered to be a compound that is not a reportable substance?

Zeolite is an aluminum silicate compound that is not reportable under Section 313.

DRAFT

Compounds; Fume or Dust; Mixture; Particles; Threshold Determination; Zinc

528. A facility processes a zinc/mercury amalgam alloy and mercuric oxide to produce batteries. The amalgam is in particulate form. The molten amalgam is injected into a cooling chamber that produces particles with desired characteristics (such as size). Since zinc is listed as 'fume or dust' only, would the facility need to consider the zinc from the amalgam towards the applicable processing threshold?

Yes. EPA considers 'dusts' to be solid particles generated by any mechanical processing of materials (including mixtures). This includes, but is not limited to, handling, crushing, grinding, and rapid impact of materials such as rock, ore, metals, and alloys. In this case, the particles produced would constitute a dust and require a threshold determination.

DRAFT

Concentration; Mixture; Xylene-Xylene (Mixed Isomers)

529. A covered facility processes two of the three xylene isomers in separate streams, along with an additional stream containing a mixture of xylene isomers of unknown concentrations. How would the facility determine if an activity threshold has been exceeded? How would the facility report the xylene on the Form R?

The toxic chemical list at 40 CFR Section 372.65, contains four xylene listings (mixed isomers, ortho-, meta-, and para-xylene) that appear with their own CAS number. The CAS number specified for xylene (mixed isomers), 1330-20-7, applies to any combination of xylene isomers. The facility must make separate threshold determinations for each individual chemical listed at Section 372.65. If the thresholds are not exceeded for any of the individual xylene listings of Section 372.65, then the facility would not have to report on any releases of xylene at the facility. For example, if the facility processes, in separate streams, 10,000 pounds of ortho-xylene (CAS number 95-47-6), 10,000 pounds of para-xylene (CAS number 106-42-3), and 10,000 pounds of xylene in which the isomers are mixed in unknown concentrations (CAS number 1330-20-7), a threshold is not exceeded for any of the xylene listings. Therefore, no reports for xylene would be required. The quantities of the individual xylene listings processed by the facility should not be aggregated for the purposes of making threshold determinations.

If the thresholds are exceeded for two or more of the individual isomer xylene listings, the facility has two choices when filling out the Form R. The facility may file separate Form Rs for each isomer or unique isomer mixture listed in Section 372.65, or the facility may file one combined report. For example, the facility processes, in separate streams, 30,000 pounds of ortho-xylene, 30,000 pounds of para-xylene, and 30,000 pounds of xylene where the isomers are mixed in unknown concentrations. Because the activity threshold for each of the three xylene listings is exceeded independently, the facility can report releases and other waste management activities from each of three listings separately on three different Form Rs (one for ortho-xylene, one for para-xylene, and one for the mixed isomers) or the facility can report all xylene releases and other waste management estimates on one Form R as xylene (mixed isomers).

DRAFT

Diethylene Glycol; Glycol Ethers Category

530. Although the category of glycol ethers requires reporting under Section 313, does diethylene glycol require reporting?

Diethylene glycol is not subject to reporting. Glycol ethers, with the following structure, are reportable: R - $(OCH_2CH_2)_n$ – OR', where:

n = 1, 2, or 3;
R = alkyl C7 or less, or
R = phenyl or alkyl substituted phenyl;
R' = H or alkyl C7 or less; or
OR', consisting of a carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

The R groups for this structure are unsubstituted alkyl or aryl groups. For diethylene glycol, neither R nor R' contain alkyl or aryl groups and thus it is not subject to reporting under Section 313. For more information refer to EPA's document entitled, Toxics Release Inventory: List of Toxic Chemicals Within the Glycol Ethers Category (EPA-745-R-95-006).

Dipropylene Glycol; Glycol Ethers Category

531. Are dipropylene glycol ethers having a $RNOC_3H_6OC_3H_6OR$ structure considered a glycol ether for Section 313 toxic chemical reporting?

Dipropylene glycol ethers are not Section 313 reportable glycol ethers since it has $(OCH_2CH_2CH_2)_n$ or $(OCH_2CH(CH_3))_n$ instead of $(OCH_2CH_2)_n$ in its structure. Propylene glycol-based ethers are not covered by this category.

Ethylene Glycol; Glycol Ethers Category; Mono Butyl Ether

532. Is ethylene glycol mono butyl ether a Section 313 chemical reportable as a glycol ether?

Using the structural definition of glycol ethers as they appear in the final rule, ethylene glycol mono butyl ether is reportable under Section 313.

R - $(OCH_2CH_2)_n$ – OR'

In this case R is equal to butyl, ($CH_3CH_2CH_2CH_2$-); R' = H; and n = 1.

DRAFT

Glycol Ethers Category; Toxic Chemical List

533. Effective November 29, 2004, EPA amended the list of hazardous air pollutants (HAP) contained in Section 112(b)(1) of the Clean Air Act (CAA) by removing the compound ethylene glycol monobutyl ether (EGBE), also known as 2-butoxyethanol (Chemical Abstract Service (CAS) Number 111-76-2) from the group of glycol ethers. Is EGBE still subject to EPCRA section 313 TRI reporting under the certain glycol ethers chemical category?

Although EGBE was removed from the list of HAPs under the CAA regulations, it was not removed from the TRI toxic chemical list. Therefore, it continues to be a part of the certain glycol ethers category of chemicals subject to TRI reporting.

Additional information for reporting glycol ethers under TRI is available in the document entitled Toxics Release Inventory - List of Toxic Chemicals within the Glycol Ethers Category (EPA745-R-00-004; December 2000).

Mixture; Polyethylene

534. Is polyethylene considered a mixture of ethylene and its polymer, the components of which must be counted for purposes of reporting under Section 313 of EPCRA?

Polyethylene is not a listed chemical and thus is not subject to reporting under Section 313. A mixture is any combination of two or more chemicals if the combination is not, in whole or in part, a result of a chemical reaction. If the combination resulted from a reaction but could have been produced without a chemical reaction, it is still treated as a mixture. Thus, since polyethylene is the result of chemical reaction, it is not a mixture under EPCRA section 313. Any EPCRA section 313 listed toxic chemicals used in the manufacture of polyethylene should be evaluated against the proper Section 313 activity threshold.

Mineral Oil; Mixture

535. A covered facility uses hydraulic fluid which is 95 percent mineral oil and 5 percent other unspecified components. Does the facility have any Section 313 chemicals to report?

Mineral oil is a highly refined mixture of saturated C15 to C50 hydrocarbons. Barring any information to the contrary, it is unlikely that mineral oil contains significant quantities of any Section 313 chemicals.

DRAFT

Toxic Chemical List

536. Are vinyl chloride, a listed toxic chemical, and polyvinyl chloride, not listed, the same thing?

Polyvinyl chloride is not a listed toxic chemical and does not need to be reported (see 40 CFR Section 372.65). It is a polymer of vinyl chloride. Only unreacted vinyl chloride mixed with the polymer should be included in threshold determinations and release and other waste management calculations.

Toxic Chemical List

537. Are toxic chemical monomers such as acrylonitrile, butadiene and styrene, which are contained in a plastic copolymer known as ABS, reportable under Section 313?

These chemicals are monomers that react to make the ABS copolymer that is not reportable under Section 313 (see 40 CFR Section 372.65). However, if any unreacted acrylonitrile, butadiene, or styrene monomers are present in the ABS copolymer in excess of *de minimis* concentrations then they are reportable.

DEHP; DOP; SDS

538. A covered facility uses a toxic chemical known to them as DOP, which they think is n-dioctyl phthalate. N-dioctyl phthalate has the CAS number 117-84-0 and is not on the Section 313 list. However, the SDS from their supplier states that the toxic chemical is called DEHP or DOP and has the CAS number 117-81-7. DEHP is di(2-ethylhexyl) phthalate on the Section 313 list. Should this chemical be reported?

DOP is a commonly used acronym for both di(2-ethylhexyl) phthalate (DEHP) and n-dioctyl phthalate (DNOP). DOP is also listed as a synonym for DEHP in the Section 313 Common Synonyms document. However, as the supplier provided the acronym DEHP and the CAS number is 117-81-7, the facility has sufficient information to distinguish between DNOP and DEHP and thus should report for DEHP.

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Asbestos; CAS Number

539. Asbestos, with CAS number 1332-21-4, is a listed toxic chemical under Section 313. The synonym list does not contain reportable asbestos forms. A covered facility uses the following forms of asbestos and would like to know if they are reportable: Actinolite (CAS number 77536-66-4), Amosite (CAS number 12172-73-5), Anthophyllite (CAS number 17068-78-9), Chrysotile (CAS number 12001-29-5), Crocidolite (CAS number 12001-28-4), and Tremolite (CAS number 77536-68-6).

The Section 313 listing for asbestos (CAS number 1332-21-4) includes specific forms of asbestos, such as those mentioned above, that have their own individual CAS numbers. Therefore, those types of asbestos are reportable as long as they are manufactured, processed, or otherwise used in the friable form.

Asbestos; Threshold Determination

540. Are releases of asbestos from the demolition of an old plant reportable?

Maybe. If friable asbestos is not being manufactured, processed, or otherwise used, no releases or other waste management of asbestos must be reported unless there are other covered activities involving asbestos in the friable form at the facility, and the threshold for reporting has been exceeded. If, however, during the demolition of the plant, asbestos is created in the friable form, the manufacturing threshold may be triggered.

Formaldehyde; Paraformaldehyde

541. Is paraformaldehyde, CAS number 30525-89-4, reportable as formaldehyde under Section 313?

No. Paraformaldehyde is hydrated polymerized formaldehyde, a solid material that is different from formaldehyde. At ambient temperature, vaporization occurs, emitting formaldehyde gas. Though paraformaldehyde itself is not reportable, any formaldehyde manufactured as a gas or a solution during the manufacture, processing, or otherwise use of paraformaldehyde must be applied to any threshold determination for formaldehyde.

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De minimis; Mixture; Threshold Determination; Toluene Diisocyanate

542. A facility receives a chemical mixture, 70 percent of which is toluene diisocyanate (TDI). Of this 70 percent, 80 percent is 2,4-TDI, with CAS number 584-84-9, and 20 percent is 2,6-TDI, with CAS number 91-08-7. The CAS number that appears on the SDS for TDI is 26471-62-5. How should the facility report?

CAS number 26471-62-5 covers the mixture of the 2,4- and 2,6-TDI isomers. The 2,4- and 2,6-TDI isomers are also individually listed under EPCRA section 313. When the threshold quantity and *de minimis* concentration for each isomer in the mixture are exceeded independently, the facility may report under the individual isomer listings or under the mixed isomers listing. When the threshold quantity and/or *de minimis* for each isomer in the mixture are not exceeded independently, but are exceeded collectively, the facility should report under the CAS number for TDI (mixed isomers).

Mixture; Threshold Determination

543. A covered facility brings in natural and synthetic rubber in slab form. It then adds chemicals to the rubber to change it to what they are making (i.e., tennis balls). Does the facility need to consider the toxic chemicals in the rubber it receives?

Yes. Rubber is a mixture for reporting purposes. Further, note that the weights of the non-PBT chemicals must be added to the threshold determination if their concentrations are above the *de minimis* concentration limit (1 percent, or 0.1 percent for OSHA carcinogens) while the weight of any PBT chemical must be added irrespective of concentration. The weight added would be the weight percent of the toxic chemical multiplied by the weight of the rubber slab.

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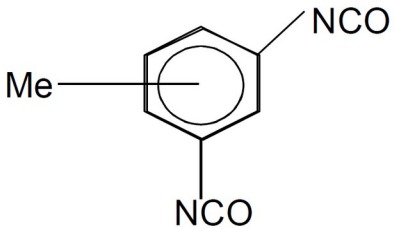
Mixture; Threshold Determination; Toluene Diisocyanate

544. According to the Chemical Abstract Service (CAS), the Chemical Abstracts Registry name for CAS number 26471-62-5 is 'benzene, 1,3-diisocyanatomethyl-.' The structural formula that describes this CAS number is as follows:



This name and structure imply only that the isocyanate groups must be one/three with respect to one another and that the position of the methyl group is not known. It should be noted that neither the name nor the structure imply that there is necessarily a mixture of chemicals. The EPCRA section 313 list of toxic chemicals (40 CFR Section 372.65) includes CAS number 26471-62-5 with the name 'toluene diisocyanate (mixed isomers).' This name implies no positional relationship of the isocyanate groups with respect to each other or to the methyl group. In addition, the name seems to imply that there must necessarily be a mixture of compounds for this listing to apply. For the purposes of EPCRA section 313 reporting, what compounds are reportable under the CAS number 26471-62-5?

The chemical name 'benzene, 1,3-diisocyanatomethyl-' is listed as a synonym for 'toluene diisocyanate (mixed isomers)' under CAS number 26471-62-5 in EPA's document Common Synonyms For Chemicals Listed Under Section 313 of the Emergency Planning and Community Right-To-Know Act, EPA 745-R-95-008, March 1995. For purposes of reporting under EPCRA section 313, 'toluene diisocyanate (mixed isomers)' includes any possible mixture of any toluene diisocyanates in which the isocyanate groups are separated by one carbon in the ring (i.e., are one/three to each other). This listing includes the 2,4-, 2,6-, and 3,5- isomers of toluene diisocyanate (TDI). TDI is commonly manufactured as a mixture of isomers (e.g., an 80:20 mixture of 2,4- and 2,6-TDI). Even if the mixture is made up of the specifically listed isomers (i.e., 2,4- and 2,6-TDI), the listing 'toluene diisocyanate (mixed isomers)' still applies. The 'mixed isomer' listing is meant to include any mixture that contains two or more of the toluene diisocyanate isomers (i.e., 2,4-, 2,6-, or 3,5-TDI). The specifically listed 2,4- and 2,6- TDI isomers should be reported individually if not present as a mixture of TDI isomers. If, however, the individual thresholds for the pure TDI isomers are exceeded, the covered facility may file a single report for TDI (mixed isomers) and include the total quantity released or otherwise managed as waste.

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CAS Number; MDI

545. A facility processes methylenebis-phenylisocyanate abbreviated MDI. MDI is listed under the EPCRA section 313 diisocyanates category with the CAS number 101-68-8. The MDI purchased by the facility, however, has the CAS number 26447-40-5. How should the facility treat this material with regard to Section 313 reporting requirements?

The EPCRA section 313 listed chemical and the purchased chemical are not necessarily the same chemical. The purchased chemical is termed by the Chemical Abstract Service as an incompletely defined substance that may be or may contain the listed chemical. The facility must use all available information (e.g., supplier notification information), to identify the amount of the listed toxic chemical present in the purchased material for threshold determinations and release and other waste management calculations. If this material does contain MDI, the quantity of MDI present should be included in all threshold calculations for the diisocyanates category.

Mixture; TDI (Mixed Isomers); Threshold Determination

546. A facility has three separate process streams, one containing 2,4-toluene diisocyanate (TDI), with CAS number 584-84-9, the second containing 2,6-TDI, with CAS number 91-08-7, and the third containing TDI (mixed isomers) with CAS number 26471-62-5. How should a facility calculate the thresholds and releases for each isomer and for mixtures of TDI isomers? If the facility knows the composition of the mixture, should they total the amount of the pure 2,4-TDI and 2,6-TDI with the amount in the mixture to determine if the threshold for the individual isomers has been met?

No. The Section 313 list of toxic chemicals includes listings for pure 2,4-TDI, pure 2,6-TDI and TDI (mixed isomers). The facility should calculate the thresholds separately for each process stream that contains the pure TDI isomers and the mixed TDI isomers. The individual TDI isomers of the mixed isomer process stream should not be applied to the thresholds of the pure isomers. If the individual thresholds for the pure TDI isomers are not met, no reporting is necessary. If the individual thresholds for the pure TDI isomers are exceeded, the facility may file a single report for TDI (mixed isomers) and include the total quantity released or otherwise managed as waste of all three process streams, or they may file three separate reports. If the thresholds for each TDI isomer in the mixed isomer process stream are not exceeded independently, but are exceeded collectively, the facility must report under the CAS number for TDI (mixed isomers).

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Activity Threshold; Ammonia; Anhydrous; Aqueous; Chemical Qualifier; Release Reporting

547. A covered facility processes an aqueous ammonia solution from water-dissociable ammonium salts in tanks and open vats. Evaporative losses occur at several points during processing. Are these evaporative losses considered releases of aqueous ammonia or anhydrous ammonia for purposes of EPCRA section 313 reporting?

Evaporation and drying losses from aqueous ammonia solutions result in the release of anhydrous ammonia, which is 100 percent reportable under the EPCRA section 313 ammonia listing. Although EPA modified the ammonia listing on June 30, 1995 (60 FR 34172), the modification only limits the quantity of aqueous ammonia that is reportable. The modification does not apply to anhydrous ammonia, which remains 100 percent reportable. Owners or operators must still include all anhydrous ammonia manufactured, processed, or otherwise used at a covered facility in threshold determinations and release and other waste management calculations. Anhydrous ammonia generated through the evaporation or drying of aqueous ammonia solutions derived from water-dissociable ammonium salts or other sources must be counted toward the applicable activity threshold. For example, if a facility processes aqueous ammonia, it has processed 100 percent of the aqueous ammonia in that solution. If the ammonia stays in solution, then 10 percent of the total aqueous ammonia is counted toward thresholds. If there are any evaporative losses of anhydrous ammonia, then 100 percent of those losses must be counted toward the processing threshold. If the manufacturing, processing, or otherwise use thresholds for the ammonia listing are exceeded, the facility must report 100 percent of these evaporative losses in Part II, Sections 5 and 8 of the Form R.

Activity Threshold; Ammonia; Otherwise Use

548. An engineering company performs reduction processes. In a NOx reduction process ammonia is used. Ideally, all of the ammonia would be consumed but, realistically, some always escapes out the stack. The ammonia reductions were determined to effect a net reduction in emissions. Are the minor quantities that escape subject to Section 313 reporting?

The ammonia used in the process would be otherwise used (40 CFR Section 372.3). If the otherwise use exceeds the 10,000-pound threshold, the facility would be required to report any releases or other waste management of ammonia.

Ammonia; Anhydrous; Aqueous; Chemical Qualifier; Release Reporting; Threshold Determination

549. Ammonia is included on the EPCRA section 313 toxic chemical list with the qualifier "includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing" (40 CFR Section 372.65). As this qualifier indicates, the quantities applied to EPCRA section 313 threshold determinations depend on the specific form of

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ammonia manufactured, processed, or otherwise used. Release and other waste management calculations also depend on the form of ammonia released or otherwise managed as waste. How does one distinguish between anhydrous ammonia and aqueous ammonia for the purpose of this listing? What are the differences in threshold determinations and release and other waste management calculations for the two forms of ammonia?

The term "anhydrous" means "lacking water," whereas "aqueous" means "dissolved in water." Anhydrous ammonia (in either the gas or compressed liquid state) may, however, contain a small amount of water. The presence of water in anhydrous ammonia does not constitute aqueous ammonia unless the amount of water present is sufficient to dissolve the ammonia. If ammonia is not actually dissolved in water, then the ammonia must be considered anhydrous. Facilities must be able to distinguish between anhydrous ammonia and aqueous ammonia when making threshold determinations and release and other waste management estimates because different percentages of the total amount of ammonia apply depending on the form of ammonia present.

If anhydrous ammonia is manufactured, processed, or otherwise used, then 100 percent of the anhydrous ammonia must be counted when determining whether an activity threshold has been exceeded. If the facility exceeds an activity threshold for ammonia (anhydrous and/or aqueous), then all of the anhydrous ammonia released and otherwise managed as wastes must be included in the facility's release and other waste management calculations.

Total aqueous ammonia includes both the ionized (NH_4^+) and un-ionized (NH_3) forms of ammonia present in aqueous solutions. When a facility manufactures, processes, or otherwise uses aqueous ammonia, it is conducting a threshold activity on 100 percent of the aqueous ammonia. However, the facility owner or operator counts only 10 percent of the total aqueous ammonia involved in a covered activity when making threshold determinations. Similarly, when estimating annual releases and other waste management estimates of ammonia from a facility, only 10 percent of the total aqueous ammonia must be included in the calculations.

Dissolving water-dissociable ammonium salts in water constitutes the manufacturing of aqueous ammonia. According to the ammonia qualifier, 10 percent of the total amount of aqueous ammonia created must be applied toward the 25,000-pound manufacture threshold as well as the processing or otherwise use threshold, depending on the use of the aqueous ammonia at the facility. However, since 100 percent of the anhydrous form of ammonia is reportable under the ammonia listing, all anhydrous ammonia used to make aqueous ammonia must be applied toward either the processing or otherwise use threshold, depending on the use of the aqueous ammonia solution at the facility.

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Ammonia; Ammonium Hydroxide; Chemical Qualifier; Concentration; Threshold Determination

550. An EPCRA section 313 covered facility maintains a Safety Data Sheet (SDS) for ammonium hydroxide (CAS number 1336-21-6). The SDS lists the concentration of total ammonia in the ammonium hydroxide at 29 percent. To assist covered facilities in calculating total ammonia in aqueous solutions, EPA has published a guidance document titled EPCRA section 313 Guidance for Reporting Aqueous Ammonia, which lists NH_3 equivalent weight percentages for chemical sources of aqueous ammonia. Ammonium hydroxide is listed as a chemical source of aqueous ammonia consisting of 48.59 percent total aqueous ammonia. When calculating the weight of total aqueous ammonia from ammonium hydroxide, should a facility use the percentage on the SDS or the percentage in the Agency's guidance document? When calculating the weight of total aqueous ammonia in other solutions of aqueous ammonia, what percentage should a facility use if given the choice between EPA's guidance document and solution-specific information?

The chemical ammonium hydroxide (NH_4OH) is a misnomer. It is a common name used to describe a solution of ammonia in water (i.e., aqueous ammonia), typically a concentrated solution of 28 to 30 percent ammonia. EPA has consistently responded to questions regarding the reportability of these purported ammonium hydroxide solutions under the EPCRA section 313 ammonia listing by stating that these are 28 to 30 percent solutions of ammonia in water and that the solutions are reportable under the EPCRA section 313 ammonia listing. For a more detailed discussion, see page 34175 of the Federal Register final rule of June 30, 1995 (60 FR 34172).

Facilities should use the percent total ammonia specified on the label of ammonium hydroxide solutions they purchase to determine the total ammonia content in these solutions. Ammonium hydroxide has the chemical formula NH_4OH; however, as mentioned above, strong evidence indicates that the species NH_4OH does not exist. Bottles of concentrated aqueous ammonia purchased from chemical supply companies are almost always labeled ammonium hydroxide. These solutions primarily consist of molecules of NH_3 dissolved in water (along with small amounts of ionized ammonia). The 48.59 percent listed for ammonium hydroxide is based on the ammonia weight of the chemical formula NH_4OH, not the actual concentration of total ammonia in ammonium hydroxide solutions. The actual concentration may vary depending upon the amount of NH_3 used to make the solution. Thus, this may not accurately reflect the actual weight of total aqueous ammonia in any given solution labeled ammonium hydroxide.

The percentages, reported in the document as NH_3 equivalent weight percentages for chemical sources, are the precise percentages of total ammonia (expressed as NH_3 equivalent weights) contained in each chemical listed based on the molecular formula for each chemical. Except for

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ammonium hydroxide, these numbers are exact for the pure chemical and do not vary. Facilities can use these numbers to calculate how much total ammonia will be in aqueous solutions made from these chemicals. If more specific information on the actual concentration of total ammonia in an aqueous solution is available from another source, such as an SDS label or measurement, facilities can use this information rather than performing the calculations prescribed in the EPCRA Section 313 Guidance for Reporting Aqueous Ammonia.

Ammonium Chloride; Ammonium Salts

551. Do ammonium salts such as ammonium chloride need to be reported under EPCRA Section?

Water dissociable ammonia salts, such as ammonium chloride, are reportable if they are placed in water. When ammonium salts are placed in water, reportable aqueous ammonia is manufactured. Ammonia (not ammonium salts) is on the list of toxic chemicals with the qualifier: 'includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing.' As indicated in this qualifier, all aqueous ammonia solutions from water dissociable ammonium salts are covered by the ammonia listing. For example, ammonium chloride is a water dissociable ammonium salt. Reportable aqueous ammonia will be manufactured when it is placed in water. Ten percent of the total ammonia present in an aqueous solution containing ammonium chloride must be included in threshold determinations and release and other waste management calculations.

Ammonia; Ammonium Salts; Facility; Otherwise Use

552. Ammonia is identified as an EPCRA section 313 toxic chemical with the qualifier, "includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing" (40 CFR Section 372.65). A facility purchases and subsequently otherwise uses 10,000 pounds of a solution consisting of 30 percent ammonia and 70 percent water. How much of this solution should be applied towards the facility's otherwise use threshold?

The facility should apply 300 pounds of the ammonia in the solution towards the otherwise use threshold for ammonia. Because the ammonia is in an aqueous form, only 10 percent of the total amount of aqueous ammonia is required to be applied towards the otherwise use threshold. In this case, the solution consists of 30 percent aqueous ammonia and therefore contains a total of 3,000 pounds of aqueous ammonia. Only 10 percent of this amount, or 300 pounds, is applied towards the otherwise use threshold.

Air Emissions; Emissions Factors;

553. Beginning with Reporting Year (RY) 2012, facilities that manufacture or process hydrogen sulfide (H2S) in quantities that exceed

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Form R; Fuel; Hydrogen Sulfide; Manufacture; Otherwise Use; Process; Releases; Waste; Wastewater Treatment; Water Treatment

25,000 lb annually or otherwise use the chemical in quantities that exceed 10,000 pounds annually are required to report the quantities they release or otherwise manage as waste management to the Environmental Protection Agency's (EPA) Toxics Release Inventory (TRI) Program. Many facilities will estimate these reportable quantities. What resources or emissions factors are available to assist in these estimations? Will EPA develop a hydrogen sulfide chemical guidance document for estimating threshold and release/waste management quantities of hydrogen sulfide?

EPA does not plan to issue a specific guidance document for estimating threshold and release/waste management quantities of hydrogen sulfide at this time. As with all Emergency Planning and Community Right-To-Know (EPCRA) § 313 chemicals, facilities may use their best readily available data (including monitoring data) pursuant to EPCRA § 313(g)(2). When data are not readily available, EPCRA allows facilities to use "reasonable estimates" of the amounts involved. Further guidance regarding "reasonable estimates" can be found in Q&A # 469-475 and 681, available at: https://www.epa.gov/toxics-release-inventory-tri-program/1998-tri-reporting-qa-document. Facilities must retain documentation of calculations used to determine threshold and reporting quantities, along with copies of their submitted Form R or A, for the record retention period of three (3) years.

Facilities may use mass balance calculations, published emissions factors, and/or engineering calculations and best judgment to create estimates for TRI reporting purposes. Below, EPA has listed some published emissions factors and information on federal and state limits on ambient hydrogen sulfide concentrations that may be useful in estimating releases of hydrogen sulfide:

1) Estimating Hydrogen Sulfide Releases at Petroleum Refineries: Consult the Canadian National Pollutant Release Inventory (NPRI) developed document, available at: http://www.canadianfuels.ca/website/media/PDF/Environmental%20Stewardship/Guidance%20Material/Canadian-Fuels_CoP_Rev15_Final_Report.pdf;

2) Estimating Hydrogen Sulfide Releases at Wastewater Treatment Plants: Consult the NPRI developed document, available at: http://www.ec.gc.ca/inrp-npri/86E3D932-F4A2-4584-B52A-7B85D797BCFA/Waste_Water_2002_English.pdf (Wastewater Treatment Plants: pages: 8-11);

3) Estimating Hydrogen Sulfide Releases from Aeration Basins:

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Consult the California Air Toxics Emissions Factor for Hydrogen Sulfide from Aeration Basins, available at: https://www.arb.ca.gov/research/apr/past/96-333_1_pt2.pdf;

4) Estimating Hydrogen Sulfide in Aqueous Solution:
Consult the temperature and pH conditions cited in Method 4500-S2 - Sulfide in Standard Methods for the Examination of Water and Waste Water (https://www.nemi.gov/methods/method_summary/7418/). Please note that facilities only need to report the portion that is hydrogen sulfide and can exclude the portion that is sulfide ion. Other methods may also be applicable;

5) Estimating Hydrogen Sulfide in Air Emissions:
Consult AP-42, available at: https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors;

6) Other:
Agency for Toxics Substances and Disease Registry (ATSDR) ToxGuide - The ToxGuide factsheet provides some summary information on typical environmental levels of hydrogen sulfide and also provides some health-based screening levels that have been established by ATSDR, available at https://www.atsdr.cdc.gov/toxguides/toxguide-114.pdf. ATSDR Toxicological Profile: This is the more detailed technical document that is summarized in the ToxGuide, available at https://www.atsdr.cdc.gov/ToxProfiles/tp.asp?id=389&tid=67.

CAS Number; Radioactive Cobalt; Threshold Determination

554. Must a facility consider the use of the radioactive Cobalt-60 (CAS number 10198-40-0) in its threshold calculations for cobalt (CAS number 7440-48-4)?

Cobalt-60 with CAS number 10198-40-0 is not on the list of toxic chemicals under EPCRA section 313. As such, Cobalt-60 is not reportable under EPCRA section 313. The listed toxic chemical is cobalt with CAS number 7440-48-4.

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Chemical Categories; Compounds; Manufacture; Nitrate Compounds; Otherwise Use; Process; Releases; Reporting Requirements; Waste

555. EPCRA section 313 requires covered facilities to report information on releases and other waste management of TRI-listed chemicals. Are nitrite compounds considered a listed toxic chemical category or are any individual nitrite compounds TRI-listed for the purposes of Section 313 threshold and release and waste management determinations?

The toxic chemical release reporting requirements apply to chemicals and chemical categories listed in 40 CFR §372.65. Nitrite compounds are not included in the nitrate compounds toxic chemical category, and there is no specific "nitrite compounds" category. However, one nitrite compound, sodium nitrite, is individually listed as a toxic chemical in §372.65. Therefore, although nitrite compounds are not covered as a whole under TRI, sodium nitrite (a nitrite compound) is listed in 40 CFR §372.65. Facilities subject to the TRI reporting requirements that manufacture, process or otherwise use sodium nitrite in quantities that exceed a threshold for any of these activities and meet all other reporting requirements under EPCRA section 313 are required to report on sodium nitrite.

Reporting Requirements

556. On September 30, 2014, EPA published a rule to finalize the addition of a nonylphenol category to the list of toxic chemicals subject to TRI reporting under EPCRA §313 (79 FR 58686). Does this mean that all nonylphenols are subject to EPCRA §313 reporting?

EPA listed the nonylphenol category as a delimited category defined by a specific list of chemical names and Chemical Abstract Service (CAS) Registry Numbers. Therefore, only the following six listed chemicals are reportable under the nonylphenol category for the purposes of TRI reporting: 4-Nonylphenol (CAS 104—40—5), Isononylphenol (CAS 11066-49-2), Nonylphenol (CAS 25154-52-3), 4-Isononylphenol (CAS 26543-97-5), 4-Nonylphenol, branched (CAS 84852-15-3), and Nonylphenol, branched (CAS 90481-04-2). This final rule is effective on September 30, 2014, and applies for the reporting year beginning January 1, 2015 (reports due July 1, 2016).
Additional information, including the final rule, is available at the following URL:
https://www.epa.gov/toxics-release-inventory-tri-program/addition-nonylphenol-category.

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Barium Chloride; Barium Sulfate; Chemical Categories; Off-site Transfer; Waste Treatment

557. Waste containing barium chloride is shipped off-site to a RCRA treatment, storage, or disposal (TSD) facility. The TSD facility treats the barium chloride, converting it to barium sulfate. The barium sulfate is stabilized and subsequently disposed. Since barium sulfate is excluded from the EPCRA section 313 barium compounds category, should the barium chloride be reported as shipped off-site for treatment or transferred off-site for disposal?

Barium chloride is being converted into a chemical that is not reportable under EPCRA section 313. Therefore, the barium chloride would be considered to be treated for destruction. The barium chloride should be reported in Section 6.2 as transferred off-site for treatment. M69 'other waste treatment' should be used. Despite the fact that barium chloride is a metal compound, the quantity of barium chloride transferred off-site should be reported in Section 8.7 rather than Section 8.1. The waste management of barium chloride is reported this way in Section 8 because the metal compound that barium chloride is converted to (barium sulfate) is not reportable and thus the barium chloride can be considered destroyed.

The following is effective starting January 1, 1998:

The TSD facility receiving the barium chloride should apply the quantity of the barium chloride that is converted to barium sulfate to the otherwise use threshold because it received the barium chloride from off-site for purposes of waste management and the facility treated the barium chloride for destruction (a listed chemical converted into a non-listed chemical). The TSD should also report the quantity of barium chloride that was treated for destruction in Section 8.6 (Quantity Treated On-site). It should also report any other releases or other waste management activities associated with the treatment for destruction of this toxic chemical.

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Aluminum; Energy Recovery; Metals; Recycling; Treatment for Destruction; Waste; Waste Management Activities; Zinc; test

558. For Toxics Release Inventory (TRI) reporting under EPCRA section 313, is on-site conversion of a metal compound to an elemental metal or from the elemental form of a metal to a compound of that same metal considered treatment for destruction?

Generally, if the conversion of a listed TRI toxic chemical into another substance (listed or not) takes place in a waste stream, it is considered treatment for destruction of the initial chemical. Metals, however, generally are not considered as treated for destruction because only the weight of the parent metal is reported and the parent metal cannot be destroyed. Therefore, the conversion of an elemental metal to a compound of the same metal or from a metal compound to the elemental form of the same metal is not considered treatment for destruction, even when such conversion takes place in a waste stream.

There are, however, a few instances in which a TRI metal or metal category compound may be considered treated for destruction upon its conversion to another form or substance because the newly formed substance is not a listed TRI chemical. For example, when elemental barium or a barium compound is converted to barium sulfate in a waste stream, this is reported as treatment for destruction because barium sulfate is not a listed TRI chemical. Similarly, aluminum and zinc, which are only reportable in the form of fumes or dusts, are considered treated for destruction when they are converted into non-reportable forms if this conversion takes place in a waste stream. Additional information regarding treatment for destruction can be found in the Waste Management Activities: Recycling, Combustion for Energy Recovery, Treatment for Destruction, Waste Stabilization and Release document on GuideME.

Mixture; Threshold Determination

559. A covered petroleum refinery manufactures naphtha from crude oil. A paraffin, olefin, naphthalene and aromatics (PONA) analysis revealed that the naphtha contains 2.5 percent by weight of C9 alkylbenzenes. Only two out of a possible eight C9 alkylbenzenes are reportable under Section 313. How would this manufacturer calculate the Section 313 reporting threshold for the generic chemical name category of C9 alkylbenzenes in this instance?

The facility should not report for the generic mixture name, such as C9 alkylbenzenes, but for the specific chemical. Since the facility does not know the concentration of each chemical in the naphtha, and assuming 2.5 percent as the upper bound for each is unrealistic, the facility should assume that each listed C9 alkylbenzene is present and divide the concentration evenly between the eight.

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Compound; Mixture

560. What is the difference between a mixture and a compound?

When a compound is formed, the identities of the reactant chemicals are lost, but in a mixture, the individual components retain their own identity and could be separated again. For example, since polyethylene is a reaction product, it is not a mixture for EPCRA section 313 purposes and is not subject to reporting. Steel fabricated into its solid form is considered a mixture because the individual metals retain their chemical identity.

Compound; Mixture; Release Reporting

561. Must a facility report the various mixtures of compounds and substances that it manufactures?

A facility must consider the specific compounds within mixtures, not the mixtures themselves, to determine whether a report must be filed. The individual listed chemicals or chemical compounds in mixtures are separately reported.

Best Available Information; CAS Number; Mixture

562. When a company has a mixture on-site that does not have its own CAS number, what CAS number should be used?

The company should use the best readily available information (e.g., SDSs, supplier notifications, and process and chemistry knowledge) at the facility to identify the listed Section 313 toxic chemicals in the mixture, in accordance with 40 CFR Section 372.30. A separate report must be filed for each toxic chemical for which the fraction of the toxic chemical in the mixture multiplied by the total weight of the mixture processed or otherwise used exceeds the applicable threshold. The toxic chemicals are treated as if they were present in pure form and each is reported under its own CAS number.

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CAS Number

563. The Chemical Abstract Service (CAS) maintains a computerized filing system that contains two main index files. The chemical abstract file provides bibliographic information referencing chemicals appearing in over 9,000 journals, papers, and symposiums from 1967 to the present. The chemical abstract file is an important tool for people interested in learning about the research, patents, and uses for specific chemicals. The chemical registry number file assigns CAS registry numbers to unique chemicals for purposes of identification. Assigning a CAS number to a particular chemical facilitates managing and regulating that chemical by universally identifying it with a specific number. Only one CAS number is assigned to each chemical and under EPCRA section 313, only one CAS number is listed per toxic chemical. If chemicals are to be assigned only one CAS number, why are some chemicals listed with multiple Chemical Abstract Service (CAS) numbers in 40 CFR Table 302.4 and the Title III List of Lists (EPA 550-B-98-017)?

There are two possible reasons for a chemical to have multiple numbers. The CAS numbers could refer to different forms of a chemical where each is considered unique for its particular properties and characteristics. The CAS registry number file includes the registry number, synonyms, chemical structure, and molecular formula for each chemical recorded in the file. If specific research has been done on a particular form of a chemical, a separate CAS number may be assigned to that particular form to facilitate the search process in the CAS file. For example, sodium hypochlorite is listed with two CAS numbers, 7681-52-9 and 10022-70-5. The former refers to the sodium salt form of hypochlorous acid, sodium hypochlorite, while the latter refers to the pentahydrate form of sodium hypochlorite. Both forms could be called sodium hypochlorite, thus sodium hypochlorite has, in effect, two CAS numbers.

A chemical may also be listed with multiple CAS numbers when multiple numbers have been inadvertently assigned to the same chemical. This multiple assignment can occur when forms of a chemical are originally believed to be unique, but after further review by chemists, are identified as the same chemical. In this case, all the CAS numbers are cross-referenced, allowing the chemical to be located with any assigned number. The misassigned numbers are deleted as registry numbers, but remain on file for referencing purposes. The CAS number first assigned is the more accurate number to use when denoting the chemical. Although all of the CAS numbers will find the chemical, only the more accurate number will prompt the CAS registry file system to display the name, synonyms, and characteristics associated with the chemical. Chromic acid, listed with CAS numbers 1115-74-5 and 7738-94-5, illustrates this situation. After further review by chemists, CAS number 1115-74-5 was deleted as a registry number, but remains on file for future reference. CAS number 7738-94-5 is the more accurate number to identify chromic acid because it was the first

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Mixture; Mixture Name; Part II Section 1

564. When should the 'mixture component identity' field on the Form R be used?

The 'mixture component identity' field is to be used only when a facility knows that a mixture it purchases and processes or otherwise uses contains a listed Section 313 toxic chemical but it does not know which toxic chemical (i.e., the supplier keeps the toxic chemical identity a trade secret). The facility must use the toxic chemical or the toxic chemical category name field in all other circumstances (unless it is declaring the toxic chemical a trade secret toxic chemical and is filling out a sanitized version of the form).

Metal Alloy; Mixture

565. How is galvanized sheet metal considered for EPCRA section 313 reporting? Are metals in alloys subject to Section 313 reporting?

Galvanized sheet metal is an alloy of several different metals. An alloy is considered a mixture for Form R reporting because the individual metals in the alloy retain their chemical identities. Like all other listed toxic chemicals in mixtures, alloys are subject to Form R reporting. When determining whether a facility meets an activity threshold, the owner/operator should only consider the weight percent of the listed chemical in the alloy.

Ozone; Reasonable Estimates

566. Ozone is manufactured as a result of the generation and transmission of electric power. Must the electricity generating facility report the amount of ozone manufactured?

Yes. Amounts of ozone (a toxic chemical) manufactured at a covered facility must be considered toward the facility's manufacturing threshold for ozone. If the facility knows that ozone is being manufactured, then the facility must use its best readily available information to provide reasonable estimates in making threshold and release and other waste management calculations.

Releases

567. What is the definition of a toxic chemical 'release' under EPCRA section 313?

Under Section 329, EPCRA defines a release as any 'spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles).' Under Section 313, covered facilities are required to take into account in their reports all toxic chemicals entering each environmental medium (e.g., 'routine' and 'accidental' releases).

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Accidental Releases; EPCRA Section 304; Releases

568. What is the difference between a release under EPCRA Section 304 and a release under EPCRA section 313? Would accidental releases reported under Section 304 have to be included in the Section 313 report?

Section 304 releases are accidental releases of extremely hazardous substances, requiring an emergency notification. Reporting under Section 313 includes the total amount of the toxic chemicals, both routine, operational and accidental releases. Thus, Section 304 releases of listed Section 313 toxic chemicals must be factored into releases reported under Section 313.

Monitoring; Releases

569. Is it true that covered facilities need not make any special effort to measure or monitor releases for Section 313 reporting and may use information that is on hand?

Yes, EPCRA section 313 states that covered facilities need not conduct monitoring or other activities beyond that required by other statutory or regulatory requirements (EPCRA section 313(g)(2)). Congress included this language to limit the burden on the affected industry for development of release and other required data. Without measurement or monitoring data, the facility is required to make reasonable estimates using its best readily available data.

Reasonable Estimates; Releases

570. Section 313(g)(2) of EPCRA states that the owner or operator of a facility may use readily available data. In some cases, the available data may be known to be non-representative and reasonable estimates offer more accurate release information. Would EPA, in this instance, favor use of the estimates rather than data?

Yes, it is preferable to use reasonable estimates using the best readily available information if available data (including monitoring data) is known to be non-representative.

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Facility; Form R; Release Calculation; Releases

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

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

Readily Available; Reasonable Estimates

572. If a covered facility has analytical data that will take extensive time and money to calculate emissions, can that facility use the maximum emissions level specified in their permit to calculate their emissions?

EPCRA allows facilities to use its best readily available data to provide information required under Section 313. When data are not readily available, EPCRA allows facilities to use 'reasonable estimates' of the amounts involved. An owner/operator facility must use his/her best judgment to determine whether analytical data are readily available. If they are not, the facility's use of maximum emissions levels, as specified in its permits, may be a reasonable basis from which to form its estimates. In any event, the owner/operator should carefully document the reason for its decision making.

Detection Limit; Reasonable Estimates

573. If a covered facility has analytical data indicating the concentration of a Section 313 chemical is below the limits of detection and the facility has no information on the probability of the chemical being present in that waste stream (e.g., Superfund waste), should the facility use half the detection limit? What documentation will EPA require if the facility asserts that it had no basis for expecting the Section 313 chemical to be present?

If the facility has no information to indicate that the chemical exists in the waste stream, it may assume that the concentration is zero. If the facility has reason to believe that the listed toxic chemical is present, it may use half of the detection limit. The facility should document that it looked at all readily available data in making this determination.

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Basis of Estimate; Reasonable Standard

574. Is it appropriate for a covered TSD facility to develop an average concentration for a Section 313 chemical contained in thousands of different waste streams managed by the facility, and then use that average as a basis for threshold determinations? If so, does EPA have a recommended approach for developing such an average?

EPCRA allows covered facilities to use the best readily available data to provide information required under EPCRA section 313. When data are not readily available, EPCRA allows facilities to use reasonable estimates of the amounts involved. A facility must use its best judgment to determine whether data are readily available. Thus, with regard to use of average concentration levels, a facility must use its best judgment to decide whether the raw data from which it might base any average concentration level are readily available. In any event, a facility should carefully document its decision making. For example, if a facility decides to use average concentration levels, it should document why the raw data from which the averages are based are not readily available, how it arrived at any average concentration level used, and why the average concentration level is a reasonable estimate of the amount of the toxic chemical in the waste stream. EPA does not have a recommended approach for determining average concentration levels.

Chromium; Reasonable Estimates

575. A covered treatment, storage, and disposal (TSD) facility receives a waste from off-site that contains chromium. The waste profile indicates only that the waste stream contains chromium. The waste profile does not indicate if the waste contains elemental chromium or a chromium compound. Can the TSD make threshold determinations based on the assumption that the chromium contained in the waste stream is present as elemental chromium?

A facility must use the best readily available information to determine which listed chemicals or compounds are being manufactured, processed or otherwise used. If the waste profile is incomplete or inaccurate, the facility should look to other sources of information that it believes are more representative of the needed information. Facilities should document assumptions and calculations used in making their determinations.

Best Available Information; Emissions Factors; Releases

576. A paint manufacturer needs to estimate emissions of Section 313 chemicals. How can the owner or operator estimate solvent emissions from open or partially open mixing tanks, and speciate total solvent emissions data into specific compound emissions?

Facilities should use the best readily available information. Emissions Factors are available in Compilation of Air Pollutant Emissions Factors (AP-42) for estimating total VOC emissions from paint manufacturing.

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Emissions Factors; Pulp and Paper Mills

577. Many pulp and paper mills burn wood for on-site electricity and may trigger manufacturing thresholds when one naturally occurring compound changes to another (e.g., copper or manganese compounds change to copper or manganese oxides). Does EPA publish emissions factors for metals manufactured from the burning of trees?

Emissions Factors provided in Section 1.6 - Wood Waste Combustion in Boilers of EPA's document AP-42, Compilation of Air Pollutant Emissions Factors can be used to calculate emissions for metal manufactured from the burning of trees. However, if a facility has better readily available information that would enable the facility to more accurately calculate the emissions generated, the facility should use that information.

Detection Limit; Monitoring; Releases

578. If a facility monitors for a toxic chemical and the measurement is below the limit of detection of the method, can they report zero releases?

The facility must use reasonable judgment as to the presence and amount of the listed toxic chemical based on the best readily available information. An indication that a reportable chemical is below detection is not equivalent to stating that the chemical is not present. If the reportable Section 313 chemical is known to be present, a concentration equivalent to half the detection limit should be used. The facility should not estimate releases based solely on monitoring devices, but the facility should also rely on its knowledge of specific conditions at the plant.

Best Available Information; Releases; Reporting Deadline

579. Form R requires estimates of the release to the environment of listed toxic chemicals in specific release categories. If a facility is unable to complete its estimate of these releases by the deadline, should the company leave that entry blank and promise a future estimate, or make the best estimate possible and submit later revisions?

Any covered facility must report by July 1 for the previous reporting year, and the data provided should be the best estimate using the best readily available data. Records supporting the data must be kept for three years. If more accurate data are developed, the facility may submit revised forms. EPA can take enforcement action if they believe that the data do not represent reasonable estimates.

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Form R; Significant Figures

580. Please explain the "two significant figures" reporting guideline.

For non-PBT chemicals, estimates are not required to be reported to a greater accuracy than two significant figures (e.g., 4224 may be entered as 4200). The number of significant figures is the number of non-zero digits. One significant digit may be reported if the estimation techniques used do not support two-digit accuracy. For PBT chemicals, if a facility's release or other management calculations support reporting an amount that is more precise than two significant digits, then the facility should report that more precise amount (see 64 FR 58734; October 29, 1999).

Form R; Release Estimate; Significant Figures

581. When reporting release estimates for non-PBT chemicals on the Form R, EPA recommends release estimates be rounded to no more than two significant figures. Should release estimates always be reported in whole numbers, or should decimal places be reported in certain instances?

When reporting release and other waste management estimates on the Form R for non-PBT chemicals, always report using whole numbers (i.e., round to the nearest pound). For PBT chemicals, facilities should report releases and other waste management amounts greater than 0.1 pound (and for dioxin and dioxin-like compounds 0.0001 gram), at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based (see (64 FR 58734; October 29, 1999) and Guidance for Reporting Toxic Chemicals with the Dioxin and Dioxin-like Compounds Category.

Compounds; Dioxin and Dioxin-like Compounds; Facility; Form R; PBT Chemicals; Process; Processing; Releases; Waste

582. A facility subject to EPCRA §313 exceeds the processing threshold for mercury and determines that the total amount of mercury released from the facility in a particular year is 0.07 pounds. What level of precision must the facility use to report when filing a Form R for a persistent bioaccumulative toxic (PBT) chemical, such as mercury?

As EPA stated in the PBT final rule, "Facilities should continue to report releases and other waste management amounts greater than 1/10 of a pound (except for dioxin and dioxin-like compounds), at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based" (64 FR 58734, October 29, 1999). EPA recommends that values such as 0.07 pounds either be rounded up to 0.1 pound or reported as they are if the underlying data and estimation techniques support that level of precision. However, it is up to the facility to determine, based on the accuracy of the underlying data and the estimation techniques on which the estimate is based, whether it would be appropriate to round the value to 0.1 pound, report the value as is, or round the value to zero.

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Disposal; Releases

583. Is the disposal of toxic chemicals in wastes in the form of dusts, shavings, or turnings that result from grinding or drilling of metal items considered a 'release of a toxic chemical?'

Yes, disposal of dusts, shavings, or turnings containing Section 313 toxic chemicals is considered a release (40 CFR Section 372.3).

Loading Emissions; Releases

584. Tank trucks and rail cars physically enter a facility. While loading for transport, toxic chemical emissions occur. Are these emissions subject to reporting under Section 313?

Yes. As long as the toxic chemicals are not under active shipping papers and the loading and the releases occur within the facility boundary, the releases must be reported if the facility meets the toxic chemical activity, employee, and NAICS code criteria.

EPCRA Section 304; RQ; Release Reporting; Releases; Transportation Exemption

585. A covered facility receives a shipment of gasoline from a tank truck. The loading dock is located within the facility boundaries. The tank truck delivers gasoline through a hose into the tank operated by the facility. While stationed at the dock, the valve of the tank truck ruptures and the gasoline leaks from the hose of the tank truck. This release occurs before the shipping papers are signed off by the facility operator. Gasoline contains listed Section 313 toxic chemicals such as benzene. If an activity threshold for benzene is met, would the facility be required to report this quantity of benzene released on the Form R?

No. In the above case, the chemicals in the tank truck are considered under active shipping until the shipping papers are signed at the loading dock. Section 327 of EPCRA states that '(e)xcept as provided in Section 304, this title does not apply to the transportation, including the storage incident to such transportation, of any substance or toxic chemical subject to the requirements of this title, including the transportation and distribution of natural gas.' In the above scenario, the material in the tank truck is considered to fall under the transportation exemption, and releases from this truck would be exempt from reporting under Section 313. This release, however, would be reportable under Section 304 of EPCRA, if the quantity of any extremely hazardous substance (EHS) or CERCLA hazardous substance released exceeds the reportable quantity (RQ) within a period of 24 hours. EPA would encourage the facility to include the amount in its Form R in order to provide the public with the full picture of benzene releases that occurred at the facility for that reporting year.

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Fuel; Releases; Waste; Waste Management Activities

586. Do federal facilities have to account for releases and other waste management activities of EPCRA section 313 chemicals contained in fuel that is under active shipping papers?

No. Except for the emergency notification requirements of section 304, EPCRA does not apply to the transportation of EPCRA section 313 chemicals. This includes EPCRA section 313 chemicals stored incident to transportation (EPCRA section 327).

Fugitive Air Emissions; Lab Hoods; Releases

587. Are releases from lab hoods considered fugitive air emissions?

The releases from lab hoods are point source air emissions. Therefore, the releases are reportable and should be accounted for in Part II, Section 5.2 of the Form R, if the facility exceeds an appropriate threshold. (See also Section 2D on the Laboratory Exemption.)

Disposal; Form R; Lead; Recycling; Releases; lead bullets

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

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

Landfill; Migration; Releases

589. Do we need to report leaking, abandoned landfills? What if we don't know if it is leaking?

Leaks from landfills need not be reported. EPA requires reporting of the amount of a toxic chemical placed in an on-site landfill during the year. The facility is not required to estimate migration from the landfill for years other than the reporting year.

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Groundwater; Migration; Releases

590. Are groundwater releases required to be reported? If so, what if a facility has a surface impoundment which it suspects is leaking? How is the amount being released calculated?

Releases to underground injection wells, surface impoundments, or landfills should be reported. Estimates of amounts leaking from such disposal and possibly reaching groundwater should not be reported. EPA may model the potential for such leaks or migration, but does not require facilities to estimate such further migrations.

Outdoor Storage Pile; Threshold Determination

591. A mining facility stores coal or ore outside. One or more listed toxic chemicals are contained within the storage piles. Due to exposure and weathering influences, other listed toxic chemicals are manufactured in the storage piles and may subsequently run-off onto land or surface water. How should the facility consider the manufacturing of listed toxic chemicals within a storage pile?

Amounts of listed toxic chemicals known to be manufactured on-site from the storage of raw materials, mixtures, or trade name products must be considered toward the manufacturing threshold for those chemicals. The term manufacture means 'to produce, prepare, import, or compound a toxic chemical.' If the mining facility has knowledge that a listed toxic chemical is manufactured on-site, the facility should count the amount of the listed toxic chemical manufactured toward the manufacturing threshold.

Release Reporting; Stockpiles; Storage

592. A mining facility leaches metals from an outdoor ore pile and collects the leachate for further processing. Should the toxic chemicals in the pile be reported as a release to land on the Form R?

During the leaching, the ore pile is considered part of the facility's process, and toxic chemicals in the pile should not be reported as a release to land. Once the leaching process is complete, and the ore pile is 'closed,' the facility will report the toxic chemicals remaining in the pile as a release to land in Part II, Section 5.5.4 (Other Disposal) of the Form R. However, amounts of listed toxic chemicals that escape the pile during the facility's leaching process and are either released to land or surface water, for example, must be considered toward release calculations if a threshold has been exceeded.

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Release Reporting; Releases; Stockpiles; Storage

593. A manufacturing 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 the threshold criteria (40 CFR Section 372.22) for filing a Form R for the toxic chemical benzene. Since the stockpiled coal contains benzene and is exposed to the outside atmosphere, would all the benzene in the coal need to be reported on the Form R as a release to land on-site?

No. A facility does not have to report toxic chemicals contained in an on-site stockpile of material that is intended for otherwise use on-site as a release to land on-site. However, any toxic chemical that escaped to air or remains in the soil from the stockpile material (e.g., evaporative losses to air, material leached to the ground, etc.) must be reported as released to the environment on-site. Once a covered facility meets the criteria for filing a Form R under EPCRA section 313 for a toxic chemical (such as benzene), all releases of that chemical at the facility are to be reported. Releases of non-PBT chemicals from the stock pile will be eligible for the *de minimis* exemption.

Landfill Leachate; Otherwise Use

594. A facility captures leachate from a landfill, treats the leachate with a toxic chemical and then uses the treated leachate as on-site irrigation water. Assuming the facility exceeds the otherwise use threshold for the toxic chemical, is the otherwise use of treated leachate (containing the toxic chemical) as irrigation water reported as a release to land in Part II, Section 5.5.4 (Other Disposal)?

Yes. Use of a leachate and chemicals contained in the leachate for irrigation purposes is considered an otherwise use and amounts of listed toxic chemicals contained in the leachate must be counted toward the otherwise use threshold. Any listed toxic chemicals manufactured during the treatment of the leachate would also need to be considered toward the manufacturing threshold. The leachate, and listed toxic chemicals contained in the leachate, are also considered a waste and any otherwise use of listed toxic chemicals contained in the leachate are not eligible for the *de minimis* exemption. This is the case even though the listed toxic chemical in the leachate must be counted toward the otherwise use threshold. Also, the otherwise use of these chemicals for irrigation constitutes a release to land and would be reportable in Part II, Section 5.5.4 (Other Disposal) and Section 8.1.

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Injection; Leaching System; Mining Disposal; Multiple Activity Thresholds; Sulfuric Acid

595. Sulfuric acid is injected into a Class II well for the purpose of in-situ leaching, not for the purpose of waste disposal. The in-situ leaching is a recirculating system and as sulfuric acid is injected into the well, low concentrations of metals are solubilized, brought to the surface, and the metals are subsequently separated from the sulfuric acid solution and distributed in commerce. Some of the metal compounds that are solubilized remain with the sulfuric acid solution and are re-injected into the in-situ recirculating leaching system. Would the amount of metal injected back into the Class II well be reported in Part II, Section 5.4 if an activity threshold is exceeded?

There are several activities that are taking place in the above scenario that the facility needs to consider in terms of EPCRA section 313 reporting. The injection of sulfuric acid solution to extract certain metals is likely to result in the formation or manufacturing of listed toxic chemicals such as metal sulfate compounds. The amounts of listed toxic chemicals manufactured must be considered toward the facility's manufacturing threshold. The metal compounds are also being recovered for subsequent distribution in commerce, and these amounts must be considered toward the processing threshold. Metal compounds that are being re-injected are being released, but for purposes of EPCRA section 313 reporting, amounts of listed toxic chemicals re-injected and recirculated are not reportable as released provided that these amounts continue to be circulated. Any amounts known to escape the 'recirculating/leaching system' and remain in the leaching zone or otherwise escape within the reporting year would be considered a release.

Disposal; Recycle; Releases; Ultimate Disposition

596. A covered facility discharges waste containing listed Section 313 metals to an on-site cooling pond. The metals accumulate and settle over time, and the water is then drained from the cooling pond, leaving the heavy metal sludge. The sludge is then dredged and sent off-site to a recycler. How should the toxic chemicals left in the pond, after the sludge has been removed for recycling, be reported?

A facility must report the ultimate disposition of listed toxic chemicals from the facility during the reporting year. Listed toxic chemicals remaining in the sediments after the sludge is sent off-site to a recycler are 'released to land.' Listed toxic chemicals sent to a receiving stream when the wastewater is drained are 'released to water.'

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Facility; Metals; Recycle; Recycling; Waste

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

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

Facility-Facility Reporting; Multi-Establishment; Otherwise Use; Stormwater; Wastewater

598. Three separately owned companies are located within a single industrial park. These companies are separate facilities under EPCRA section 313. Facility A discharges wastewater through a pipeline to an outfall on Facility B's property. Facility B runs the discharge permit for another outfall through which stormwater from Facility C passes. Both the wastewater and stormwater contain several toxic chemicals, which pass through the outfalls untreated (within permitted levels) to a nearby waterway. Facility A and Facility C exceed activity thresholds for these toxic chemicals in their manufacturing processes. Facility B does not use the chemicals in any manufacturing operations on-site. However, more than 10,000 pounds of each toxic chemical contained in the wastewater and stormwater annually flow through Facility B's piping and outfalls. Must Facility A and C report the discharges as off-site transfers in Part II Section 6.2 of the Form R, or in Section 5.3, as a discharge to a stream as well as a release in Section 8.1? Must Facility B consider these toxic chemicals towards the otherwise use threshold even though the toxic chemicals are not treated for destruction, stabilized or disposed on-site?

In this situation, Facility A and Facility C would report the toxic chemicals transferred to Facility B, as an off-site transfer in Part II, Section 6.2 using treatment code M90, other off-site management and in Section 8.1 as released. Facility B would not consider these toxic chemicals towards their otherwise use threshold because Facility B does not receive toxic chemicals in waste from off-site for disposal on-site under EPCRA section 313. If, however, Facility B meets an activity threshold for these chemicals elsewhere at the facility, it would report the release of the chemicals in the wastewater received from Facility A and the stormwater from Facility C in Part II, Section 5.3 and 8.1 of the Form R.

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Definition of Facility; Releases

599. A covered facility is adjacent to a lagoon which the facility does not own but to which it pays to discharge wastes. The facility, however, is in effect the operator of the lagoon. In one year, the facility released a listed mineral acid into the lagoon as an attempted pH control. Must the facility report for the release of the listed mineral acid, even though the process was a one-time treatment method that will not be repeated?

Yes, the facility must report the release of the listed acid if it meets the threshold criteria for reporting. The facility was acting as operator of the waste treatment site and must report listed chemicals otherwise used in excess of the threshold. Because the facility operates the lagoon and it is adjacent to the rest of the site, the lagoon is part of the facility (40 CFR Section 372.3).

Chemical Conversion; Chlorine; Releases

600. How are chlorine releases reported? Must chlorine, CAS number 7782-50-5, be reported if it is transformed into another chemical compound during the release process?

If chlorine is present in waste released by a facility it must be reported even though the chlorine may be transformed in the environment subsequent to the release. If the chlorine is transformed in the waste stream prior to any releases, the facility must still report if an activity threshold is met, but the amount reported may be zero.

Chlorine; Estimating Releases; Releases; Waste Treatment; Water Treatment

601. How can one estimate emissions of chlorine from use in cooling water treatment? We have tried to estimate the emissions for some cooling water systems based on the amount of water evaporation, wind drift and the amount of chlorine used, but the releases seem too high.

Estimating emissions based on the amount used overestimates releases since chlorine is only slightly soluble in water, it reacts with chemicals in the water and it dissipates in side reactions. Multiplying measured residual chlorine by recirculation rate by lost water fraction may also overestimate releases (residual includes other forms of chlorine), but may be the only way to make a reasonable estimate. Please refer to EPA's EPCRA section 313 Reporting Guidance for Food Processors (EPA 745-R-98-011; August 1998).

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Acids; Chemical Conversion; Release Reporting; Release to Land; Releases

602. A facility mines magnesium-rich brine from an on-site well. After extracting the magnesium, it disposes of the brine in on-site disposal wells. In order to keep the disposal well formation clean and usable, the facility pumps 280,000 pounds of a reportable mineral acid into the wells. The facility considers this an otherwise use of the acid. Since the acid would be neutralized before it migrates off-site, is it also a release to land?

Yes. The facility must consider their use of a reportable acid as an on-site release to land even though subsequent to the release the acid may be neutralized in the process of cleaning the well. EPA does not allow facilities to reduce the quantity reported as released to the environment based on conversions of a chemical in the environment after the chemical has been released by the facility.

Fugitive Air Emissions; Point Source Air Emissions; Releases

603. Our facility paints metal cabinets and the paint solvents contain a listed toxic chemical. The system consists of a closed, vacuum vented painting room and a closed oven room vented by an oven stack. Are releases from the vent to the outside of the building over the painting room considered 'releases from building ventilation systems' and therefore reported as fugitive emissions?

No, fugitive releases are emissions that are not in a confined directional air flow. Since your building vent system over the painting room is a confined air stream, it can be combined with the oven stack as a stack or point emissions in Part II Section 5.2 of the Form R.

Pipes; Release Reporting; Releases

604. Where does one report routine leaks from pipes? Would these be reported as disposed to land?

Reporting leaks from pipes requires determining where the released toxic chemical goes. For example, a toxic chemical that evaporates would be reported as a fugitive air emissions in Part II, Section 5.1 of the Form R. A nonvolatile material leaking into land, or any material leaking from an underground pipe, would be reported as a release to land and entered in Part II, Section 5.5.4 'Other Disposal.' In either case, the toxic chemical would also be reported in Section 8.1.

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Combustion Unit Efficiency; Release Calculation; Releases

605. In calculating releases from incinerators, boilers, industrial furnaces and like units, is it sufficient to base the amount released on the efficiency of the unit?

Release calculations based solely on the efficiency of the unit may not be sufficient. Facilities must use the best readily available information. For example, the 99.99 percent efficiency of an incinerator may not refer to the destruction and removal of the chemical being reported on the Form R. If that is the case, the efficiency may have no relation to the release quantity of the chemical being reported. Even if the surrogate waste is the chemical being reported, the 99.99 percent efficiency may not only include the quantity of the chemical destroyed by combustion, but may also include the quantity of the chemical that is physically removed. The quantity of the chemical removed can include undestroyed chemical in the ash, and undestroyed chemical discharged from air pollution control devices like scrubbers, precipitators, baghouses, etc. Furthermore, releases of the chemical due to faulty equipment upstream from the feeding point of the combustion device can also be counted as quantity removed and included in the 99.99 percent efficiency calculation. As a result, release calculations based solely on the efficiency of the unit might count the chemical removed as destroyed. This will result in under-reporting of the quantity of the chemical released to the environment.

The facility should also examine its operating records to account for chemical releases during upset conditions such as those released from an emergency dump stack.

Combustion Unit Efficiency; Metals; Releases; Treatment for Destruction

606. Why does EPA not allow covered facilities to use the efficiency of a combustion unit (e.g., incinerator, industrial furnace or boiler) to calculate releases of metals from the unit?

Metals cannot be destroyed by combustion. Therefore, the efficiency of a combustion unit has no relation to the releases of metals from the unit.

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Asbestos; Definition of Friable; Releases

607. A covered manufacturing facility uses more than 10,000 pounds of friable asbestos in a diaphragm cell process during the course of a reporting year. During the process, material containing friable asbestos is washed in a treatment unit where it coagulates and is removed by a pressure filter. The filter cake containing asbestos is wetted with ethylene glycol, and the resulting filter cake/ethylene glycol mixture is subsequently landfilled on-site in a closed container. Should the facility report the placement of this asbestos in a landfill as a 'release to land' on the Form R?

EPA interprets 'friable' under EPCRA section 313 '...as being crumbled, pulverized, or reducible to a powder with hand pressure' (53 FR 4519; February 16, 1988). Facilities are required to report releases or other waste management of only the friable form of asbestos. The facility will report zero releases of friable asbestos to land because the ethylene glycol/asbestos mixture is not considered to contain friable asbestos since the asbestos contained therein is wet (i.e., with ethylene glycol). The facility would report the amount of friable asbestos that is treated in Part II, Section 8.6. Note that because ethylene glycol is also a listed toxic chemical, the facility would also need to consider this chemical for threshold determinations and release and other waste management calculations.

Byproduct; Chemical Conversion; Chemical Identity; Release Reporting; Releases

608. Do the Section 313 reporting requirements overlook the possibility that a substance can lose its chemical identity as a byproduct in a reaction, and that the difference between "input and output" volumes may not always be due to a release?

EPA does recognize that a toxic chemical can lose its chemical identity in a reaction by being converted into a new chemical. The facility must still account for the amount they either manufacture or process regardless of whether the listed toxic chemical is converted to another toxic chemical in the process. Releases and other waste management estimates must then be calculated for any part of the process involving the Section 313 listed toxic chemical. In addition, if the byproduct created is a listed toxic chemical, the facility must consider it toward the manufacturing threshold.

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Basis of Estimate; Emissions Factors; Facility; Form R; Process; Releases; Waste; Waste Management Activities

609. For TRI reporting, EPA has identified four basic methods that a facility may use to develop the estimates for releases and other waste management activities: monitoring data, mass balance calculations, emissions factors, and other approaches such as engineering calculations. The best method for calculating the quantities of each release and other waste management activity will depend on the facility's site-specific knowledge and available data sources. What potential data sources are available for each basis of estimate type?

Potential monitoring data sources can include stack monitoring data, outfall monitoring data, air permits, industrial hygiene monitoring data, National Pollution Discharge Elimination System (NPDES) permits, publicly owned treatment works (POTW) pretreatment standards, effluent limitations, Resource Conservation and Recovery Act (RCRA) permit data, hazardous waste analysis, pH for acids, and continuous emissions monitoring. The basis of estimate code used in Section 5 or 6 of the TRI Form R for monitoring data is either M1 or M2, depending on whether the estimate was based on continuous monitoring data (M1) or periodic or random data or measurements (M2).

Potential data sources for mass balance calculations can include supply records, a hazardous material inventory, an air emissions inventory, pollution prevention reports, hazardous waste manifests, and spill event records. The applicable basis of estimate code for mass balance calculations is C.

Potential emissions factors can include AP-42 emissions factors, other EPA emissions factors, published facility or trade association chemical-specific emissions factors, site-specific emissions factors relating release quantity to through-put or equipment type (e.g., air emissions factors), or other site-specific emissions factors developed specifically for a situation or process on-site that takes into account the actual field conditions at the location. The applicable basis of estimate code is either E1 or E2, depending on whether the estimate was based on published emissions factors (E1) or site-specific emissions factors (E2).

Other potential data sources can include engineering calculations, best engineering judgment, volatilization rates, Raoult's Law, Henry's Law, and solubilities. The applicable basis of estimate code for these types of other approaches is O.

The potential sources and factors provided above are only examples. A facility can use any source of information so long as the source is consistent with EPCRA section 313(g)(2): the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. For more details on release estimate

DRAFT

Basis of Estimate; Emissions Factors; Releases

610. If a company measures its own leaks (valve, flange, pump, etc.) and determines a new fugitive factor, is the code 'E' or 'M' or 'O'?

The company should use the code M if it measured releases of the toxic chemical from its equipment at the facility to determine its release amount. 'E' is used only for published emissions factors which are chemical specific. However, in this case, the company would use 'O' which is used if it measured leaks generally or applied non-published factors developed at other facilities.

Basis of Estimate; Releases

611. If total releases are obtained using a combination of estimating techniques, how do we report 'Basis of Estimate' in Section 5, Column B?

Report the basis of estimate code associated with the technique used to calculate the major portion of each release entry. See examples in the current Form R instructions.

Emissions Factors; Releases

612. Are SOCMI (Synthetic Organic Chemicals Manufacturing Industry) emissions factors applicable to the petroleum refining industry as well as to organic chemical manufacturers?

Yes, SOCMI fugitive emissions factors can be used for the petroleum refining industry even though they are based upon synthetic organic chemicals manufacturing. The refinery user would have to correct for differences in concentrations of the mixtures, because SOCMI factors are based upon pure substances being released.

Basis of Estimate; Emissions Factors

613. Are emissions factors published by other than EPA sources reported as an 'E' or an 'O'?

Published emissions factors by sources other than EPA that contain chemical specific emissions rates may be reported as 'E'. Published emissions factors that are not chemical specific are indicated as 'O'.

Basis of Estimate; Emissions Factors; Releases

614. EPA's fugitive emissions factors for equipment leaks for the Synthetic Organic Chemicals Manufacturing Industry (SOCMI) and some air emissions factors listed in EPA's document AP-42, Compilation of Air Pollutant Emissions Factors, are not chemical specific. Should the basis of estimate code be entered as 'E' or 'O'?

Use 'O' for non-chemical-specific emissions factors.

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Basis of Estimate; Form R; Process; Releases; Waste; Waste Management Activities

615. On Sections 5 and 6 of the TRI Form R, facilities must indicate the principal method used to determine the amount of releases and other waste management activities. What is the difference between the two basis of estimate codes for emissions factors, E1 and E2?

The E1 code indicates that the estimate is based on published emissions factors, such as those relating release quantity to through-put or equipment type (e.g., air emissions factors). These emissions factors are generated from data published by trade associations and other organizations and take into account averages for a type of activity for specific process/equipment/sector(s) to achieve a general emissions factor. AP-42 emissions factors would fit most likely under E1. The E2 code indicates that the estimate is based on site-specific emissions factors, such as those relating release quantity to through-put or equipment type (e.g., air emissions factors). These emissions factors are developed specifically for a situation or process on-site and take into account the actual field conditions at the location, rather than an average across the industry. Additional information about emissions factors is available in AP-42, Compilation of Air Pollutant Emissions Factors. AP-42 is available at the following URL: https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors.

Estimating Releases; Section 8

616. A covered facility has estimated fugitive emissions to be 52 pounds and, based on their lack of precision in this estimate, have reported it as range code B (11–499 pounds) in Section 5 of the Form R. When reporting the quantity released in Section 8.1, what quantity should they use to represent their fugitive emissions when adding up all releases: 52 (the calculated result) or 255 (the midpoint of the range)?

The air emissions reported in Section 8.1 should be 52 pounds unless the facility has better information about their emissions. Facilities are not allowed to use range codes in Section 8 of the Form R. In this instance, the owner or operator seems to have estimated their fugitive emissions from data relevant to the listed toxic chemical and the activities occurring at their facility.

Emissions Factors; Fugitive Air Emissions; Releases

617. The emissions factors used to estimate releases to air from leaks in pipes are time dependent. What amount of time should be used to determine fugitive emissions from emissions factors?

In using emissions factors to determine fugitive emissions to the air from leaks in pipes, a facility must use the total amount of time over which a pipe contains the listed toxic chemical, since a release will occur whether a toxic chemical is moving or stagnant in the pipe.

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Best Available Information; Facility; Releases; Waste

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

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

Rainwater Runoff; Stormwater

619. Should we report the composition of stormwater as it falls from the sky or do we report its composition once the rainwater has run off soil?

The composition should be counted once the rainwater has run onto and off equipment, concrete pads, etc. as a portion of the total facility release to surface water.

Form R; Part II Section 5.3; Releases to Receiving Streams

620. A covered facility determines that it can estimate stormwater releases of a toxic chemical from the facility. However, such releases go to a city-owned storm sewer system and the facility has no direct knowledge of the receiving stream or surface water body to which the toxic chemicals are ultimately released. What do they report as the 'stream or water body name' on Part II, Section 5.3 of the Form R?

The facility would put 'city-owned storm sewer' or the equivalent because this is all they know. To leave the stream or water body name item blank or put 'NA' would be identified as an error when the Form R is entered into the computerized database of Section 313 data.

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NA vs. 0; Spill; VOC; Zero Releases

621. If a covered facility which exceeds a threshold for a volatile toxic chemical spills ten pounds of it (e.g., dichloromethane), should the facility report NA or zero for releases to the land?

The facility should not report NA for the releases to the land, if the facility spills a toxic chemical on the ground. If the facility spills ten pounds of a relatively volatile chemical such as dichloromethane (CAS number 75-09-2) with a high vapor pressure (435 mm Hg) and low adsorption coefficient (K_{oc} = 28), virtually all ten pounds would be expected to volatilize to air. In this case, the ten pounds would be reported in Section 5.1 and zero pounds under section 5.5. NA should only be used in this section to indicate that there have been no releases to land. Although one may expect all of the volatile chemical to volatilize, the zero in Section 5.5 indicates that there was an opportunity for the toxic chemical to remain on the land.

Catastrophic One-Time Event; NA vs. 0; Part II Section 8.8; Waste Management Activities

622. On the Form R, a covered facility owner/operator must provide information about routine and non-routine releases for each reported toxic chemical. Specifically, in Part II, Section 8.8, an owner/operator must report the quantity of any release of a toxic chemical into the environment or transferred off-site as a result of a remedial action, catastrophic event, or one-time event not associated with production processes. If the facility did not experience any such release or transfer, must the owner/operator report zero, or may the owner/operator report "NA" in Section 8.8?

While either notation, NA or zero, may be entered in Part II, Section 8.8 of the Form R, they are not synonymous. If a remedial action, catastrophic event, or one-time event not associated with production processes results in a release into the environment or an off-site transfer of the listed non-PBT chemical and the annual aggregate release was less than 0.5 pound, then a facility owner/operator should enter zero in Section 8.8. For PBT chemicals, facilities should report releases and other waste management amounts greater than 0.1 pound (and for dioxin and dioxin-like compounds 0.0001 gram) at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based. (see (64 FR 58734; October 29, 1999) and Guidance for Reporting Toxic Chemicals with the Dioxin and Dioxin-like Compounds Category (EPA-745-B-00-021)). An owner/operator should only report NA for Section 8.8 on the Form R if no release or transfer occurred as a result of these activities.

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Basis of Estimate; NA vs. 0; Releases; Zero Releases	**623. For releases and other waste management activities that are reported as zero, what should be reported as a basis of estimate? If we put 'NA' (i.e., there's no potential for release) is it necessary to put 'NA' in 'the basis of estimate' column of the Form R?** If you report NA, leave the basis of estimate box blank or enter NA. If you report zero releases then you need to provide a basis of estimate.
Blank Data Elements:NA; Form R	**624. In some sections of the Form R, facilities are asked to report 'NA' if that section does not apply to a submission. Are blank spaces left on the form the equivalent of 'NA?'** No. A facility must enter 'NA' to inform the Agency that the submitter has not just overlooked a section of the Form R.
Form R Submissions; NA	**625. A covered facility is required to file a Form R for benzene. The facility did not have any known accidental spills or releases to land of benzene during the calendar year. Is it appropriate for the facility to report 'NA' in Part II, Section 5.5.4 (Other Disposal)?** No. It is only appropriate to report 'NA' when there is no possibility that a release could have occurred to a specific media or off-site location. In Part II, Section 5.5.4, the facility is required to report any amount of a listed toxic chemical released to land that does not fit the categories of landfills, land treatment, or surface impoundments. This includes any spills or leaks of the listed toxic chemical to land. While there were no known spills or leaks to land of benzene, the possibility did exist that a release could have occurred. In this situation, the facility should report 0 in Section 5.5.4 and provide a basis of estimate (see the Toxic Chemical Release Inventory Reporting Forms and Instructions).
Air Emissions; Releases; Storage Tanks	**626. How does one use the storage tank equations in Appendix C of EPA's technical guidance entitled Estimating Releases and Waste Treatment Efficiencies (1999 version) to estimate air emissions for a specific toxic chemical in a liquid mixture?** You must estimate emissions of the total mixture using average molecular weight and vapor pressure for the mixture, then multiply by the mole fraction of the toxic chemical in the gaseous emission. The required formulas are found in the referenced technical guidance document but are not listed in a step-by-step procedure.

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Air Emissions; Partial Vapor Pressure; Releases; Toluene

627. We manufacture paint and one of the chemicals we use is toluene. We used the Estimating Releases and Waste Treatment Efficiencies guidance document but the answer given is for toluene and mineral spirits and thus is much too high. Can we use the six percent present in the paint mixture times the number of paint mixtures and report that?

The partial vapor pressure of toluene in formulations, which is a function of its vapor fraction and mole fraction (not weight percent), can be used. See Appendix C, of Estimating Releases and Waste Treatment Efficiencies (1999 version).

Air Emissions; Mixture; Releases; Storage

628. For estimating air emissions of specific chemicals from floating roof tanks that contain mixtures, how does one calculate the average vapor molecular weight and true vapor pressure to use in AP-42 equations? Does one calculate emissions for the mixture then adjust by weight percentage later or vice versa?

Covered facilities should calculate emissions of the mixture then adjust for concentration. Convert chemical fractions from weight to mole, calculate the mixture's true vapor pressure, calculate the chemical's vapor mole fraction, calculate the average vapor molecular weight, and use storage tank equations to calculate mixture emissions. Then calculate the gaseous weight fraction and multiply by total mixture emissions to get each chemical's emissions. Facilities may choose to refer to EPA's technical guidance entitled Estimating Releases and Waste Treatment Efficiencies (1999 version)

Fugitive Air Emissions; Releases; Storage Drums

629. How does a facility owner or operator estimate fugitive or working losses from drums contained in a warehouse or storage facility?

Fugitive emissions from drums in storage at a covered facility may include emissions from opening and emptying the drums. The facility may consider each drum as a small tank and estimate the amount of toxic chemical contained in the vapor space using methods such as partial pressure determinations found in EPA's technical guidance document, Estimating Releases and Waste Treatment Efficiencies (1999 version) for the Form R.

Emissions Factors; Emissions Factors-Estimating Emissions; Releases

630. Is there any recommended approach for estimating emissions from facilities whose raw material is of a constantly varying and unknown composition? For example, tar plants receive crude coal tar in batches. No analysis is done on incoming raw materials or on products (or on intermediates) at such facilities.

If available, data on the average composition for the specific material or published data on similar substances should be used.

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Off-site Transfer; Point Source Air Emissions; Releases

631. A covered manufacturing facility sends a toxic chemical in a waste to an off-site RCRA regulated treatment, storage, and disposal facility (TSD) for recycling. Are emissions discharged by the off-site TSD included as point source emissions on the manufacturing facility's Form R or are they not reported?

The owner or operator of the manufacturing facility should report the toxic chemical as sent off-site for recycling in Section 6.2 (Transfers to Other Off-Site Locations) and in Section 8.5 (Quantity Recycled Off-Site). The manufacturing facility owner or operator is only responsible for reporting toxic chemical releases and other waste management activities from his/her own facility. If the TSD that recycles the manufacturer's waste is subject to EPCRA section 313 reporting, the TSD owner or operator would report releases resulting from the recycling activity.

Facility; Form R; Waste

632. Many federal facilities send their hazardous waste containing EPCRA section 313 chemicals to off-site TSD facilities. If a federal facility is reporting these toxic chemicals on a Form R report, what is the facility's obligation to ascertain the final, known disposition of the EPCRA section 313 chemical for purposes of choosing a waste management code in Part II, section 6.2.C.?

The federal facility is required to use the best data available at the facility to identify the final, known disposition of an EPCRA section 313 chemical that it is reporting on a Form R report for the purpose of entering a waste management code in Part II, section 6.2.C of the Form R. While obtaining additional information from the off-site location concerning the fate of the particular EPCRA section 313 chemical is not required, it is certainly an option for facilities who lack a complete understanding of the final disposition of an EPCRA section 313 chemical in a waste sent off-site.

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Facility; Form R; Off-site Transfer

633. Section 6.1 of the Form R requires covered facilities to indicate how much of a TRI chemical was transferred off-site to publicly-owned treatment works (POTWs) during a given reporting year. Section 8 of the Form R requires facilities to use their best readily available information to determine the final disposition of the toxic chemical initially sent to the POTW and then distribute the amount reported in Section 6.1 among Sections 8.1c, 8.1d, and 8.7, as appropriate. Beginning with Reporting Year 2013, TRI-MEweb uses chemical-specific default POTW rates to distribute the amounts in Section 8. Are facilities required to use the default values?

EPCRA requires facilities to submit the most accurate readily available information. If facilities do not have information on the removal and destruction rates for a chemical transferred to a particular POTW, then they may use the chemical-specific default POTW rates provided in TRI-MEweb. TRI-MEweb has assumed the chemicals ultimate disposition using experimental and estimated data on removal and destruction rates at POTWs compiled by EPAs Risk-Screen Environmental Indicators (RSEI). The percentages that EPA provides are automatically pre-loaded in TRI-MEweb and are applied to quantities provided in Section 6.1 to assist with Section 8 calculations and as guidance for users who do not know the ultimate disposition of their off-site transfers to POTWs. If the facility has more accurate information readily available on the final disposition of the subject chemical, users should edit the default values and use the more accurate information in place of the default percentages.

Releases; ppm

634. If the calculated threshold of a listed toxic chemical is based on the mass utilization of the solution, would the emissions of a million pounds of wastewater stream containing 1 ppm of the toxic chemical be the actual mass of the chemical or the mass of the wastewater?

Parts per million (ppm) of a toxic chemical in wastewater indicates the concentration of a toxic chemical, not the actual total mass of the toxic chemical.

Only the actual mass of the toxic chemical being released should be reported. A million pounds of wastewater stream containing 1 ppm of the toxic chemical is equivalent to one pound of the toxic chemical.

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Air Emissions; Horizontal Storage Tanks; Releases

635. How should a covered facility estimate emissions from horizontal storage tanks? The AP-42 equations were developed for vertical tanks.

For fixed roof tanks, the working loss equation for vertical tanks can be used. For breathing losses, one can still use the vertical tank equation, except that an effective tank diameter must be substituted for D in the equation. D is the square root of {(4)(area of liquid surface)}/π. H is the same as for vertical tanks.

Part II Section 7A; Waste Treatment

636. Does Section 7A (On-Site Waste Treatment Methods and Efficiency), of the Form R apply only to the facility completing the report?

Yes, this Section of the Form R applies only to the treatment of waste streams containing toxic chemicals that occur on-site at the reporting facility.

Absorbent; Release to Land; Releases; Waste Treatment; Water Treatment

637. If a reportable chemical were spilled outside a building at a facility and an absorbent (e.g., kitty litter) was used to absorb the toxic chemicals, would the use of the absorbent be listed as a treatment and be reported in Part II, Section 8 of the Form R?

No, the use of the absorbent would not be considered treatment for Section 8 of the Form R but it would be treatment of the waste stream in Section 7A of the Form R. Only if the toxic chemical was destroyed, such that it was no longer the chemical subject to EPCRA section 313, would that activity be considered treatment in Section 8. If the absorbent were drummed and sent to a landfill, that would be listed as a transfer to an off-site location for disposal. Any amount of the toxic chemical left on the ground must be accounted for as a release to land and reported in Part II, Sections 8.1 and 5.5.

Acid Neutralization; Release Reporting; Releases; pH

638. How would a facility report under Section 313 on a waste stream which is neutralized to a pH above 6 before discharged to a POTW?

Covered facilities that use Section 313 chemicals for pH adjustments and neutralization must report if they meet the otherwise use threshold, even if these chemicals are consumed and no releases result. The listed toxic chemical is reported as zero pounds discharged to the POTW in Section 6.1 (Discharges to Publicly Owned Treatment Works) and the entire amount neutralized is reported in Section 8.6 (Treated On-Site). The neutralization process is reported under Section 7A of the Form R (On-Site Waste Treatment Methods and Efficiency).

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Acid Neutralization; Mineral Acids; NA vs. 0; Releases; pH

639. In Part II, Section 6.1 of the Form R (discharges to POTW), if the facility monitors a reportable acid in waste and the pH is above 6 (considered to be 100 percent neutralized), would the release reported be zero or NA?

Since there is a potential for discharge of the particular toxic chemical to the POTW, the discharges to the POTW on Part II, Section 6.1 of the Form R would be reported as zero rather than NA.

Release to Water; Releases

640. A covered facility discharges wastewater containing a listed toxic chemical to a stream on-site. This stream, however, is only present during certain times of the year when there is heavy rainfall. Should this release be reported as a release to water or a release to land?

If the stream is a named, recognizable waterway, then the facility should report the discharge as a release to water in Part II, Section 5.3 and report the name of the receiving stream in the same Section. If the release is not to a named, recognizable waterway, the release should be reported as a release to land.

Form R; Part II Section 5.3; Releases to Receiving Streams

641. How should a facility go about designating the name of a receiving stream?

Facility owner/operators must report the name of each stream to which toxic chemicals being reported are directly discharged. You should report the name of the receiving stream or water body as it appears on the NPDES permit for the facility. If the stream is not named in a permit, enter the name of the off-site stream or water body by which it is publicly known or enter the first publicly named water body to which the receiving waters are a tributary, if the receiving waters are unnamed. You should not list a series of streams through which the toxic chemical flows, but only the first water body it enters from your facility. Do not enter names of streams to which off-site treatment plants discharge. Enter 'NA' in Section 5.3.1, if you do not discharge the listed toxic chemical to surface water bodies.

Form R; Part II Section 5.3.1; Releases to Receiving Streams

642. A covered facility owner/operator's NPDES permit lists not only the first stream into which they discharge their waste, but also the subsequent streams it will flow through. The first three streams are listed on the permit as 'unnamed creek.' The fourth listed stream is the first with a name, Grove Creek. Since the facility does not discharge directly into Grove Creek, what should they list in Section 5.3.1 for receiving stream or water body name on the Form R?

Since Grove Creek is the first named receiving stream, it should be listed in Part II, Section 5.3.1 even though the waste is not directly discharged into it.

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Containment Area; Disposal; Release Reporting; Release to Land; Releases

643. If a covered facility had a cement lining or other leak restricting device in the area where they store toxic chemical containers and a release from the storage area of the stored toxic chemicals occurs, how is this reported on the Form R?

If the facility does not have specific measures for land filling, land farming, or land disposal, then for the purposes of the Form R, the releases would be entered on Part II, Section 5.5 4 (Other Disposal). This would apply to amounts released that were not cleaned up and removed from the site or otherwise treated and disposed on-site.

Containment Area; Release Reporting; Releases

644. If a toxic chemical is released into a containment area made entirely of concrete (i.e., there is no contact of the toxic chemical with the ground, or the area is designed to catch such materials in the event of an accidental spill), how should this be reported on the Form R?

The material does not have to be reported as released, if the concrete containment area is part of regular processing operations (or is designed to catch such materials in the event of an accidental spill, etc.). However, any material that is not further used (e.g., there are fugitive air emissions or transfers off-site) must be reported in the appropriate sections on the Form R.

Estimating Releases; Releases; Reporting Acids; pH

645. A waste stream containing a reportable acid is neutralized to a pH of 5.5 and then released to a river. How does one calculate the amount of acid that is released to the river?

For purposes of reporting under EPCRA section 313, EPA considers a reportable acid waste stream that has been neutralized to a pH above 6 to be completely neutralized. However, if the pH is below this level (e.g., 5.5), calculate the amount of acid released based on the amount of base it would take to raise the pH of the waste stream to 7 (not 6). For more information on pH measurements, EPA has published Estimating Releases and Waste Treatment Efficiencies for Mineral Acid Discharges Using pH Measurements (EPA 745/F-97-003).

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Acids; Neutralization; Off-site Landfill; Off-site Transfer; pH

646. A covered facility generates a waste stream in the form of a filter press cake that contains nitric acid, a toxic chemical. Before the filter cake is sent to an off-site landfill for disposal, the nitric acid in the filter cake is neutralized to pH 7. How should the facility report the disposal of this nitric acid on its Form R?

Because the nitric acid is neutralized to a pH 6 or above during on-site treatment, no nitric acid is present in the filter cake sent off-site for disposal. Therefore, the off-site transfer would not be reported in the Form R for nitric acid. The on-site waste treatment of the nitric acid must be reported in Part II, Section 7A (On-Site Waste Treatment Methods and Efficiency) and in Section 8.6 (Quantity Treated On-Site). In addition, the facility must determine if the neutralization of the nitric acid in the filter cake results in the manufacture of a water dissociable nitrate compound category in an aqueous solution, which is a listed category under EPCRA section 313.

POTW; Releases

647. A covered facility uses a mixture containing a toxic chemical. During daily use, the employees become contaminated with the mixture containing the listed toxic chemical. When they finish working with the chemical, they wash it off their hands and down the drain. Would this be a release to a POTW even if the facility does not have a permit to discharge the listed toxic chemical to the POTW?

The quantity of toxic chemical washed down the drain would need to be reported as a transfer to a POTW in Section 6.1, regardless of the existence of a discharge permit (see 40 CFR Section 372.85(b)(15)).

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Release to Land; Releases; Ultimate Disposition

648. A manufacturing facility otherwise used benzene in excess of a reporting threshold during each of reporting years 1995 and 1996. In 1995, the facility generated wastes containing benzene and placed these wastes in an on-site lagoon. The benzene on this waste was reported as a release to land on the Form R for benzene for reporting year 1995. In 1996, benzene from the sludge from the on-site lagoon was transferred to an on-site landfill. During both the original placement in the lagoon and the subsequent transfer to the landfill, benzene was released to air. For the purpose of reporting under EPCRA section 313, does the owner or operator need to report releases to an on-site landfill and/or fugitive air emissions of benzene on the Form R?

The facility should not have reported all of the benzene which was placed in the on-site lagoon as a release to land. The majority of the benzene will evaporate. The purpose of sending a waste to a lagoon is so that the volatiles (in this case benzene) will evaporate and the solids will settle. The facility should have determined, to the best of its ability, what percentage of the benzene would evaporate during that reporting year. It should have reported this amount as a fugitive air emission. The balance should have been reported as a release to land. Both the amount reported as a fugitive air emissions and the amount reported as a release to land should have been reported for 1995, the year when the wastes containing the benzene were placed in the on-site lagoon. When completing the Form R for benzene for reporting year 1996, the facility would not report as a release to land any benzene in sludge that was transferred from the on-site lagoon to the on-site landfill as this material was already reported as a release to land on the Form R for the previous year. However, the facility must report on the Form R for benzene for reporting year 1996 any air emissions of benzene that occurred as a result of transferring the sludge from the on-site lagoon to the on-site landfill if the facility met the threshold for benzene.

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Joint Venture; Off-site Transfer; Storage; Ultimate Disposition

649. Company A owns and operates a covered facility. Company B, a 50-50 joint venture between Company A and Company C, is located within the same site but is owned and operated by a separate person. Company B transfers drums containing toxic chemicals to storage pads at Company A for storage and preparation for off-site transfer. Company B's wastes are manifested separately from Company A's wastes and Company B knows the ultimate off-site destination and handling method. Should Company B report the toxic chemicals transferred to Company A as an off-site transfer to Company A or to the ultimate destination?

If Company B is a 50-50 joint venture between Companies A&C, it is not owned, operated or controlled by Company A and therefore is a separate facility from Company A. Since Company B knows the ultimate disposition of the toxic chemical, Company B should report the off-site location as Company A in Part II, Sections 6.2 but should report the type of waste management activity that will ultimately be performed in Part II, Sections 6.2 and 8 on the Form R. If Company B had not known the ultimate disposition of the waste, it would report the toxic chemicals in waste as an off-site transfer for storage only, using waste management code M10 in Part II, Section 6.2 and report the toxic chemical as released in Section 8.1 of the Form R.

Release Reporting; Waste Reuse

650. If waste rock placed in a pile at the end of one reporting year is considered a release to land, and is processed in subsequent years, should the tailings/closed dump resulting from the subsequent processing be reported again as a release to land?

Yes. Covered facilities must consider amounts manufactured, processed, or otherwise used toward threshold determinations each year. Provided these amounts are not associated with exempt activities and reporting thresholds have been exceeded, amounts released, including disposed, are reportable during the year in which the releases occur. If an amount of a listed toxic chemical previously disposed of is manufactured, processed, or otherwise used in a subsequent year then the facility should consider these amounts as it would new materials brought on-site, and report any waste management activities that are associated with toxic chemicals for which thresholds have been exceeded.

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Fugitive Air Emissions; Point Source Air Emissions; Releases; Storage Tanks

651. Why are releases from storage tanks considered point source air emissions for Section 313 reporting while releases from similar operations (i.e., tank trucks and railcars) are considered fugitive emissions?

Storage tanks and railcars or tank trucks are similar operations. However, it is the nature of releases rather than their source that is most important in their classification for reporting. Because emissions from railcars and tank trucks are most often small, scattered, and the result of manual transfer operations, they are considered fugitive. Emissions from storage tanks, meanwhile, are most often considered point source because they are usually from vents, ducts, or other confined air streams. If a covered facility has sufficient reason to believe that the nature of releases from rail cars and tank trucks are similar to those of storage tanks, they may report them as point source emissions, or vice versa. The facility must, however, document all assumptions and estimates made to support their reasoning.

Facility; Release Reporting; Releases; Vessels

652. A covered facility has a barge terminal where listed toxic chemicals may be loaded to a barge. If an activity threshold is met for one of these chemicals, are releases from the barge reportable?

Releases from the covered facility (i.e., barge terminal) must be reported. This would include releases from buildings, equipment, and storage at the terminal. The barge terminal ends where the equipment physically meets the barge. Releases from the barge itself (e.g., air displacement of volatiles) are not reportable since barges are not covered under the definition of a facility (see 40 CFR Section 372.3).

Disposal; Release Reporting; Release to Land; Releases; Storage

653. A facility has an on-site concrete basin used as a collection pond for 80 percent of the facility's wastewater. No NPDES permit was assigned to this concrete basin. The wastewater is temporarily collected in the basin and sent to an off-site biological treatment plant. How would the facility report releases of listed toxic chemicals placed in the concrete basin on the Form R?

The amount of listed toxic chemical collected in the basin would be considered on-site storage. However, any leaching into the ground or volatile air emissions would be reported as releases to land and air, respectively, in Part II, Sections, 5.5.4 (Other Disposal) and 5.1 (Fugitive or Non-Point Air Emissions) of the Form R. Also, if the toxic chemical is sent off-site to the treatment facility during the reporting year, it is reported as an off-site transfer in Section 6.2 of the Form R.

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Air Emissions; Releases; Ultimate Disposition

654. A covered facility processes items containing toxic chemicals. During processing, dusts are released to air within the facility and some of this dust settles out within the facility (on rafters, equipment, floors and in adjacent rooms). If a processing threshold is met, how would the facility report the releases of the toxic chemicals present in the dust on the Form R in Section 5?

The facility must account for the amount of the listed toxic chemical released to various environmental media. Reporting of releases is based on the entire reporting year. If during the year an amount in dusts that settle out are collected and disposed of, then this would be reported in an amount disposed of on-site or off-site in the appropriate Section of the Form R (e.g., if the dusts are sent off-site for disposal they would be reported in Part II, Section 6.2). Any amount of toxic chemical in dusts that remain airborne would be reported as a fugitive release (Part II, Section 5.1 of the Form R). Amounts released that settle outside of a building on facility structures or equipment that are not collected and disposed of should be reported in Part II, Section 5.5.4 of the Form R as a release to land on-site.

Asbestos; Double Counting; Release Reporting; Releases; Ultimate Disposition

655. A toxic chemical (e.g., friable asbestos) is emitted as an air particulate which deposits on the facility roof, such that it will be washed into a NPDES permitted pond or swept into a solid waste pit or landfill. Will the release be reported as a release to land or water, but not air? This would prevent a toxic chemical from being reported twice, once as an air emission, and once as a water/land emission.

If the facility can develop a reasonable estimate of that part of a release to air that is deposited within the facility (and subsequently collected or deposited in an on-site landfill or surface impoundment), then these quantities can be separated from the air release figure(s) and reported as released to land on-site. The remaining air releases not deposited on the facility would be reported as releases to air.

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Air Releases; Particulates; Releases

656. A covered facility emits particulate containing a listed toxic chemical from a stack on-site. Some of the particulate lands on-site and some of the particulate lands on an off-site property. Should the covered facility report the emitted particulate in Sections 5.5.4 (Other Disposal) and 6.2 (Transfer Off-site for Disposal) or in Section 5.2 (Stack or Point Source Air Emissions)?

If the facility has reasonable estimates about what percent of stack particulate emissions lands on-site, this quantity of toxic chemical would be reported in Part II, Section 5.5.4 (Other Disposal) and the remaining amount of toxic chemical (including the amount deposited on an off-site property) would be reported in Part II, Section 5.2 (Stack or Point Source Air Emissions).

Disposal; Part II Section 8.8; Release to Land; Releases; Remediation

657. A covered facility that exceeds an activity threshold for lead brings in lead-contaminated soil from a CERCLA remedial action off-site, mixes it with on-site remediation waste (that also contains lead), and places the combined waste in an on-site landfill. How is this reported on the Form R? It is pretty clear that all of the lead will be reported in Part II, Section 5.5.1, and that the lead in the on-site remediation waste gets reported in Part II, Section 8.8. But would the lead in the remediation waste brought in from off-site also be reported in Part II, Section 8.8? Or 8.1? Or perhaps not at all?

The amount of lead-contaminated soil brought on-site, from off-site, mixed with on-site remediation waste, and placed in an on-site landfill, would be reported in Part II, Section 5.5.1 and Section 8.1, but NOT Section 8.8. This is not remediation material, because it was not generated on-site, but merely brought on-site for treatment. The on-site remediation waste would be reported in Section 8.8. In addition, beginning with reporting year 1998, the covered facility would also consider this quantity towards its otherwise use threshold.

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Landfill; Release Reporting; Releases

658. For release reporting under Section 313, would a covered facility need to include a listed toxic chemical, such as lead, from remediation activities where contaminated soil is dug up and removed to a hazardous waste landfill?

If the threshold for lead has been exceeded elsewhere at the facility, the amount of lead in the contaminated soil would be included in the release reporting. If the ultimate disposal is removing the soil to a hazardous waste landfill off-site, then this would be reported in Part II, Section 6.2 of the Form R as a transfer to an off-site location for disposal, rather than an on-site release to land. In addition, beginning with reporting year 1991, releases and other off-site waste management associated with remedial actions are also reportable in Part II, Section 8.8 of the Form R.

Facility; Form R; Fuel; Fuel Blending; Manufacturing; Process; Processing; Releases; Waste

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

No. All releases and other waste management of an EPCRA section 313 chemical resulting from remedial actions should be reported under Part II, section 8.8 (as well as in sections 5 and 6) of the Form R and are not to be reported under Part II, sections 8.1 through 8.7 of the Form R.

Facility; Form R; Releases

660. A federal facility is submitting a Form R report for an EPCRA section 313 chemical. During a remediation project, the same chemical is transferred from one medium to another. For example, soil excavation during groundwater remediation causes an EPCRA section 313 chemical to be released to the air. How should the release be reported on the Form R?

If a federal facility exceeds reporting thresholds for the chemical in other non-exempt activities at the facility then the release of that EPCRA section 313 chemical from one medium to another due to remediation activities must be reported on the Form R, unlike EPCRA section 313 chemicals that transfer to another medium as a result of natural migration. Releases of EPCRA section 313 chemicals that occur as a result of remediation activities during the reporting year are reported in section 8.8 and the appropriate sections of Part II, sections 5 and 6 of the Form R report.

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Release Reporting; Temporary Storage

661. Is ash placed on-site in a pile waiting to be sold during construction season considered a release to land for the reporting year prior to its transfer?

Amounts of listed toxic chemicals placed on land are considered released under EPCRA section 313. However, for reporting purposes, material that is placed on-site during a reporting year does not have to be reported as a release to land on-site if the pile was only used for temporary storage during the reporting year. EPA will consider the pile used for temporary storage if: (1) the facility routinely made off-site transfers of material from the pile during that reporting year; or (2) the facility had a contract in place to transfer the material before the end of the reporting year and transferred the material containing listed toxic chemicals off-site before that year's report was submitted or by July 1, whichever comes first. However, quantities of the toxic chemical that volatilize or leach into the ground as a result of the on-site temporary storage must be counted as released on the Form R.

Disposal; Off-site Transfer; Release Reporting; Release to Land; Releases; Waste Pile

662. A covered facility continually places material containing a toxic chemical on the land in a pile during a reporting year for disposal. The facility is intending to have the pile hauled off-site during the next reporting year. Must the facility report the listed toxic chemical in the pile as released to land for the reporting year in which it places the material in the pile?

Material that is added to a pile during a reporting year does not have to be reported, for that reporting year, as a reportable release to land on-site if the pile is used only for temporary storage. EPA will consider the pile used for temporary storage if the facility routinely made off-site transfers of material from the pile during that reporting year. The facility must transfer the toxic chemical off-site before that year's report is submitted or by July 1, whichever comes first.

If a facility did not make such routine transfers during a reporting year in which material was added to the pile, EPA will consider the pile used for disposal and the quantity of listed toxic chemical placed on the pile during that reporting year and present at the end of that year must be reported, as a release to land, regardless of the facility's intention to transfer the material off-site in an ensuing year. If, in an ensuing year, such material is transferred off-site, the movement would be reported as a transfer off-site (assuming a threshold for the chemical transferred has been exceeded during that reporting year).

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Disposal; Facility; Form R; Storage; Waste

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

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

Disposal; Facility; Storage; Waste

664. Are toxic chemicals in waste stored on a concrete pad outside considered a release?

Waste stored on a concrete pad must be counted as a release to land if the facility intends to leave the material on the pad for an indefinite period. If the facility routinely uses the pad for 'temporary' storage of waste until enough waste is accumulated and then sends the waste off-site for treatment or disposal purposes, or otherwise management activities on-site, then the 'temporary' storage need not be reported as a release to land within the reporting year when it is 'temporarily stored,' and only those amounts released from the pad, such as runoff, would be reported as released, provided thresholds have been exceeded elsewhere at the facility.

DRAFT

Documentation; Temporary Storage

665. A metal mine stockpiles waste rock during the reporting year and has plans to leach this waste rock in the following year. What type of documentation (if any) would EPA accept from the mine to show that the waste rock will be processed, and therefore not have to be reported as a release to land during the reporting year? For example, the facility may have drawn plans for the leaching pad, have contracts with a supplier for materials used to construct the pad, or have a permit modification for the leach pad but the start date is in March of the following year.

Waste rock containing toxic chemicals that is added to stockpiles during a reporting year does not have to be reported for that reporting year, as a reportable release to land on-site, if the stockpile was only used for temporary storage. EPA will consider the pile used for temporary storage if the facility routinely made off-site transfers or processed on-site waste rock from the stockpile during the reporting year, has good documentation of the transfers or amounts processed, or has contracts in place to transfer the materials prior to that year's reporting deadline, and removes or processes all of the listed toxic chemicals from the stockpile before that year's report is submitted or by July 1, whichever comes first. Listed toxic chemicals placed in piles during the previous year that remain after the July 1 reporting deadline must be considered toward the facility's release and other waste management calculations, provided that thresholds for those chemicals have been exceeded.

Compounds; Copper; Disposal; Facility; Mining; Process; Processing; Releases; Waste; Waste Management Activities; Waste Rock

666. In the current reporting year, a mining facility exceeded a threshold for copper compounds and reported releases to land of copper in waste rock tailings. If that same waste rock or tailings are beneficiated in the subsequent reporting year, is the disposal of the resulting wastes from the processing of the waste rock considered a release to land?

Yes. The facility is required to report the copper in the waste rock tailings as a release to land in both the current reporting year and in the subsequent reporting year. The facility must report the releases and other waste management activities that occur in each reporting year for material that undergoes a non-exempt activity (i.e., facility is not required to consider any further releases of materials that have been disposed of and are not subjected to further management activities).

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Disposal; Facility; Landfill; Mining; Waste; Waste Rock

667. A facility is re-mining waste rock which was disposed to land in a prior reporting year. In re-mining the waste rock, a portion of the waste rock previously disposed is taken from the landfill and moved to another location at the facility to allow access to other waste rock that has a metal content sufficient for further beneficiation. Is the waste rock that is taken from the landfill and disposed considered a release to land: Part II section 5.5.4 Other Disposal, despite the fact it was originally reported as release to land for disposal in a prior reporting year?

Yes. Toxic chemicals that have been released in one reporting year, must also be reported in subsequent years when the material undergoes non-exempt activities, provided certain thresholds have been exceeded. The facility is required to report the listed toxic chemical in the waste rock as a release to land because the toxic chemicals have been displaced and subsequently 'released' or disposed in a following reporting year.

Release Reporting; Release to Land; Waste Ash

668. In January of a reporting year, a covered facility places ash containing 11,000 pounds of an EPCRA section 313 listed toxic chemical into a landfill that already contains 3,000 pounds of a previously disposed toxic chemical for a total of 14,000 pounds in the landfill. In August of the same reporting year, the facility removes waste ash from the landfill which contains 5,000 pounds of the toxic chemical added in January and 3,000 pounds of the toxic chemical added during a previous reporting year. The removed waste ash (8,000 pounds of toxic chemical) is distributed in commerce for a beneficial reuse (e.g., they sell the waste ash, including the toxic chemical, for direct incorporation into concrete). How should the facility report releases of the toxic chemical for the reporting year?

Provided that the facility exceeded a threshold for the toxic chemicals, the facility should report a release of 6,000 pounds of the toxic chemical as landfilled on-site in Part II, Section 5.5.1B (Disposal to Land On-site) and as release in Section 8.1 (Quantity Released). Eight thousand pounds of the toxic chemical (i.e., 5,000 pounds deposited in January and the 3,000 pounds deposited in a prior reporting year) were processed and should be counted towards the processing threshold for the facility for the reporting year. EPA recognizes that by placing the toxic chemical into the landfill, the facility has released the toxic chemical. Nevertheless, EPA will allow facilities to consider quantities that are temporarily stored in a landfill and removed during the same reporting year to not be reported as release in Part II, Sections 5 and 8.

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Direct Reuse; Off-site Transfer; Releases

669. An iron/steel mill has 5 to 8 percent of a listed toxic chemical in their waste slag. The slag is shipped off-site where it is directly reused as cement material. One common use is for roadbed material under railroad tracks. Is the reuse as cement material reportable on the Form R as an off-site transfer?

The listed toxic chemical in the slag that is sent off-site for further use as cement material is not reported as an off-site transfer in Part II, Section 6.2 of the Form R. However, the facility must consider the quantities of toxic chemical repackaged and shipped off-site for reuse toward the facility's processing threshold.

Off-site Transfer; Recycle; Waste Broker

670. How should a covered facility report a transfer in which it sends wastes containing a toxic chemical off-site to a waste broker who in turn sends the wastes to a recycling facility?

Covered facilities are required to report information on off-site transfers for purposes of recycling in both Sections 6 and 8 of the Form R. In Section 6, the facility should report the final disposition of which it has knowledge of the toxic chemical in the waste. When a facility knows that a toxic chemical in wastes sent to a broker is ultimately being recycled, but does not know the location of the recycler, the waste broker is considered the final destination, and the transfer should be reported as M93 (transfer to waste broker-recycling) along with the location of the waste broker. If the location of the recycler to whom the broker sends wastes containing the toxic chemical is known, the recycler is considered the final destination, and the transfer should be reported as recycling with the appropriate code. The location of the recycler, not the waste broker, should be reported. The facility would also report the amount of the listed toxic chemical sent off-site for recycling in Section 8.5 (Quantity Recycled Off-Site).

Off-site Transfer; Releases

671. A covered facility sends many solvent wastes off-site for recycling. However, the receiving facility may incinerate some solvents instead. This depends on the disposer, and the generator is always notified. Is it acceptable to report this as a transfer to a waste broker (recycling) (M93)?

When reporting off-site transfers of waste in Part II, Section 6.2 of the Form R, it is acceptable to enter M93 in Section 6.2.C only if you do not know the final disposition of the listed toxic chemical. A reporting facility must also identify whether the listed toxic chemical was sent off-site for treatment, energy recovery or recycling in Part II, Section 8 of the Form R.

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Permits; Release Reporting; Releases; UIC (See Underground Injection); Underground Injection

672. Should only underground injections that are covered by Underground Injection Control Wells (UIC) permits be reported?

Covered facilities must report all underground injection of toxic chemicals regardless of permit status.

Release Reporting; Releases; Reuse

673. A covered facility manufactures a listed toxic chemical in a reactor. Attached to the reactor is a water-cooled condenser, the function of which is to condense escaping unreacted starting material and reaction solvent (e.g., toluene) and to return it directly to the reactor. The facility used a threshold amount of toluene during the calendar year and must file a Form R for toluene. How would the facility report the above activity on the Form R?

The amount of the toxic chemical manufactured would be considered toward the facility's chemical activity threshold. However, in this situation, the listed toxic chemical does not undergo any recovery steps, it merely changes physical state and is directly reused. Processes that directly reuse a listed toxic chemical on-site are not reported on the Form R as recycled in Part II, Section 8.6.

Off-site Transfer

674. The Form R instructions require the listing of different types of on-site waste treatment for a particular waste stream. Does this apply to sequential treatment of a toxic chemical sent off-site? Should the same estimate for amount sent off-site be entered for both waste treatment steps or just the final treatment step?

The reporting facility is not required to list sequential waste treatment steps for waste sent off-site. The facility should report in Part II, Section 6.2 the one code that best describes the primary type of waste management activity occurring within the sequence and report the total quantity of the listed toxic chemical sent to this off-site location.

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Fertilizer; Land Treatment; Off-Site Disposal

675. If Facility A transfers a toxic chemical in waste off-site to another facility who applies the waste to land for treatment, must Facility A report the amount sent off-site on the Form R? Should Facility A also report volatilization of the toxic chemical that occurs off-site during application to land, as a fugitive air release in Part II, Section 5.1?

Facility A must report the amount of toxic chemical in waste sent off-site for disposal as an off-site transfer for disposal. The facility should report this amount in Part II, Section 6.2, using disposal code M73, and in Section 8.1. The facility should not report the amount released to air during off-site application to land, since this activity did not occur on-site. In Part II, Section 5.1, facilities should only report amounts of toxic chemicals that are released on-site.

Direct Reuse; Fertilizer; Product

676. Facility A produces a byproduct containing a toxic chemical. The facility gives some of the byproduct away, and sells some of the byproduct. In both cases, the off-site facility uses the byproduct as fertilizer for farming. Should Facility A report the amount of toxic chemical in the byproduct given away or sold, on the Form R?

If the toxic chemical in the byproduct is sent off-site to be directly reused as a fertilizer, then the transfer would not be considered a transfer off-site for waste management purposes, and Facility A would not report, as a transfer off-site for waste management, the amount sold/given away. However, because the facility distributed the toxic chemical into commerce, the facility must consider the quantity of toxic chemical shipped off-site for direct reuse (i.e., both the amounts given away and sold) as fertilizer as processed for threshold determinations.

Off-site Transfer; Recycle; Residue; Ultimate Disposition

677. A residue of a listed toxic chemical is present in empty drums that are sent to an off-site facility where the drums are recycled, but the listed toxic chemical is not recycled. The facility has no information as to how the listed toxic chemical in the drum is managed. How should the facility report this activity?

Though the drums are recycled, the final disposition of the toxic chemical is unknown. Because this facility does not know how the toxic chemical is managed, the toxic chemical should be reported as an unknown disposal, code M99 (Unknown Disposal) in Part II, Section 6.2.C and quantity released in Section 8.1.

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Off-site Transfer; Residue

678. A covered facility receives listed toxic chemicals in a tank car. Once emptied, the car remains at the facility for a period of time before being returned to the supplier. Does the residue in the tank car that leaves the facility have to be counted as an off-site transfer for Section 313?

If the facility knows the car will be refilled, the residue is not counted as an off-site transfer. If the facility knows it will be cleaned out and the quantity disposed or otherwise managed as waste, it must be counted as an off-site transfer for disposal.

Off-site Transfer; Recycle

679. If a waste is sent to an off-site facility to be recycled or reclaimed, does the material meet the requirements for being recycled or reclaimed for the purposes of Section 313 regardless of what the off-site recycling facility actually does with the waste?

In order to report the listed toxic chemical as recycled off-site, the reporting facility must have positive knowledge that the listed toxic chemical being reported is actually being recycled by the off-site facility.

Off-site Transfer; POTW; Release to Water

680. A covered facility treated its wastewater on-site and discharged it to a pipe which runs through a POTW and then on to a stream. The POTW does not treat the waste but it monitors the wastewater and allows it to pass into the stream if it meets treatment standards. If it does not meet standards, the POTW shuts a valve in the pipe and the wastewater is released to a water body under the POTW's NPDES permit. How should the wastewater be listed on the Form R?

The facility should consider the wastewater as a transfer off-site to the POTW since the POTW is ultimately responsible for the release. The POTW has the authority to allow or prevent that release and it enters the stream under their NPDES permit. Because the covered facility knows that the POTW does not treat (destroy) the listed toxic chemical but allows it to pass through into the stream, the facility should also report the quantity sent off-site in Part II, Section 8.1 (Quantity Released).

Form R; NPDES Permit; Part I Section 4.9; Releases to Receiving Stream

681. If a covered facility enters an NPDES permit number on the Form R but does not discharge the toxic chemical to a receiving stream, must it also enter a receiving stream name?

No. If there are no releases of the toxic chemical to the receiving stream noted in the NPDES permit, the facility would not need to list the stream name. However, the NPDES permit number must be supplied whether or not there are releases of the specific reported chemical to a receiving stream or water body.

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Off-site Transfer; Recycle; Threshold Determination

682. How should a covered facility treat a toxic chemical in a solvent sent off-site for distillation and returned to the facility for reuse?

The amount of a toxic chemical in the solvent sent to another facility for distillation is reported as a transfer of the toxic chemical to an off-site location for recycling (i.e., it should be reported in Part II, Sections 6.2 and 8.5 of the Form R). The quantity of the solvent returned to you must be treated as if it were a quantity of the toxic chemical purchased from any other supplier and must be used for threshold determination.

Off-site Transfer

683. A covered printer uses solvent to clean presses and sends soiled rags to a launderer. Is the listed toxic chemical in the material sent to the launderer considered waste transferred to an off-site location? Which disposal code should be used?

The material sent to the launderer is considered an off-site transfer. The facility could use code M90 (Other Off-site Management) or M99 (Unknown Disposal) in Part II, Section 6.2.C of the Form R if it does not know the final disposition of the toxic chemical in the rags.

Off-site Transfer; Part II Section 6.2; RCRA ID Number; Waste Broker

684. A covered facility sends waste off-site to another facility. During the reporting year, the off-site transfer facility is bought by another company. The off-site transfer facility name changes but the RCRA identification number and facility address remains the same. What name should be reported as the off-site transfer facility?

The facility should give the name of the off-site transfer facility as it was known on December 31 of the reporting year; that information being the most accurate and up-to-date information known.

Landfill; Off-site Transfer; RCRA ID Number

685. What RCRA identification number does a facility list if it sends a non-hazardous waste containing a Section 313 toxic chemical to a solid waste landfill?

If an off-site location such as a solid waste landfill does not have a RCRA identification number, the facility would enter ‘NA’ in the space provided. If the facility does have such a RCRA identification number, it must list the number, if known, even though the waste being transferred may not be a regulated RCRA hazardous waste.

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Facility; Form R; Off-site Transfer; Waste

686. If a TRI-covered facility transfers waste containing an EPCRA section 313 chemical to an off-site facility that does not have a RCRA identification number (e.g., the facility does not accept hazardous waste or it is in a foreign country), the facility completing the Form R can enter NA in the box for the off-site location RCRA ID number. In TRI-MEweb, how does a facility select a transfer location without a RCRA ID number?

TRI-MEweb has a search feature to standardize entry of off-site location information. Users may first search for the off-site transfer location using the city, county, state, or zip code for the facility. Alternatively, you may manually enter the information of the off-site transfer location.

Off-site Transfer; Part II Section 6.2; Release Reporting

687. A covered facility produces 200,000 pounds of a listed toxic chemical in waste annually. Of that amount, the facility treats 100,000 pounds on-site and sends 100,000 pounds to an off-site treatment plant that has a 99.9 percent efficiency. Can the facility factor in the efficiency when it reports the off-site transfer amount in Part II, Section 6.2 of the Form R?

Section 6.2 of the Form R requires you to report the actual amount of listed toxic chemical you send off-site. The efficiency would be taken into account by the off-site facility if they are reporting under Section 313. The 100,000 pounds of the toxic chemical that are treated on-site should be reported in Part II, Section 7A and in Section 8.

Energy Recovery; Fuel Blending; Heat Value; Metals; Off-site Transfer; Ultimate Disposition

688. A covered facility sends a toxic chemical in a paint thinner waste to a firm for fuel blending purposes. Should the amount of toluene and xylene in the waste be reported on the Form R, Part II, Section 6 as a transfer off-site?

A toxic chemical in a waste stream sent off-site for waste fuel blending is considered combusted for energy recovery if the listed toxic chemical has a significant heat value and is combusted in an energy recovery device. EPA believes that waste blended into fuel will be combusted in an integrated energy recovery device. Where both elements are met, the quantity of the toxic chemical must be reported as an off-site transfer for purposes of energy recovery on the Form R. However, other reportable toxic chemicals in the waste (e.g., metal pigments) that are incombustible or that do not add significant heat value to energy recovery upon combustion must be reported as off-site transfers for purposes of waste treatment or disposal, as appropriate. Please note that metals cannot be treated or combusted for energy recovery purposes and, therefore, should be reported as disposed in Section 8 of the Form R, unless the facility has knowledge the metals are being recycled.

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Coal Tar; Electricity Generating Facility; Energy Recovery

689. Do EGFs that burn coal tar with their coal/oil report this amount in Part II, Section 8 of the Form R as energy recovery?

No. While coal tar is a by-product of destructive distillation in the production of coke, it is not a waste. Therefore, EPA would not interpret its combustion to be a waste management activity and it would not be reportable in Section 8 of the Form R

Energy Recovery; Facility; Form R; Fuel; Otherwise Use; Process; Releases; Waste

690. A federal facility voluntarily reports releases of EPCRA section 313 chemicals contained in motor vehicle fuel. The motor vehicles are operated by the facility and they report the combustion of the EPCRA section 313 chemicals that occurs in the vehicle engine as "otherwise used" and subject to the 10,000-pound threshold. Would the combustion process that occurs in the vehicle engine be considered a reportable energy recovery method (i.e., Part II, sections 7B and 8.2) for the Form R reporting?

No. The quantity of EPCRA section 313 chemical reported in Part II, sections 7B and 8.2 of the Form R as used for energy recovery include EPCRA section 313 chemicals present in wastes, not in raw materials. Therefore, the combustion of EPCRA section 313 chemicals contained in fuel that occurs in a motor vehicle engine is not considered a reportable energy recovery method on the Form R report.

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Facility; Off-site Transfer

691. A petrochemical company generates a waste stream which contains a toxic chemical. The waste stream is treated at a treatment plant that is located within the boundaries of the petrochemical facility. The treatment plant is neither owned nor operated by the petrochemical company. An agreement has been made between the petrochemical company and the treatment plant that the petrochemical company is responsible for disposal of the sludge generated by the treatment plant (e.g., by transferring the sludge to a landfill). The treatment plant has a NPDES permit and the remaining waste is discharged to a receiving stream. (ln other words, some of the listed toxic chemical sent to the treatment plant returns to the petrochemical plant in sludge and is subsequently sent to an off-site landfill. The remainder of the listed toxic chemical, which does not return to the petrochemical plant in sludge, is sent directly to a receiving stream). How should the petrochemical plant report these off-site transfers of toxic chemicals in wastes? Should the petrochemical plant report the treatment occurring at the treatment plant in Part II, Section 7A (Waste Treatment Methods and Efficiencies) of the Form R?

Even though the treatment plant is located within the boundaries of the petrochemical plant, it is neither owned nor operated by the same person as the petrochemical plant. Therefore, the treatment plant and the petrochemical plant are separate facilities. Since the petrochemical plant does not directly treat the waste, it is not responsible for filling out Part II, Section 7A (Waste Treatment Methods and Efficiencies), on its Form R for the toxic chemical.

The petrochemical plant reports only two off-site transfers: (1) the total amount of toxic chemical that is sent to the treatment plant (along with the name and address of the treatment plant); and (2) the amount of listed toxic chemical that is sent to a landfill in sludge (along with the name and address of the landfill). This can be interpreted as reporting a portion of the toxic chemical twice, but since the treatment plant is a separate facility, the total amount sent to the treatment plant has to be reported as an off-site transfer. The petrochemical plant does not need to report the receiving stream since the waste is not discharged directly from the petrochemical plant to the receiving stream.

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Part II Section 7A; Waste Treatment

692. Where multiple sources are combined for waste treatment, should each source be listed in the Part II, Section 7 of the Form R with a common efficiency, or should only the combined waste stream be shown?

Report only the combined (or aggregate) waste stream and report the treatment and its efficiency. However, a waste stream that is treated before combination with other wastes, which are then subsequently treated, should be reported on a separate line.

Influent Concentration; Part II Section 7A; Sequential Process; Waste Treatment

693. A covered facility has a sequential waste treatment process in which the influent concentration and treatment efficiency for each step is known. How should they report in Section 7A of the Form R?

The facility should report influent concentration for the first step and report overall treatment efficiency for the entire process as per the Form R instructions.

Influent Concentration; Metal Compounds; Metals; Release Reporting; Waste Treatment

694. In Part II, Section 7A of the Form R, should covered facilities report the influent concentration to a treatment system for metal compounds in a waste stream for the parent metal only? How do I consider treatment efficiencies for metal compounds?

For metal compounds, the calculation of the reportable concentration and waste treatment efficiency must be based on the weight of the parent metal, not on the weight of the metal compounds. Metals are not destroyed, only physically removed or chemically converted from one form to another. The waste treatment efficiency reported must represent only the physical removal from the waste stream (except for incineration), not the percent conversion from one form to another. If a listed waste treatment method converts but does not remove a metal (e.g., chrome reduction), the method must be reported with a waste treatment efficiency of zero.

Part II Section 7A; Sequential Process; Waste Treatment

695. If a wastewater treatment system contains an oil skimmer or other phase separation treatment, is this reported as a sequential waste treatment step for each of the separated phases, or just for one phase?

The separation step is a sequential waste treatment step for one liquid phase (the one with the larger volume, typically the water phase). The other phase must be considered a new waste stream and must be listed separately on the form if treated subsequent to its separation.

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Facility; Form R; Waste; Waste Treatment

696. Section 7A of the Form R requires facilities to report on-site waste treatment methods and their efficiency. Does a facility have to report a treatment method used on a waste stream containing a TRI chemical if the treatment does not destroy, chemically convert, or physically remove the chemical within the waste stream?

Most of the information reported on the Form R is specific to the TRI chemical, rather than the waste stream containing that chemical. However, facilities must report waste treatment methods applied on-site to waste streams that contain the TRI chemical, even if the waste treatment method does not remove the specific TRI chemical being reported. In the event that a facility is reporting a waste treatment that does not destroy, chemically convert, or physically remove the TRI chemical, the efficiency is zero and the facility must report efficiency code E6 (equal to or greater than 0%, but less than or equal to 50%) for that treatment method (see: TRI Reporting Forms and Instructions, Section D.7).

Acids; Complete Neutralization; Waste Treatment; pH

697. We send our sludge to a biological treatment device on-site. The microbes in the system exist in buffered solution. As a result, the toxic chemical (a mineral acid) in the sludge is neutralized (pH 7.3). How do I account for biological and neutralization treatment in one process in Part II, Section 7A of the Form R? After that, the waste goes to settling ponds where solids settle out. Is this also a sequential treatment step?

First, list the biological treatment, even though it does nothing to the toxic chemical, and then enter the neutralization treatment, which has a 100 percent efficiency since pH 7.3 is considered complete neutralization for an acid. As for the settling ponds, the toxic chemical ceased to exist upon complete neutralization, so this step does not need to be included in Part II, Section 7A of the Form R for the mineral acid. However, any coincidental manufacture of toxic chemicals during this process should be considered towards the manufacturing threshold determination.

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Incineration; Treatment Efficiency; Treatment for Destruction; Waste Treatment

698. A covered facility has a liquid waste stream containing a toxic chemical which is incinerated. The incineration destroys 99.9 percent of the chemical. However, 0.1 percent is released to air. Does the facility need to report this waste stream in the waste treatment Section of the Form R?

If the threshold is met, the facility must report this liquid waste stream as treated for destruction in Part II, Section 7 of the Form R. The listed toxic chemical remaining after incineration in the gaseous waste stream must be reported as stack or point source air emissions in Part II, Section 5.2 of the Form R. The amount of the listed toxic chemical destroyed is also reported in Part II, Section 8.6 of the Form R, and the stack or point source air emissions are also reported in Part II, Section 8.1 of the Form R.

Air Emissions; Facility; Form R; Incineration; Waste; Waste Treatment

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

No. The federal facility does not need to report the gaseous waste stream in Part II, section 7A of the Form R report because no treatment is applied to the gaseous waste stream. However, the amount of the EPCRA section 313 chemical in the gaseous waste stream would be reported as a release to air and in Part II, section 5.2, Stack or Point Air Emissions.

Acids; Neutralization; Waste Treatment

700. We have two waste streams, one containing "an unlisted caustic material" and the other phosphoric acid, that are combined for neutralization. The combined waste stream then stays in the settling pond until the solid settles out. The water is sent to a POTW, the solid to a landfill. How should we report on these toxic chemicals? When does a toxic chemical cease to exist by neutralization?

Neutralization is the treatment method for phosphoric acid. If the pH is 6 or above then the efficiency is 100 percent (i.e., no phosphoric acid is released) and no off-site transfer should be reported. If the waste is acidic, (i.e., pH below 6) report the transfer of phosphoric acid sent off-site and calculate efficiency from the input and the remaining acid.

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Acids; Neutralization; Waste Treatment

701. If a covered acid, such as phosphoric acid, is spilled onto a concrete pad and immediately neutralized with a base, how is this reported on the Form R? How would the spill be reported if it were spilled directly on the land and neutralized?

If the acid spilled on the concrete pad is 100 percent neutralized, the facility would only report any non-neutralized air releases of the toxic chemical in Part II, Sections 5 and 8 on the Form R. If the spill were released directly to land before being neutralized, only the amount of the chemical that seeped into the land (i.e., not neutralized) and any air releases occurring as a result of the spill would be reported in Part II, Sections 5 and 8 on the form. Note that if the spill is considered a one-time, non-routine event, the entire amount spilled (that is not neutralized) should be reported in Part II, Section 8.8 of the Form R.

Auxiliary Scrubber; Release Reporting; Waste Treatment

702. How is an auxiliary scrubber that is designed and used only to mitigate emergency releases reported?

The influent concentration and treatment efficiency of the scrubber as it operates during an emergency event should be reported. The emergency scrubber is not considered to be sequential treatment with a scrubber which treats routine emissions from the same process, unless the two units function in series on a single waste system.

Best Available Information; Part II Section 7A; Treatment Efficiency; Waste Treatment

703. A waste stream containing glycol ethers is sent through several treatment steps, none of which are specifically intended to remove the glycol ethers. During the settling process, some of the glycol ethers present in the waste stream unintentionally evaporate into the ambient air. Should the facility owner or operator report the glycol ether as being treated and, if so, what waste treatment efficiency estimate is reported?

Any releases of a toxic chemical, even during treatment, must be estimated and reported in Part II, Section 5 of the Form R. Part II, Section 7 of the Form R must be completed if a waste stream containing the glycol ethers is treated, regardless of whether the treatment methods actually remove the glycol ethers. If, for whatever reason, glycol ethers are removed during the treatment of a waste stream, the owner or operator should use the best readily available information to determine how much of the glycol ethers are removed during the treatment process and use this information to estimate a 'treatment efficiency' for the toxic chemical.

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Air Emissions; Part II Section 7A; Storage Tanks; Waste Treatment

704. A covered facility owner or operator has a conservation vent on a bulk storage tank. The conservation vent prevents emissions from the tank during material loading, unloading, and storage. Should this conservation vent be listed in Part II, Section 7A of the Form R as a waste treatment method since it is reducing the toxic chemical emissions from the tank?

No. Part II, Section 7 of the Form R is only for the description of waste treatments that occur on-site. In the above scenario, the conservation vent functions as a preventive device. The conservation vent does not function as a waste treatment step. (Another example of a preventative device is a floating roof storage tank, the function of which would not be considered waste treatment).

Activity Threshold; Waste Management Activities

705. If a covered facility counts the amount of a listed toxic chemical towards an activity threshold, is it automatically exempted from reporting this amount as undergoing a waste management activity on the Form R?

No. If, for example, a facility combusts a toxic chemical in a waste for energy recovery, the owner or operator would consider the amount combusted for energy recovery towards the otherwise use threshold. If the facility exceeds a threshold for this chemical, the owner or operator would also report the method and amount of energy recovery in Part II, Sections 7 and 8 on the Form R.

Metals; Recycle; Reuse; Waste Management Activities

706. If a covered facility sends metal scraps containing chromium off-site to be remelted and subsequently reused, does it report the amount of toxic chemical in the metal as recycled off-site?

Assuming no contaminants are removed during the melting process, the chromium in the metal scraps is not actually being recovered but merely melted and reused. Therefore, the amount of the toxic chemical in the metal scraps would not be reportable in Part II, Sections 6.2 or 8 of the Form R. However, because the facility is repackaging and distributing the toxic chemicals in commerce, it should consider these amounts of the toxic chemical towards the facility's processing threshold. If the covered facility exceeds a chemical activity threshold, it is required to file a TRI Report for that chemical.

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Energy Recovery; PACs

707. EPCRA section 313 listed polycyclic aromatic compounds (PACs) are used as binders for coke in carbon anodes. The anodes are baked in a ring furnace and the PACs are combusted. The heating value of the PACs allow for a reduction in the use of natural gas. Should the amount of PACs combusted be reported as burned for energy recovery on the Form R?

In this scenario, EPCRA section 313 chemicals are being burned in the process, not in a waste management activity. Toxic chemicals reported as released or otherwise managed as waste on the Form R, including quantities reported for energy recovery, should not include chemicals consumed during processing activities. Therefore, the PACs combusted as part of the process in a ring furnace, should not be included as combusted for energy recovery under EPCRA section 313. These quantities should, however, be considered when making the facility's otherwise use threshold.

Metals; POTW; Part II Section 8; Release Reporting; Waste Management Activities; Waste Treatment

708. If I send ten pounds of chromium (or any metal) to a POTW or other wastewater treatment facility, where should I report the ten pounds in Section 8 of the Form R?

Because metals cannot be destroyed, they should not be reported as treated in Part II, Section 8.6 or 8.7 of the Form R. If you do not know what the POTW does with the metal constituents they receive, you should assume they are released and report the ten pounds sent to a POTW in Part II, Section 8.1 on the Form R.

Data Sources; Form R; Source Reduction

709. Where can facilities obtain source reduction figures from previous years?

Facilities should use the best readily available information they have. For example, they may use inventory data, reuse data, engineering reports on process modification, and product development studies.

Part II Section 8.10; Source Reduction; Waste Management Activities; Waste Treatment

710. Would RCRA permitted incineration of a listed toxic chemical count as a source reduction activity under Part II, Section 8.10 of the Form R?

Section 8.10 of the Form R is for reporting actions or techniques that prevent a toxic chemical from becoming a waste to be disposed, treated, combusted for energy recovery, or recycled. Incineration is considered waste treatment (assuming there is no energy recovery) and is reportable under Part II, Sections 6.2.C or 7A, as well as Section 8.6 or 8.7, depending on whether it is performed on- or off-site. It should not, however, be reported as a source reduction activity in Part II, Section 8.10.

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Part II Section 8.8; Release Reporting; Remediation; Waste Management Activities

711. Is dredging a lagoon (or surface impoundment) containing a toxic chemical once every five years (routine procedure) considered a remedial action under the Pollution Prevention Act? If so, how should releases from the dredging be reported in Section 8.8 of the Form R?

Because the dredging of the lagoon (or surface impoundment) occurs routinely every five years, it is not considered a remedial action under the Pollution Prevention Act, and accordingly, releases from the dredging should not be reported as releases from remedial actions. Instead, releases and other waste management quantities of the toxic chemical resulting from dredging would be reported in Sections 5 or 6 and in Section 8 of the Form R, depending on the ultimate disposition of the chemical.

Activity Index; Batch Processor; Part II Section 8.9; Production Ratio; Waste Management Activities

712. For the purposes of reporting in Part II, Section 8.9 of the Form R, a facility must provide a ratio of the reporting year production to prior year production, or provide an activity index based on a variable other than production that is the primary influence on the quantity of the reported toxic chemical recycled, combusted for energy recovery, treated, or released (including disposed). How should one-time or batch processors determine an activity index or production ratio for reporting in Section 8.9 of the Form R?

A one-time processor in its first year of using a listed toxic chemical should report 'NA' in Section 8.9 of the Form R. If a one-time processor uses a toxic chemical on a yearly basis but in different products, applications, and quantities, then a production ratio based on production or application involving the toxic chemical should be calculated as follows: production involving the toxic chemical in the current year divided by production involving the toxic chemical in the prior year.

Batch processors should calculate a ratio based on campaigns involving the toxic chemical from year to year as follows: campaign production in the current year divided by the campaign production in the prior year.

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Activity Threshold; Facility; Form A; Form R; Recycling; Releases; Waste; Waste Management Activities

713. Facilities subject to EPCRA section 313 are required to report all releases and other waste management activities involving toxic chemicals for which the facility has exceeded an activity threshold. Specifically, in Section 8, Column A of the Form R, facilities must report quantities of a toxic chemical released or managed as waste for the prior year. Must a facility report on quantities of a toxic chemical released or managed as waste for the prior year if the facility was not required to file a Form R or Form A for that toxic chemical in the prior year?

The owner or operator of a facility may put "NA" in Column A of Sections 8.1 through 8.7 of the Form R if the toxic chemical was not present at the facility in the prior year. "NA" is also appropriate for Column A if the toxic chemical was present at the facility in any amount during the prior year, but there was no possibility for a release or other waste management activity of that toxic chemical to occur during the prior year. For example, if the facility did not have an on-site recycling operation for the waste stream containing the toxic chemical in the prior year, the facility may put "NA" in Column A of Section 8.4 (on-site recycling). Otherwise, the owner or operator should provide a reasonable estimate for prior year release and other waste management activities of a toxic chemical in Column A of Sections 8.1 through 8.7.

Activity Index; Part II Section 8.9; Production Ratio

714. Can a covered facility within the seven newly added industry sectors report 'NA' in Part II, Section 8.9 (Production Ratio or Activity Index) of the Form R, for reporting year 1998?

For reporting year 1998 only, facilities in the seven newly added industries may use 'NA' in Part II, Section 8.9 (Production Ratio or Activity Index) of the Form R. In future years, these newly added facilities may only use 'NA' in this section if the reported toxic chemical was not manufactured, processed or otherwise used in the year prior to the reporting year. All other facilities covered by EPCRA section 313 may only use 'NA' for the 1998 reporting year, and all future years, if the reported toxic chemical was not manufactured, processed or otherwise used in the year prior to the reporting year.

Facility; Form R

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

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

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Facility; Manufacture; Otherwise Use; Process; Waste

716. The Reporting Forms and Instructions state that you may only enter NA (Not Applicable) in Section 8.9 (Production Ratio or Activity Index) if the reported EPCRA section 313 chemical was not manufactured, processed, or otherwise used in the year prior to the reporting year. Can you enter NA if your facility did manufacture, process, or otherwise use the chemical in the prior year but did not exceed an applicable reporting threshold?

No, you may not enter NA in Section 8.9 if the chemical was manufactured, processed, or otherwise used in the year prior to the reporting year, regardless of whether an applicable reporting threshold was exceeded. Entering a value in Section 8.9 allows year-to-year changes in your facility's release and other waste management quantities to be viewed within the context of production.

NA; Part II Section 8A

717. Are covered facilities in a newly added industry sector required to provide an estimate in column A, Section 8 (Prior Year Estimate) of the Form R for the first year in which their industry is covered?

No. For only that first reporting year that the industry sector was added to TRI's covered sectors list, covered facilities in a newly added industry sector are not required to provide an estimate for the prior year in column A, Section 8 of the Form R. However, if the facility has information to develop an estimate, then reporting the estimate may provide valuable information that may clarify the facility's yearly estimates.

Energy Recovery; Facility; Form R; Recycling; Waste

718. In Section 8, Columns C and D of the Form R, facilities must report quantities of a toxic chemical released or managed as waste for the following year and second following year. When would it be appropriate for a facility to put "NA" in these columns?

The owner or operator of a facility should enter "NA" in Columns C and D of Sections 8.1 through 8.7 of the Form R if there will be no on-site or off-site treatment, combustion for energy recovery, or recycling on the waste stream containing the TRI chemical or the chemical will not be present at the facility in either of the following years. It would also be appropriate to enter "NA" if the facility shut down during the reporting year and will not be operating in the following year or second following year.

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Facility; Form R; Manufacture; Otherwise Use; Process; Waste

719. Release and other waste management quantities for the year prior to the reporting year must be entered in Sections 8.1-8.7, Column A of the Form R. Am I required to complete these sections for an EPCRA section 313 chemical whose manufacture, process, or other use did not exceed an applicable threshold at my facility in the prior reporting year?

Yes. You are required to complete Sections 8.1-8.7, Column A for each chemical for which you are required to submit a Form R report. In completing these Sections, you may use your best readily available data (or reasonable estimates if such data are not readily available). Facilities in a covered industry sector that manufacture, process, or otherwise use an EPCRA section 313 chemical are expected to retain any documentation that may be necessary for the purpose of developing estimates for these Sections.

Economic Reasons; Source Reduction; Waste Management Activities

720. If a covered facility modifies a process for economic reasons resulting in a waste reduction, should this be reported as source reduction?

Yes. Any changes that result in less of the listed toxic chemical being generated in waste may be included. Codes are provided to identify changes such as equipment and technology modifications, as well as process changes, procedure modifications, and improved housekeeping.

Activity Threshold; Facility; Form R; Manufacture; Manufacturing; NAICS; Otherwise Use; Process; Processing

721. A facility must complete and submit a TRI report if it has 10 or more full time employee equivalents; is included in a covered North American Industry Classification System (NAICS) code; and exceeds the manufacturing, processing, or otherwise use threshold under EPCRA section 313. If a facility reduces the amount of a TRI toxic chemical that it manufactures, processes, or otherwise uses below the relevant chemical activity threshold through source reduction, is there a way for the facility to highlight this reduction?

The facility may voluntarily choose to report the source reduction without filing a Form R by using TRI-MEweb's "Not Reporting?" feature. If the facility fell below the reporting threshold for one or more chemicals due to source reduction, the facility can provide comments about its source reduction activities when completing this section. The public will be able to access this information using the TRI Pollution Prevention Tool.

Additional information about pollution prevention and TRI is available at: https://www.epa.gov/toxics-release-inventory-tri-program/pollution-prevention-p2-and-tri.

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Facility; Form R; Process; Releases; Waste

722. If a facility implemented a source reduction activity to help reduce its toxic chemical releases, how does the facility classify the nature of this source reduction activity and elaborate on its potential effect on releases in the Form R?

In order to classify the kind of source reduction activities in which a facility is engaging, the facility must refer to and identify a code from the "Source Reduction Activity Codes" within Section 8.10. EPA encourages reporters who report NA in Section 8.10 to explain any barriers they encountered while trying to implement source reduction activities on-site in 8.11. Additional information and guidance on source reduction activities is available in the TRI Reporting Forms and Instructions.

If a facility wants to submit additional information on its source reduction activities, it may do so in Section 8.11 of the Form R. This section provides an opportunity to publicly comment on the selected source reduction activity codes or highlight any steps the facility took to reduce the amount of toxic chemicals entering the environment. If submitting information in this section, EPA encourages the facility to provide specific, detailed information to encourage other facilities to adopt similar practices and to help TRI data users and the public understand these source reduction activities. For example, facilities could describe how specific release or waste management quantities have changed or might change in the future, which processes and products were affected, and which technologies and materials were used. Facilities can also enter useful URLs such as pollution prevention resources or corporate sustainability pages.

For assistance in reporting Pollution Prevention and Production Ratio Data in Sections 8.9-8.11 and 9.1, please visit: https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

For additional information on identifying effective environmental practices and highlighting pollution prevention successes, please visit https://www.epa.gov/toxics-release-inventory-tri-program/pollution-prevention-p2-and-tri.

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Catastrophic One-Time Event; Part II Section 8.8; Release Reporting

723. Are releases due to a pipe rupture that was caused by premature failure of the pipe (no direct cause known) considered a catastrophic release and reportable in Part II, Section 8.8?

Releases reported in Part II, Section 8.8 of the Form R should be the result of a remedial action, a catastrophic event or a one-time release not associated with normal or routine production processes. In general, pipes have an expected life span. If a pipe ruptures during its expected life span for no known reason, the release should be considered a one-time release not associated with normal or routine production processes and should be reported in Section 8.8. However, if the pipe bursts because it was in use after its expected life span it should not be considered a one-time release because it should have been replaced.

Accidental Releases; Facility; Form R; Releases

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

If the accidental release of the EPCRA section 313 chemical at a federal facility is a one-time event, then it should be reported in section 8.8 of the Form R report. If the release is routine or frequent, it should be reported in section 8.1 of the Form R. For example, spills that occur as a routine part of production operations and could be reduced or eliminated by improved handling, loading, or unloading procedures are included in the quantities reported in section 8.1 through 8.7 of the Form R report, as appropriate. A total loss of containment resulting from a tank rupture caused by a tornado would be included in the quantity reported in section 8.8.

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Chemical Deletion; Facility; New Chemical; Reporting Requirements; States; Tribes

725. How has EPA engaged tribal governments in the TRI program?

On April 19, 2012, EPA published a final rule that improves and clarifies certain opportunities allowing tribal governments to participate more fully in the TRI Program (77 FR 23409). First, beginning with Reporting Year 2012 (RY12), facilities located in Indian Country will be required to submit annual TRI reports to EPA and the appropriate tribal representative, rather than to the state in which the facility is geographically located. This rule also clarifies the opportunities available to tribal governments to modify the list of covered chemicals and TRI reporting facilities. In particular, EPA included a provision that provides the following opportunity for the Tribal Chairperson or equivalent elected official to request that EPA apply the TRI reporting requirements to a specific facility located within their respective tribal land. The Tribal Chairperson may also petition EPA to add or delete a particular chemical to or from the list of chemicals covered by TRI. Additional information about TRI reporting in Indian County, including a copy of the final rule, is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/tri-reporting-facilities-located-indian-country.

Facility; Reporting Requirements; States; Tribes

726. How can reporting facilities determine whether they are located within Indian Country for TRI reporting?

A list of TRI facilities that may be located in Indian Country is available at: https://edap.epa.gov/public/extensions/TRI_Tribal_Communities_Dashboard/TRI_Tribal_Communities_Dashboard.html.

In addition, facilities can contact their designated TRI Tribal Contact to verify whether their location is under the jurisdiction of an Indian Tribe. Contact information for TRI Tribal Contacts is available at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-tribal-contacts.

Form A; Form R; Manufacture; Otherwise Use; PBT Chemicals; Process; Releases; Reporting Requirements; Waste

727. How did the 2009 Omnibus Appropriations Act change the TRI Form A reporting requirements?

The 2009 Omnibus Appropriations Act returned TRI reporting requirements back to the rules in effect prior to December 22, 2006. These changes affect TRI reports due July 1, 2009 and beyond. The change requires that all reports on persistent, bioaccumulative, and toxic (PBT) chemicals (as listed in 40 CFR 372.28) be submitted on “Form R,” the more detailed form. For all other chemicals the shorter form, “Form A,” may be used only if the “annual reporting amount” (i.e., the sum of production-related releases and other waste management) does not exceed 500 pounds and the amount manufactured, processed, or otherwise used does not exceed 1 million pounds during the reporting year.

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Form A

728. What is the Form A and who may submit this form?

The Form A provides certain covered facilities the option of submitting a substantially shorter form with a reduced reporting burden. Facilities which meet the NAICS code, employee, and chemical activity thresholds but who do not exceed one million pounds manufactured, processed, or otherwise used and the facility's total annual reportable amount does not exceed 500 pounds for the non-PBT chemical, may submit an annual certification statement (Form A) instead of a Form R for the toxic chemical.

Form A; Manufacture; Otherwise Use; Process; Releases; Waste

729. What is the Form A and when may it be used?

The Form A provides certain covered facilities the option of submitting a substantially shorter reporting form. For non-PBT chemicals, reporters are eligible to use Form A if they have an annual reportable amount (i.e., the sum of production-related releases and other waste management) of the chemical that does not exceed 500 lb/yr and the amount manufactured, processed, or otherwise used does not exceed 1,000,000 lb as of Reporting Year 2008, Form A may no longer be used to report PBT chemicals.

Form A Criteria

730. If I meet the criteria for filing a Form A for one non-PBT chemical, may I use it for all of the non-PBT chemicals covered at my facility?

No. Eligibility for use of Form A is toxic chemical specific. However, more than one toxic chemical can be reported on a single Form A. To be eligible for reporting a toxic chemical using Form A, a facility must not manufacture, process, or otherwise use more than one million pounds of the specific non-PBT chemical and the total annual reportable amount for the non-PBT chemical must be less than 500 pounds. In some instances, a facility may submit the Form A for some chemicals and the Form R for other chemicals. Although all non-PBT toxic chemicals that meet the eligibility criteria for use of Form A may now be reported together on a single Form A, each eligible toxic chemical must be individually listed on the Form.

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Form A Criteria

731. EPA published a final rule in the Federal Register on November 30, 1994 (59 FR 61488), which created an alternate threshold of one million pounds for certain facilities. How can a facility that exceeds one of the original thresholds qualify for the alternate threshold?

Facilities which have a total annual reportable amount of no greater than 500 pounds for a listed non-PBT chemical may qualify for the one-million-pound alternate threshold for that chemical, beginning with the 1995 reporting year. For purposes of the alternate threshold, the total annual reportable amount includes non-PBT chemicals listed at 40 CFR Section 372.65 which are released (including disposed), treated, recycled, and burned for energy recovery at the facility and amounts transferred from the facility to off-site locations for the purposes of recycling, energy recovery, treatment, and/or disposal. These amounts correspond to column B, Sections 8.1 through 8.7 of the reporting Form R. If a facility's combined total annual reportable amount does not exceed 500 pounds for a specific non-PBT chemical, the facility can qualify for reduced reporting requirements unless the amount of that non-PBT chemical manufactured, processed, or otherwise used within the reporting year exceeds one million pounds.

Covered facilities that qualify for the alternate threshold are not exempt from reporting, but must fulfill certain requirements. In lieu of submitting a Form R, the owner/operator of a facility must submit an annual certification statement (Form A) indicating that the facility met the requirements for use of the alternate threshold for a specific chemical. The facility must also maintain, and make available upon request, records substantiating the claim. The Form A includes basic information regarding the facility's identification, the chemical in question, and a statement of accuracy to be signed by a senior management official of the facility.

Facility; States

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

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

Indian Lands: EPCRA Reporting

733. In 1986, Congress passed EPCRA, to help local communities, including Indian reservations, protect public health and the environment from chemical hazards by informing citizens about the chemicals present in their communities. On July 26, 1990, EPA published a rulemaking in the Federal Register designating Indian Tribes and their chief executive officers as the implementing authority for EPCRA on all Indian lands (55 FR 30632). What is EPA's policy

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regarding the implementation of the different provisions of EPCRA on Indian lands?

EPA's policy is to work with Tribes on a government to government basis in implementing the requirements of EPCRA. EPCRA contains four major provisions: planning for chemical emergencies, emergency notification of chemical accidents and releases, reporting of hazardous chemical inventories, and toxic chemical release reporting. The emergency planning provisions of EPCRA Sections 301-303 are designed to help Indian Tribes prepare for, and respond to chemical emergencies occurring on Indian lands that involve extremely hazardous substances (EHSs), found at 40 CFR Part 355, Appendix A and B.

The chief executive officers of federally recognized Tribes must appoint Tribal Emergency Response Commissions (TERCs), responsible for carrying out the provisions of EPCRA in the same manner as State Emergency Response Commissions (SERCs). Alternatively, Tribal leaders can join a Tribal Coalition which functions as the TERC, or establish a Memorandum of Understanding with a State to participate under the SERC. TERCs establish emergency planning districts and can appoint Local Emergency Planning Committees (LEPCs) or act as TERCs/LEPCs, performing the functions of both. LEPCs use information collected under EPCRA to develop local emergency response plans to respond quickly to chemical accidents. The chief executive officer should ensure that TERCs maintain a broad-based representation, including Tribal public agencies and departments dealing with environmental, energy, public health and safety issues, as well as other tribal community groups with interest in EPCRA. The Tribal LEPC should also be representative of the community, and should include elected Tribal officials, fire chiefs, Indian Health Services officials, Bureau of Indian Affairs officials, Tribal elders and leaders, representatives of industries on or near the reservation, and members of the general community.

The emergency release notification provisions of EPCRA Section 304 require facilities to immediately notify TERCs and LEPCs of releases in excess of reportable quantities of EHSs and CERCLA hazardous substances, found at 40 CFR Section 302.4. Facilities must also provide written follow-up reports on the actions taken to respond to releases and possible health effects of the released substances. The emergency release notification provisions cover releases from commercial, municipal, and other facilities on Tribal lands, including those owned by the Tribe, and those from accidents on transportation routes within the reservation. Substances covered by this Section include not only EHSs, but also hazardous substances subject to the emergency release notification requirements of CERCLA Section 103. CERCLA requires notification of releases to the National Response Center.

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In cases where releases from facilities located on Indian lands may affect areas outside Indian jurisdiction, the legislation under EPCRA Section 304(b)(1) requires that notice be provided to all SERCs and LEPCs likely to be affected by the releases. Response to such releases will be handled by cooperation between the affected jurisdictions. EPA encourages Indian Tribes, SERCs, and LEPCs to participate in joint planning efforts to prepare for such potential emergencies. The hazardous chemical right-to-know provisions of EPCRA Sections 311 and 312, require facilities that prepare Safety Data Sheets (SDSs) for hazardous chemicals under OSHA, and have hazardous chemicals or EHSs present above applicable threshold levels, to submit these SDSs, or lists of such chemicals to TERCs, LEPCs, and local fire departments. Facilities are also required to submit hazardous chemical inventory forms which detail the amounts, conditions of storage, and locations of hazardous chemicals and EHSs to TERCs, LEPCs, and local fire departments. It is the responsibility of TERCs and LEPCs to make this information available to the public.

Toxic chemical release reporting under EPCRA section 313 requires covered facilities to submit annual reports on routine and accidental toxic chemical releases and other waste management activities to EPA and the Tribal environmental, health, or emergency response agency which coordinates with the TERC. TERCs and EPA make this information available to the community through the national Toxics Release Inventory (TRI) database. The data is also released to the public annually in national and state TRI reports.

The information collected under EPCRA enables TERCs and LEPCs to paint a picture of the hazardous substances, chemicals, and toxics found on Indian lands. It also allows the Tribal communities to work with industries to reduce the use and releases and other waste management of toxic chemicals and prevent chemical accidents. EPA recognizes that resources are often limited on Indian lands, and EPA is committed to helping Indian tribes comply with EPCRA. EPA provides technical assistance, guidance, and training tailored to the needs of Indian tribes. EPA’s Office of Chemical Emergency Preparedness and Prevention (CEPPO) can provide TERCs with grants/ cooperative agreements to aid in the implementation and effectiveness of their EPCRA programs. To be eligible for consideration under this grant program, a tribe or Tribal Coalition must function as an independent TERC. To the extent that Tribes have these functions performed by states, they are not eligible for these grants. Tribal agencies can also apply for training grants provided by FEMA under EPCRA Section 305(a) to gain or improve skills needed for carrying out emergency planning and preparedness programs. These grants are provided through the TERCs or other agencies. The Hazardous Materials Transportation Uniform Safety Act

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of 1990 (HMTA) also includes funding grants for Indian tribes for training public sector employees in emergency response activities. HMTA provides planning grants for developing, improving, and implementing EPCRA plans, and for developing a training curriculum for TERCs and LEPCs. Tribes should contact their EPA Regional office for information on how to apply for these grants.

Enforcing the provisions of EPCRA is key to providing Tribal communities with the information necessary to prepare for and prevent chemical accidents. EPA provides assistance to Tribal communities for specific enforcement actions against violators of Sections 302, 311, and 312. Since EPA does not receive or process information under these Sections, actions should be initiated at the tribal and district levels.

Form A; RQ; Release Reporting

734. What is the total annual reportable amount and is it the same as an RQ (Reportable Quantity)?

No, they are not the same. The total annual reportable amount applies to EPCRA section 313 listed toxic chemicals and is facility specific. A facility's total annual reportable amount is equal to the combined total quantities released at the facility (including disposed), treated for destruction at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or release (including disposal). The total annual reportable amount is not the same as a reportable quantity (RQ). An RQ is chemical specific and applies to Extremely Hazardous Substances (EHS) or CERCLA Hazardous Substances. In the case of an accidental release, a facility owner/operator would refer to a chemical's RQ to determine if the facility has released enough such that reporting to a Local Emergency Planning Committee, SERC, and the National Reporting Center is required under EPCRA Section 304 and CERCLA Section 103.

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Alternate Threshold; De minimis; De minimis Exemption; Establishment; Facility; Form A; Form R; Manufacture; Mining; Otherwise Use; Process

735. In lieu of submitting a TRI Form R, facilities are given the option of submitting a Form A provided that it is a non-PBT chemical, they do not exceed 500 pounds for the total annual reportable amount, and that the amounts manufactured, processed, or otherwise used of the chemical do not exceed one million pounds. When determining if a facility meets the one-million-pound alternate threshold and the 500-pound annual reporting amount, is the facility permitted to consider exemptions, such as the article or *de minimis* exemption, and exclude those quantities from their calculations?

A facility is permitted to take exemptions, if applicable, when determining whether the facility has met the one-million-pound alternate threshold. Additionally, a facility does not have to count exempted activities towards the annual reportable amount. The alternate threshold and annual reportable amount determinations for an individual chemical must be based upon a whole facility determination and account for all establishments within a facility; therefore, an individual activity may be exempt but the facility may exceed the alternate threshold or annual reportable amount at the facility level.

Electronic Data; States; Tribes

736. What is CDX?

EPA's Central Data Exchange (CDX) is the Agency's point of entry on the Internet-based Environmental Information Exchange Network (Exchange Network) for environmental data exchanges. CDX provides the capability for states, tribes, and facilities to gain access to their data through the use of Web services. CDX enables EPA to work with stakeholders -- including state, tribal, and local governments and regulated industries -- to facilitate the electronic submission of data to the Agency via the Internet. EPCRA section 313 covered facilities access TRI-MEweb through CDX to submit annual toxic chemical release reports to EPA and their state or tribe. You can access the electronic reporting site at: https://cdx.epa.gov/.

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Data Quality; Establishment; Facility; Form A; Form R; Multi-Establishment; Process; Processing

737. What is TRI-MEweb?

The Electronic Reporting Rule requires facilities to submit, revise, and withdraw non-trade secret TRI forms electronically via TRI-MEweb, a web-based reporting application for electronic filing of TRI Form R and Form A Certification Statement reports. The TRI-MEweb application is hosted in EPA's Central Data Exchange (CDX) system. Users must access, create, and load facility accounts in TRI-MEweb to begin reporting. TRI reporting requires two user roles to be created in CDX: a preparer role and a certifying official role. Preparers and certifying officials must register for the application at: https://cdx.epa.gov/.

To learn more about TRI-MEweb, please visit https://www.epa.gov/toxics-release-inventory-tri-program.

Electronic Form R; Form R

738. Can commercially developed electronic versions of the Forms be submitted for compliance with Section 313?

The Agency encourages submission of Forms using the EPA software provided with the Form R package. The Agency has also approved the facsimile outputs of certain privately developed software packages. A list of the providers of software packages is made available by EPA. Contact the EPCRA Information Hotline for more information ((800) 424-9346 or (703) 412-9810).

Reporting Requirements

739. Where can I learn more about TRI-MEweb?

The TRI Program has developed a series of TRI-MEweb resources, including online tutorials to assist facilities with using the TRI application, as well as two helpdesks. The TRI-MEweb online tutorials can be found on TRI's website at https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials. TRI-MEweb also has links to tutorials, as well as a user guide and link to the CDX Helpdesk Chat. TRI has hotlines to provide CDX/TRI-MEweb technical support and reporting guidance to reporting facilities: TRI Information Center Hotline [(800) 424-9346 - select option 3] and CDX Help Desk (888) 890-1995.

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Electronic Data; Facility; States

740. If I submit my TRI report through TRI-MEweb, will it automatically be submitted to my state or tribe?

Facilities that use TRI-MEweb and are in a state or tribal territory participating in the TRI Data Exchange (TDX) will have their forms sent simultaneously to EPA and to their respective state or tribal TRI office. TRI-MEweb will inform the preparer during the submission process whether the facility is in a state or tribal territory participating in the TRI Data Exchange. A list of participating states is also available here: https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-exchange.

However, if a facility is in a state or within tribal lands that is not participating in the TRI Data Exchange, any forms submitted via TRI-MEweb will not automatically be sent to the state/tribe. After these facilities submit their reports to EPA via TRI-MEweb, they should use the application to prepare a submission for the state/tribe on paper, diskette, CD, or DVD. To verify the preferred method of submission for each state and tribe, go to the TRI State Programs website at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-state-contacts or the TRI Tribal Contacts website at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-tribal-contacts.

Facility; Reporting Requirements; States; Tribes

741. Does my facility need to submit a paper TRI form to my state or tribal authority?

Facilities that use TRI-MEweb and reside in a state or tribal country participating in the TRI Data Exchange (TDX) will have their forms sent simultaneously to EPA and their respective state/tribe via TDX.

Please be aware that if your facility does not reside in a state/tribe participating in TDX, any forms submitted via TRI-MEweb will not automatically be sent to the state/tribe. After these facilities submit their reports to EPA via TRI-MEweb, they can use TRI-MEweb to print a submission for the state/tribe on paper, diskette, CD, or DVD. To verify the preferred method of submission for each state or tribe, go to the TRI State Programs website at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-state-contacts or the TRI Tribal Contacts website at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-tribal-contacts.

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Data Quality; Electronic Data

742. Why does EPA require electronic submission of non-trade secret TRI forms?

The Government Paperwork Elimination Act allows Federal agencies to provide for electronic submissions and the use of electronic signatures, when practicable. Similarly, EPA's Cross-Media Electronic Reporting Regulation (CROMERR) states that any requirement to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions, once the agency publishes a notice that electronic document submission is available for that requirement.

On August 27, 2013, EPA finalized a rule requiring facilities to report non-trade secret TRI forms using software developed by the Agency (78 FR 52860). Currently, EPA provides TRI-MEweb as the online application for submitting TRI reporting forms electronically. Widespread use of TRI-MEweb improves the quality and accuracy of TRI data and allows EPA to get the data to the public faster.

Further information about this rule is available: https://www.epa.gov/toxics-release-inventory-tri-program/electronic-reporting-toxics-release-inventory-data.

Electronic Data; Facility

743. How do I access my facility's reporting history in TRI-MEweb with the facility's access key?

In TRI-MEweb, there are different steps required to access the history, depending on your knowledge of your facility's reporting history:

1) You know that your facility reported in prior years: Enter the TRIFID and access key to load the facility account.

2) You know that your facility did not report in prior years: Enter the facility's location information and select your facility among those that match the search criteria. Save this information using the access key or technical contact information.

3) You do not know if your facility reported in previous years: Enter the facility's location information and select your facility among those that match the search criteria. Save this information using the access key or technical contact information.

Additional information is available in a series of TRI-MEweb tutorials available on the TRI website at https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

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Electronic Data; Facility; Process; TRI Facility Identification Number

744. I need to load my facility account in TRI-MEweb. Where can I find the access key assigned to my facility ID?

Some facilities may need to obtain their assigned six or seven-digit "access key" that will uniquely identify the facility's reporting history record and load it into TRI-MEweb. Access keys are generated for each TRI facility identification designator (TRIFID). Access keys do not change from year to year. TRI-MEweb provides chemical release data that has been reported to EPA back to Reporting Year 1991 in each facility account.

If another user at your facility has already loaded the facility into their TRI-MEweb account, they may provide you with the facility access key, which is visible from the "Manage Facilities" page. You can have the access key emailed to you via the TRI-MEweb application after entering and verifying the TRIFID. You can also obtain your facility access key by calling the CDX Helpdesk at 888-890-1995 or emailing the Helpdesk at helpdesk@epacdx.net

The following people may need to request an access key:

a) New preparers that have created a new CDX account and will transmit TRI forms for a facility that has reported TRI chemical releases to EPA in the past.

b) Preparers that want to add an unlisted facility to their TRI-MEweb account.

c) Preparers that have accidentally deleted facility profiles from their TRI-MEweb account.

d) If a facility has not previously reported to the TRI Program, a TRIFID and access key will be automatically generated within the TRI-MEweb application.

Note: If your facility has changed ownership during the past calendar year, the TRIFID remains the same because this identification number is assigned to the physical location and not to a specific company or proprietor. If the TRIFID remains the same, the access key does not change.

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Electronic Data; Facility

745. How do I access my facility's forms in TRI-MEweb without the facility's access key?

Access keys are sent via email from CDX at the beginning of the year to the prior year's certifying officials and technical contacts of reporting facilities. TRI filers may also request their access keys be e-mailed to their CDX-registered e-mail within the TRI-MEweb application.

If you do not have the facility's access key, TRI-MEweb offers filers another way to add a facility if you have information about that facility from the prior year's reporting, including your facility's TRI facility identification number (TRIFID), technical contact name from the previous year's report, and technical contact phone number. TRI-MEweb will indicate that it has granted you access to the facility, and you may prepare the submission for that facility. TRI-MEweb will also display the list of individuals that have been granted access to that facility.

Documentation; Form A

746. If I qualify and file a Form A, must I submit any other documentation to EPA and the state or tribal authority?

No. If a covered facility meets the criteria and files the Form A, the owner/operator need not submit any other documentation to EPA and the state or tribal authority. However, the facility must maintain all documentation supporting their Form A submission.

Electronic Data; Facility; States; Tribes

747. What is the TRI Data Exchange (TDX)?

Facilities must submit a copy of each reporting form sent to EPA to the state or tribe in which that facility is located. TDX allows facilities to submit TRI reporting forms simultaneously to both EPA and the appropriate state or tribe through the Central Data Exchange (CDX). TDX also helps EPA, states, tribes, and territories exchange environmental information efficiently and streamlines the acceptance and processing of TRI data by both EPA and the states/tribes. A filer may check to see if their state or tribe is in the TRI Data Exchange by going to https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-exchange. For more information on the Exchange Network, please visit their website at: http://www.exchangenetwork.net/data-exchange/toxics-release-inventory-tri/.

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Electronic Data; Facility; Process; Signature

748. Facilities that use TRI-MEweb, submit their TRI forms through the Internet via the Central Data Exchange (CDX), and are located in a state participating in the TRI Data Exchange (TDX) will have their TRI forms sent simultaneously to EPA and their state officials via the Environmental Information Exchange Network. Which states are currently participating in the TRI Data Exchange?

TRI-MEweb will inform users whether their state or tribe is participating in the TRI Data Exchange or whether they must submit their forms to their state separately (e.g., diskette, paper submission). However, TRI-MEweb will not inform that user of the preferred method of submissions for filers in states or tribes that do not participate in TRI Data Exchange. A filer will need to contact their state directly (https://www.epa.gov/toxics-release-inventory-tri-program/tri-state-contacts) to determine the preferred method of submission for states that do not participate in TRI Data Exchange. A filer may check to see if their state or tribe is in the TRI Data Exchange by going to https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-exchange. If additional states or tribes join the TRI Data Exchange, TRI-MEweb will be updated accordingly, and facilities located in those states will also have their forms submitted automatically to their state officials via the Internet Note that for submissions, revisions, and withdrawals for Reporting Year 1991 through Reporting Year 2004, all facilities, including those residing in states participating in the TDX, must report to their states separately in the required format specified by the state (e.g., diskette, paper). TRI-MEweb will not electronically transmit forms for these reporting years to state officials.

Electronic Data; Facility; Process; Processing; Recordkeeping; States

749. Will facilities be able to print paper copies of reports using TRI-MEweb?

The Electronic Reporting Rule, effective January 21, 2014, requires facilities to submit, revise, and withdraw non-trade secret TRI forms electronically via TRI-MEweb application. Facilities cannot use TRI-MEweb to print federal paper submissions to submit to EPA. However, TRI-MEweb does allow facilities to print a copy of the submitted TRI form for recordkeeping purposes (this form is clearly marked as not allowed to be filed manually to EPA).

Facilities may print a copy of a Form R or Form A Certification Statement for recordkeeping purposes via the “Submission History” tab. The “Submission Summary” page will display only the forms which have been certified and submitted to EPA. Select “View Reports” to access your Copy of Record of your Form R or Form A Certification Statement.

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Facility

750. Are there any TRI-MEweb tutorials available?

The TRI-MEweb tutorials are designed to demonstrate how different tasks are performed within the Web-based application reporting tool. These tutorials are designed for new users, as well as, experienced users. These tutorials are available to watch within TRI-MEweb.

Electronic Data

751. Who can I contact if I need to troubleshoot a CDX or TRI-MEweb technical issue?

Users may request assistance from the CDX hotline on issues like how to obtain access keys, load facility accounts, and verify status of submissions in TRI-MEweb. Users may also request assistance from the CDX helpdesk to reset passwords, address issues with the CDX registration process, and add the TRI-MEweb application to the CDX user account. These technical application issues can be resolved if you can contact the CDX hotline at (888) 890-1995.

Electronic Data

752. I am having problems opening the CDX login webpage to launch TRI-MEweb.

If the CDX login webpage is down for a legitimate reason (i.e., maintenance, system update), an announcement should be posted on the main CDX login webpage and on the TRI website. However, if the CDX login webpage is operational, but the webpage appears broken on your computer, you should check to ensure that your browser's TLS 1.0 security setting is enabled.

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Electronic Data; Facility; Reporting Requirements

753. How can a preparer or certifying official confirm within TRI-MEweb that the Electronic Signature Agreement (ESA) has been received and processed for approval?

A preparer or certifying official can check the status of an ESA on TRI-MEweb. All facilities that have been added to TRI-MEweb by the preparer are on the "Manage Facilities" page under the "Facility Management" tab. The "ESA Status" column will indicate each person who has been authorized to access that facility's account through the "View User" link:

a) If the status is "Sign CDX ESA", the facility's certifying official has not processed the ESA form.

b) If the status is "CDX ESA Pending Approval," then the certifying official has printed their ESA form, but it is on its way via postal mail to the Data Processing Center or is still being processed.

c) If the status is "Sign TRIFID Signature Agreement," then the new certifying official has an approved ESA form but has neither associated the TRI Facility Identification number (TRIFID) nor provided their job title in TRI-MEweb.

A preparer or certifying official may also contact the TRI Data Processing Center at (703) 227-7644 to verify the status of an ESA. The certifying official should also verify that the form was properly mailed to the DPC's current address, which is available under the "Contact Us" page on the TRI website.

Deadline Extension; Form R

754. Are there any extensions that a facility can get for filing the Form R?

EPCRA section 313(a) mandates that covered facilities report to EPA by July 1 of each year. On occasion, however, EPA has extended the date for submitting the Form R. If EPA chooses to extend the deadline, facilities should verify with their state representative that the state will also extend their reporting deadline. No extensions are ever made on an individual facility basis. If EPA extends the deadline a notice of this is published in the Federal Register.

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Facility; Releases

755. Can I use the TRI-MEweb application if I have my own TRI software?

Some facilities have their own software or use private software to assist in collecting chemical release data. This "third party software" is often designed to produce output data files that match EPA's electronic data structure specifications. Facilities may upload their data files in extensible markup language (XML) format via the Upload Tool in TRI-MEweb. The facility's information can also be updated in TRI-MEweb using the Upload Tool. All data uploaded must be checked for errors and certified.

For more information, please view the "Using the Upload/Download Data Tool" tutorial, which can be found on TRI's website:- https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

Form R; Reporting Deadline; Weekends

756. Form R is to be submitted on or before July 1 of the year following the reporting year. When is the official due date if July 1 falls on a Saturday or a Sunday?

If the reporting deadline falls on a Saturday or Sunday, the EPA will accept the forms which are postmarked on the following Monday (i.e., the next business day).

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Facility; Process; Processing

757. How do I add the certifier role for TRI-MEweb to my CDX user account?

To add the TRI-MEweb Certifying Official role to an existing CDX user account, follow these steps:

1) Log in to your CDX account at: https://cdx.epa.gov/ to open your MyCDX account page and click on "Manage Your Program Services" link.

2) Under TRI-MEweb, request a new role by selecting and adding "certifying official."

3) Verify your identity. This is either done online by correctly answering personal identifying information or by printing, signing, and mailing in a paper Electronic Signature Agreement (ESA) form to EPA's Data Processing Center (DPC). Completing the online process will provide you immediate access to TRI-MEweb. If you submit a paper ESA then the TRI-MEweb link will remain deactivated and inaccessible until the ESA is processed and approved by the DPC.

Additional information is available in a series of TRI-MEweb tutorials available on the TRI website at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

Activity Threshold; EO 13148; Facility; Form A; Form R; States; Tribes

758. Are there any fees associated with submitting the Form R?

Under EPCRA section 313 and its implementing federal regulations, there are no federal fees or taxes for submitting a Form R or Form A to EPA or the state. However, states and tribes may have similar reporting programs or other state/tribe requirements that associate fees or taxes with the submission of TRI forms. A directory of state and tribe TRI program contacts is available at: https://www.epa.gov/toxics-release-inventory-tri-program/forms/tri-program-contacts.

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Certification; Form R; Signature

759. **The instructions state that photocopied versions of Part I may be submitted. Does this mean that a senior official at a facility, certifying the validity of the forms, only has to sign one submission? Are facilities required to include an original signature on forms going to the state or Indian Country as well as to EPA?**

No. The final rule (February 16, 1988; 53 FR 4500) states that each unique toxic chemical submission must contain an original signature. The purpose of the requirement is to ensure that the certifying official has reviewed each toxic chemical submission. A photocopied signature or no signature does not fulfill this purpose. An original signature on the certification statement is not required for the copy that is sent to the state. However, if the state requires an original signature under their state Right-To-Know laws, then the facility must comply.

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Electronic Data; Facility

760. How do I certify TRI forms prepared via TRI-MEweb?

Newly designated certifying officials must create a new Central Data Exchange (CDX) account, add TRI-MEweb to their CDX account, and complete an Electronic Signature Agreement (ESA) and a TRI Facility Identification number (TRIFID) Signature Agreement before any pending forms can be certified. The "Pending Signature" section in TRI-MEweb indicates the facilities for which a certifying official must sign a TRIFID Signature Agreement by following the prompts on TRI-MEweb. Certifying officials may also add additional TRI facilities by clicking on the "Add Facility" button.

Returning certifying officials will receive an email from CDX when a form has been submitted and requires their certification.

Before certifying pending forms, the certifying official can view the error reports through the "Summary Reports" page. If the certifying official detects that a correction is needed on the form, the certifying official may return the form to the preparer. Note that returning a submission does not remove the data from TRI-MEweb; this just allows the preparer to make any corrections and resubmit the form for certification. Otherwise, the certifying official may certify and submit the form to EPA. A notification will be sent from CDX to the certifying official's registered e-mail account confirming that the form's certification has been completed, along with the certification time stamp.

It is important to ensure that the certifying official's e-mail address associated with their CDX account is kept up to date as correspondence regarding TRI submissions is sent to the certifying official's registered e-mail address. If a certifying official wishes to update their e-mail address or job title, these changes can be made by in the "Profile" window on the My TRI welcome page, or contacting the CDX Helpdesk by phone (888-890-1995) or e-mail (helpdesk@epacdx.net).

Form R; NOTE; Signature

761. A facility received a Notice of Technical Error (NOTE) stating that they did not have an original signature on the Form R submitted to EPA. How should the facility respond to this NOTE?

EPA must have an original signature on file. A facility must resubmit a completed Form R with an original signature, and this new form should be attached to the NOTE and returned to EPA and to the facility's state contact.

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Form R; Form R Submissions

762. Can a facility submit one original copy of Part I (facility Identification Information) with several copies of Part II (Chemical Specification Information) for different listed toxic chemicals?

No. Submission of multiple copies of Part II, with only one copy of Part I, would be considered noncompliance. The final rule clearly requires that each completed submission contains all parts of the Form R (including Part II).

Electronic Data; Facility; Process; Signature

763. Each certifying official must sign and submit an Electronic Signature Agreement (ESA) in order to certify TRI forms in TRI-MEweb. What is the process for completing the ESA?

An Electronic Signature Agreement (ESA) form is a statement that declares that the registrant understands that any electronic signature executed with the electronic signature device is as legally binding as a handwritten signature and is required by EPA before any certifying official can certify and submit a TRI form created in TRI-MEweb.

New certifying officials: An ESA form is needed for certifying officials that have been newly designated for a TRI reporting facility. ESAs are created upon the certifying official creating a new CDX user account, adding the TRI-MEweb application, and applying for a certifying official role. There are two options available to obtain an ESA approval from EPA.

Option 1 – LexisNexis real-time ESA approval: EPA now provides an alternative method for certifying officials to process ESAs in real-time using a third-party identity verification vendor named LexisNexis. This real-time approval is possible because personal identifying information including last 4 digits of SSN is provided voluntarily by the certifying official to a third-party vendor (EPA does not collect any personal information from our users) to authenticate their identity. Third party verification and identification widgets are commonly used in the banking system. The most significant benefit from the LexisNexis method is that users will no longer need to wait up to 5 business days for an ESA approval by EPA. This alternate ESA approval method is optional. If the certifying official does not wish to provide personal information to a third-party vendor; they should submit a paper ESA form instead well in advance ahead of the July 1 deadline.

Option 2 – Paper ESA form: A printable ESA form can be generated during the CDX user account registration process. The ESA form must be signed and mailed to EPA's Data Processing Center for approval before the certifying official can begin to certify any TRI forms transmitted by the preparer to CDX using TRI-MEweb. The "TRI-MEweb" link on the My CDX page will remain inactive until EPA processes the paper form ESA at the DPC. Hardcopy ESA approval may take up to five business days, so

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please plan accordingly or consider the option one, LexisNexis. The "TRI-MEweb" link on the MyCDX page is activated and updated when the paper ESA is approved.

Please send hard copy ESA forms through regular mail to:
U.S. Environmental Protection Agency
Attention: TRI Reporting Center
P.O. Box 10163
Fairfax, VA 22038

ESAs sent by certified mail or overnight mail (e.g., FedEx, UPS) should be sent to:
Attention: TRI-MEweb ESA
CGI Federal, Inc.
c/o EPA Reporting Center
12601 Fair Lakes Circle
Fairfax, VA 22033

TRIFID Signature Agreement(s) required for all certifying officials (preexisting and new): All certifying officials will also need to electronically sign a TRIFID Signature Agreement before obtaining access to any pending submissions to each TRIFID that has been added to the TRI-MEweb application. The TRIFID Signature Agreement form identifies the TRIFIDS that the certifying official will be responsible for when digitally signing TRI forms under the terms of the CDX ESA.

An ESA is needed if your preparer accidentally deletes the certifying official user profile with a previously approved ESA from TRI-MEweb after the 45-day reactivation period has expired.

An ESA is not needed if your certifying official submitted a signed ESA and EPA approved it in a previous year. He/she may continue to certify forms in following reporting years for the same facilities registered in their CDX certification module.

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Certification Statement; Form R; Senior Management Official

764. May a representative from a consulting firm that prepares a Form R or Form A for a covered facility sign the certification in lieu of the covered facility's owner/operator?

No. A representative from a consulting firm preparing a Form R or a Form A for a covered facility cannot sign the certification in Part I, Section 3 of either the Form R or the Form A. The certification must be signed by the owner/operator, or a senior management official employed by the facility subject to EPCRA section 313 toxic chemical release inventory reporting. Senior management official means an official with management responsibility for the person or persons completing the report, or with management responsibility for the manager of environmental programs for the facility or establishments, or with management responsibility for the corporation owning or operating the facility or establishments responsible for certifying similar reports under the other environmental regulatory requirements (40 CFR Section 372.3).

Certification; Form R; Signature

765. Can a plant manager of a covered facility or a designee sign the certification statement on the Form R? That is, can a plant manager qualify as a senior management official?

Section 313 requires that a senior official with management authority over the person or persons filling out the form certify the accuracy and completeness of the form. This person could be a plant or facility manager rather than a senior corporate executive and should be the senior person in a position to attest to the accuracy of the information provided.

Electronic Data; Facility; Reporting Requirements

766. Certifying officials with an approved CDX ESA must complete a TRI Facility Identification number (TRIFID) Signature Agreement for each facility for which they will certify TRI forms in TRI-MEweb. If the company name changes, does the certifying official have to update the TRIFID Signature Agreement?

A TRIFID Signature Agreement authorizes a certifying official to represent a facility that is submitting TRI data to EPA under a specific TRIFID. Therefore, certifying officials with an approved ESA would only need to submit a new TRIFID Signature Agreement if they are going to certify TRI forms for an additional facility. A change in company name, mailing address, phone number, job title, or e-mail address would not require an update to the TRIFID Signature Agreement, if the facility's TRIFID remains the same and has not changed its physical location.

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Establishment; Facility; Multi-Establishment; Process; Processing; Releases; Storage; Waste; Waste Management Activities

767. May multiple certifying officials certify and submit forms for individual forms and/or establishments?

A unique certifying official can certify pending forms for each form and/or establishment. In addition, the same certifying official may submit pending forms for all of the forms and/or establishments.

After a preparer has completed a reporting form, the preparer identifies a certifying official. The preparer should select the appropriate certifying official for the form from a list of certifying officials associated with the facility. If the appropriate certifying official is not listed, TRI-MEweb will allow the preparer to add a certifying official.

Facility; Form A; Form R; Process

768. How does the new certification module work in TRI-MEweb?

EPA has developed a new certification component within the TRI-MEweb application that will allow a facility to prepare any reporting year TRI Form R or Form A Certification Statement and transition directly into the certification process without leaving the TRI-MEweb application.

New RY 2012 TRI-ME-web users: There are two user roles involved in the reporting process to EPA of your TRI data; a preparer role and a certifying official role. Both of these TRI roles require creating/having a Central Data Exchange (CDX) user account and adding the TRI-MEweb application to their MyCDX profile. All new certifying officials will need to apply for an Electronic Signature Agreement (ESA) before they are allowed to certify any pending TRI forms. There are now two options to obtain an ESA. A single link will take both roles to open the TRI-MEweb application to a landing page to begin managing their facility accounts.

All existing certifying officials: In prior reporting years, the certifying officials had to certify TRI forms in a separate module in their MyCDX account. The new certification module is now available within the TRI-MEweb application. This will require all our existing certifying officials to add their TRIFID(s) for their facilities into the application. All pre-approved certifying officials will be prompt upon logging into CDX and opening for the first time the TRI-MEweb application in the RY 2012 reporting season to proceed to the “Manage TRIFIDs” section under the “Certify” tab. All TRIFID(s) assigned in prior years should already be listed. The certifying official may add any missing TRIFIDs that will transmit TRI forms (without needing to process a new ESA for each) with only digitally signing a verification statement. If any TRI forms have been previously sent, they will appear under the “Pending Submission” subtab.

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Certification; Form R; Senior Management Official

769. If a covered facility has a manager who is the originator of the data in the Form R report, would he/she sign the form or would it be the facility manager to whom this manager reports?

Senior management official means 'an official with management responsibility for the person or persons completing the report, or the manager of environmental programs for the facility or establishments, or for the corporation owning or operating the facility or establishments responsible for certifying similar reports under other environmental regulatory requirements' (40 CFR Section 372.3). Your facility must make the determination regarding who meets this definition.

Activity Threshold; Applicability; Facility; Form A; Form R; Process; Processing

770. If a facility previously submitted a TRI reporting form but no longer meets the applicability criteria (e.g., the facility closed and did not exceed activity thresholds), how does the facility notify EPA that the facility is no longer subject to TRI?

The facility can use TRI-MEweb to indicate that your facility will no longer be reporting to TRI, or will not be submitting a form for one or more specific TRI-listed chemicals for the current reporting year. The facility can submit this information without filing a TRI form or certifying this information. In TRI-MEweb's "Facilities Management" page, the "Not Reporting?" option can indicate if the facility will not be submitting one or more TRI reporting forms for the current reporting year.

Alternatively, facilities may submit an e-mail to the TRI Data Processing Center (DPC). The e-mail should include the facility name; TRI facility identification number (TRIFID); facility address; technical contact name and telephone number; and, the reason why the facility is not submitting a TRI reporting form (e.g., failed to trigger a reporting threshold) or is no longer subject to TRI (e.g., facility closed, process modifications, production changes, product elimination or substitution). If the facility closed, the e-mail should also specify the date of closure.

Contact information for the TRI DPC is available here: https://www.epa.gov/toxics-release-inventory-tri-program/forms/tri-program-contacts.

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Form R; Latitude/Longitude

771. Our facility operations cover a large area. What longitude should be reported for our facility and how can we locate this information?

Report the latitude and longitude for a location central to the operations for which you are reporting. You may find this information on your NPDES permit. See the instructions for completing Form R for a detailed description on how to determine latitude and longitude from United States Geological Survey (USGS) maps of your facility location.

Facility; Import; Mixture

772. How do I import data from the previous year into my current year TRI forms? Is this function done automatically?

TRI-MEweb allows users to import data from the previous year into their current reporting year forms in TRI-MEweb. However, this function is not automatically performed by the application. When creating a new form, a preparer can select the "Import Data" option to pre-populate the prior year's reported data into the current year forms. The preparer must select the individual chemical name(s) to import and report to EPA for the current year form.

Note that there are some limitations to the data that will be imported from the prior reporting year. Any "Not Applicable" checkboxes will not be checked on any section of the form. Section 8.8 of the Form R (catastrophic quantities) and the Schedule 1 (dioxin and dioxin-like compounds) will not be imported. Data pertaining to numeric basis estimates or rounding values will also not be imported.

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Facility; Form A; Form R; Process; Processing

773. How can I update information about my facility (e.g., new facility name or new technical contact) for TRI purposes?

Facility information, including name and contact information, must reflect the facility on December 31st of that reporting year. If information for the facility has changed, the preparer will need to update the information in TRI-MEweb. Navigate to the "Facilities Management" page in TRI-MEweb to choose the "Not Reporting?" option for the facility and update the facility's information.

Preparers can also edit facility names while preparing a Form R or Form A Certification Statement, in the "Edit Facility" page.

Alternatively, facilities may submit an e-mail to the TRI Data Processing Center. The e-mail should include: the facility name; TRI facility identification number (TRIFID); facility address; technical contact name and telephone number; and, the reason for the change (if necessary). Contact information for the TRI DPC is available at the following website: https://www.epa.gov/toxics-release-inventory-tri-program/forms/tri-program-contacts.

Facility; Facility Name Change; Form R; Parent Company-Parent Company Name

774. The owner/operator of a covered facility is preparing Form Rs for a facility. The facility and its parent company both changed their names after the reporting year. What names should be reported by the owner/operator (for both the facility and the parent company) on the Form Rs covering the reporting year?

The facility should report the names used by the facility and parent company during that reporting year. When the owner/operator submits Form Rs for the next reporting year, these reports should reflect the names used by the facility and parent company during the new reporting year. (Note: the TRI Facility identification number will not change.)

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Facility; Facility Owner; Form A; Form R; NAICS; Process

775. How are Toxics Release Inventory Facility Identification Numbers (TRIFID) established?

A TRIFID is established when a facility owner or operator first submits a TRI Form R or Form A for a particular location. The facility retains this identification number even if the facility changes ownership, name, production processes, or NAICS codes. A facility owner or operator that needs to inquire whether the facility's location has been assigned a TRIFID in past reporting years should contact the CDX Help Desk at (888) 890-1995 or the Regional TRI Coordinator, or search for the TRIFID or location on the Envirofacts Web site at: https://www3.epa.gov/enviro/. A facility owner or operator filing a first-time submission should request a TRIFID within TRI-MEweb, and a new TRIFID will be assigned automatically. To request a TRIFID, open TRI-MEweb, select the "My Facilities" tab, and click on the "Access/Add Facility" button. From this page, select the "I will be transmitting reports for a facility that has not previously transmitted TRI data" option, click "Next" and follow the instructions. Print the TRI-MEweb page that displays your new TRIFID and access key for future reporting.

Change of Ownership; Form R; TRI Facility Identification Number

776. The owner/operator of Poultry Products submits a Form R for the first time and receives a TRI identification number. The following year Poultry Products is bought by Allen Family Foods and reports the new name on its Form R. Is the TRI identification number changed to reflect the change in facility name?

No, the TRI identification number is established by the first Form R submitted by the facility. This identification number is retained by the facility even if the facility changes ownership and name. This identification number will stay with this facility as long as the facility location does not change. The TRI identification number remains the same even if the facility changes names, production processes, NAICS codes, etc.

Change of Ownership; Form R; TRI Facility Identification Number

777. A portion of a covered facility is sold in July to a new owner. For reporting on the Form R for that reporting year, what TRI facility identification numbers should be used by the reporting facilities (40 CFR Section 372)?

For purposes of reporting on the Form R, the portion of the facility that was not sold during the year would maintain the TRI identification number originally assigned to the facility. The facility under new ownership would, however, indicate in Part I, Section 4.1 that the report is a first time submission by the facility. Once the reports have been submitted by the new facility, a new identification number will be assigned to the facility for use in subsequent years.

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Form R; Mailing Address; Part I Section 4.1

778. A facility regulated under EPCRA section 313 uses a post office box number or a mailing address different from its physical address to receive its mail. When the physical location is listed as the mailing address, the mail is returned to the sender by the post office. For reporting on the Form R Part I, Section 4.1, what should the facility list as its mailing address?

Since reporting year 1991, Form R contains a separate field for mailing addresses. The facility should enter its mailing address in this field if it is different from the facility's physical address. The facility must always enter its physical address in the appropriate Section of the Form R. EPA encourages facilities to notify EPA of address changes in advance.

Form R; NPDES Permit; Part I Section 4.9

779. If a covered facility has a NPDES permit, but does not discharge toxic chemicals to surface water, does the facility have to fill in Part I, Section 4.9?

Yes. This information is part of the facility identification section of the Form R and is intended for use in obtaining other information about the facility.

Form R; Part I Section 4.4; Public Contact

780. Can the 'public contact' listed on Part I, Section 4.4 be located elsewhere in the parent organization and not at the facility?

Yes. The public contact listed on Part I, Section 4.4 does not have to be located at the covered facility.

Form R; Part I Section 4.4; Public Contact; Technical Contact

781. If the public contact item (Part I, Section 4.4) is left blank, can the facility later use a public contact to speak to the news media on behalf of the technical contact?

If a public contact is not identified, EPA will enter the technical contact into the database as a public contact. Thus, this person would receive public inquiries. You may, of course, use any person you choose to respond to such inquiries.

Form R; Technical Contact

782. Regarding the technical contact, can this person be a different person for (a) each toxic chemical? (b) each separate part of a facility?

Yes. A facility can identify different technical contacts for different toxic chemicals or different establishments within the facility, preferably with one 'technical contact' listed on each form. Up to two names can be entered into the technical contact field on the database, but only one technical contact phone number can be listed.

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Facility; Form R; Mining

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

The facility should report the latitude and longitude for a location central to the operations for which you are reporting. For a large facility, with several major points of activity, the facility should choose a location equidistant from all of the major activity points to determine the latitude and longitude.

Facility; Form A; Form R; Reporting Requirements

784. Section 4.6 of Part I of the TRI Form R and Form A asks for the facility's Dun & Bradstreet number. What is a Dun & Bradstreet number? How can someone completing the Form R or Form A find the Dun & Bradstreet number for the facility?

A Dun & Bradstreet number, commonly referred to as a DUNS number, is a nine-digit, location-specific, business code assigned by Dun & Bradstreet. The DUNS number is a unique number that financially identifies individual businesses, while linking them with their corporate family structures. The Dun & Bradstreet number may be available from the facility's treasurer or financial officer. Facilities can also contact Dun & Bradstreet directly at 800-234-3867 or https://www.dnb.com to obtain a facility's number, or to create a new number if the facility does not currently have a number. Please note for Reporting Years 1991-2004, Section 4.6 of Part I requested a facility's latitude and longitude. During this time, the DUNS number was located in Section 4.7 of Part I of the Forms.

Photocopying; Reporting Requirements

785. A covered facility handles the same amount of chemicals each year, with the same emissions quantities. Is it allowable to simply change the date on the previous year's Form R, photocopy it, and send the altered document in, if no information but the date has changed?

EPA allows facilities to photocopy certain portions of a prior year's reporting form. However, EPA requires original signatures on each year's report. Prior year reports can and should be used as a basis or gauge for current year reporting, but should not be used as a substitute for current year reporting.

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Facility; Form R; Threshold Determination; Waste

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

No. If a federal facility uses an EPCRA section 313 chemical in a manner that meets the criteria for a reporting exemption, that amount of the EPCRA section 313 chemical is exempt from threshold determinations and release and other waste management calculations. If a Form R report is required because of other, non-exempt uses, exempted quantities should not be included in calculations for Part II, section 4.1.

Form R; Maximum Amount On-Site; Part II Section 4; Threshold Determination

787. For Part II, Section 4 of the Form R, a covered facility must calculate the maximum amount of a toxic chemical on-site at any one time during the reporting year. The facility must add up the amounts of the toxic chemical present at all locations within the entire facility (e.g., storage tanks, process vessels, on-site shipping containers). Must the facility include the amount of the toxic chemical in a waste stream or in scrap metal prior to being smelted when determining the maximum amount on-site?

Yes. When determining the maximum amount on-site for Part II, Section 4 of the Form R, the facility must aggregate all nonexempt quantities of the toxic chemical. Toxic chemicals present in waste as well as in scrap metal are not exempt from reporting on the Form R and thus must be included when calculating the maximum amount on-site for Part II, Section 4.

Form R; Maximum Amount On-Site; Previous On-Site Disposal

788. How do covered facilities that operate landfills report maximum amount of a chemical on-site? Does this data element take into account amounts of a chemical that have been disposed of in prior years?

To comply with EPCRA's maximum amount on-site requirement, facilities should report in data element 4.1, Part II, of the Form R, the maximum quantity of the toxic chemical present at the facility during the reporting year. Facilities should include amounts of the chemical in storage tanks, process vessels, on-site shipping containers, and any other amount of the chemical at the facility. However, facilities do not have to count amounts of the toxic chemical that it disposed of in on-site landfills in previous years.

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Form R; Maximum Amount On-Site; Part II Section 4; Threshold Determination

789. Part II, Section 4 of the Form R records the maximum amount of a toxic chemical on-site at any time during the reporting year. When determining this amount, covered facilities must aggregate all nonexempt quantities of the toxic chemical. Does this amount include concentrations of the toxic chemical present in products?

Yes. Covered facilities must indicate the maximum amount of the toxic chemical on-site at any one time during the reporting year. The maximum amount on-site includes raw materials, in-process materials, product inventory, and quantities present in wastes. Owners or operators must total all quantities of the nonexempt amounts of the toxic chemical present at the facility when completing Part II, Section 4.1 of the Form R.

Form R; Maximum Amount On-Site; Part II Section 4

790. How should facilities estimate the maximum quantity on-site for hydrochloric acid (aerosol), manufactured as a by-product of the combustion process and vented directly to a stack?

When determining the maximum amount on-site for Part II, Section 4 of the Form R, only the reportable form of a chemical (e.g., aerosol) is to be considered. The quantity of the hydrochloric acid (aerosol) could be estimated by determining the volume of the air stream that could contain hydrochloric acid (aerosol), as well as the concentration of the acid in the air stream. In this case, the volume would be the interior volume of the equipment from where it is manufactured (e.g., boiler) to where it is released (e.g., stack). Keep in mind that the range codes used for the maximum quantity on-site are quite broad, and therefore, a precise calculation may not always be required. Facilities are also directed to refer to the Guidance for Reporting Sulfuric Acid (EPA-745-R-97-007; November 1997).

Form R; Fume or Dust; Maximum Amount On-Site; Part II Section 4; Threshold Determination

791. The list of toxic chemicals under EPCRA section 313 contains two substances with a "fume or dust" qualifier (aluminum and zinc). For purposes of reporting the maximum amount on-site (Part II, Section 4 of the Form R), should covered facilities only report the maximum amount of fume or dust on-site or the maximum amount of all forms of the chemical on-site at any one time?

When determining the maximum amount on-site for Part II, Section 4 of the Form R, only the reportable form of a chemical (e.g., fume or dust) is to be considered.

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Ammonia; Ammonium Salts; Facility; Form R; Mining; Toxic Chemical List

792. Ammonia is included on the TRI toxic chemical list with the qualifier "includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing." For the purposes of reporting the maximum amount of the TRI chemical on-site at any time during the calendar year (Part II, Section 4 of the Form R), should the facility follow the 10% qualifier rule and report only 10% of the total aqueous ammonia on-site?

When determining the maximum amount on-site for Part II, Section 4 of the Form R, the facility only has to consider the reportable form of a chemical. Therefore, for aqueous ammonia, the facility should report 10% of the maximum amount of total aqueous ammonia on-site at any time during the calendar year. In addition, the facility must report 100% of the maximum amount of anhydrous ammonia in this section.

Form R; Maximum Amount On-Site; Multi-Establishment; Part II Section 4; Threshold Determination

793. In Part II, Section 4.1 of the Form R, covered facilities must enter a range code indicating the maximum quantity of a toxic chemical on-site at any time during the reporting year. If a facility is reporting by establishment, should the quantity reported in Section 4.1 represent the maximum quantity at the establishment or the maximum quantity for the entire facility?

If a Form R is being submitted for 'part of a facility' (i.e., an establishment or group of establishments), the range code selected for the maximum amount of a toxic chemical on-site should be reflective of the establishment or group of establishments, and not of the entire facility.

Data Quality; Facility; Process; Recordkeeping; States

794. What are the recordkeeping requirements for TRI facilities?

Standard recordkeeping practices are essential for accurate and efficient TRI reporting. It is in the facility's interest, as well as EPAs, to maintain records properly. Facilities must keep a copy of each report filed for at least three years from the date of submission. Facilities must also maintain documents, calculations, worksheets, and other information that they used to prepare prior reports. If there appears to be a problem with a facility's report, EPA may ask the facility to submit its supporting documentation.

EPA may conduct data quality reviews of facilities TRI submissions. An essential component of this process involves reviewing a facility's records for accuracy and completeness. EPA recommends that facilities also keep records for those EPCRA section 313 chemicals for which they did not file EPCRA section 313 reports.

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Recordkeeping; Reporting Requirements

795. What are the EPCRA section 313 recordkeeping requirements for facilities that do not exceed thresholds?

If a facility does not exceed an activity threshold for any listed toxic chemical, or is not in a covered NAICS code, or does not have ten or more full time employees, it is not required under EPCRA section 313 to maintain any records associated with its uses, releases, or other waste management activities involving listed toxic chemicals. Such facilities, however, may want to keep records of the amounts of listed toxic chemicals they manufacture, process, or otherwise use in order to defend against any claim that they failed to report.

Audit Provisions; Form R

796. Are specific audit provisions in the regulations? What about resolving differences of opinion, (i.e., does the auditor have final judgment)?

Specific audit provisions are not in the EPCRA section 313 regulations. The Agency, however, has the responsibility to assure that the data submitted are based on reasonable estimates. Audit results will be used to identify problems with calculating releases and other waste management quantities. In resolving differences of opinion, we expect that a final judgment will be made by the Agency. Also note that EPA has finalized a self-audit policy (December 12, 1995; 60 FR 66706) for facilities who choose to conduct their own audits.

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Electronic Data; Recordkeeping

797. A covered RCRA Subtitle C hazardous waste facility uses data from hard copies of manifests, waste profiles, purchasing orders, inventory orders, etc. to determine thresholds and calculate releases and other waste management activities. The covered facility transfers all of the data from the paper sources into its computer system, and then discards the hard copies. The facility keeps the computerized data for three years from the date of submission of its Form R. Can electronic data be used (in conjunction with other data) to satisfy the recordkeeping requirements at 40 CFR Section 372.10, or must the facility maintain copies of the original documentation?

Insofar as 40 CFR Section 372.10 is concerned, some electronic data that has been scanned may be used to satisfy recordkeeping requirements. Facilities should employ adequate safeguards to prevent changes to the data after the data have been scanned and the documents stored electronically should capture all of the information required by 40 CFR Section 372.10. For example, this section of the regulations states, in part, that 'Each person subject to the reporting requirements . . . must retain the following records for a period of 3 years from the date of the submission of a report . . .[3][vi] receipts or manifests associated with the transfer of each toxic chemical in waste to off-site locations.' While the scanning and electronic storage of the entire receipt or manifest would satisfy the recordkeeping requirements of 40 CFR Section 372.10, the data entry of portions of the receipts or manifests into spreadsheets or databases might result in the loss, or erroneous entry, of pertinent information that is required by 40 CFR Section 372.10.

Enforcement; Form R

798. The enforcement requirements of EPCRA (Section 325), state that the civil and administrative penalties for Section 313 noncompliance shall not exceed $25,000 for each violation. Is a noncompliance violation determined on a per facility or per toxic chemical basis? Also, is that penalty assessed on a per day basis?

Section 325(c)(i) states: 'any person who violates any requirements of Section 313 shall be liable to the United States for a civil penalty in an account not to exceed $25,000 for each such violation,' for each day a violation continues. Therefore, the facility can be assessed a penalty for each Form R not submitted or submitted incorrectly, and the penalty can be assessed on a per day basis. EPA accesses penalties on a per toxic chemical per facility basis which may include per day penalties, depending on the circumstances of the violation. An Enforcement Response Policy (ERP) is available for EPCRA section 313 and it describes the types of violations and associated penalties (current version). Also note that the Department of Treasury recently increased the fines from $25,000 to $27,500 for violations occurring after January 30, 1997; (December 31, 1996; 61 FR 69360).

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Data Quality; Electronic Data; Facility

799. When validating TRI chemical forms in TRI-MEweb, users might receive critical errors, possible errors, or data quality alerts (DQAs). What are the differences among critical errors, possible errors, and DQAs?

Critical errors, possible errors, and DQAs are all intended to show any errors that may exist on TRI forms. Preparers should carefully review all errors and DQAs prior to submitting any forms to EPA.

Critical errors show information on a current year form that is incorrect or incomplete. Users must correct any forms that have a validation status of "Failed with Critical Errors" before they are allowed to submit the forms to EPA and their state.

Possible errors are intended to highlight a potential problem on a current year form. Users should review and correct possible errors, if applicable. If users review the errors and determine that they are not applicable, they may proceed to submit the form. Users may submit forms to EPA with a possible error.

DQAs inform facilities of possible reporting issues. DQAs are offered to assist facilities in ensuring accurate and consistent reporting by comparing the data that facilities report on current year forms to data they have reported on prior year forms. Users should review their chemical quantity data to ensure accuracy, but as with possible errors, users may submit forms to EPA with a data quality alert.

A Validation report in PDF format is available to Certifying Officials under the Pending Submission page to verify whether to proceed to submit the form to EPA.

For Reporting Year 2005 through the present reporting year, after any TRI form has been properly certified and data has been processed by EPA, an electronic Facility Data Profile (eFDP) report is generated in TRI-MEweb. The eFDP will provide a complete assessment of the form in the chemical error summary section.

Please note that validation (i.e., critical errors, possible errors, and data quality alerts) will not be triggered in TRI-MEweb for Reporting Years 1991 - 2004, as forms prepared for those older years do not undergo the validation process in TRI-MEweb.

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Form R Revisions; Withdrawal

800. If a covered facility finds that it has submitted the forms with minor errors (e.g., boxes incorrectly checked, NA in the wrong place, all pages were not sent for each toxic chemical even if the pages should be blank), should the forms be resubmitted or should the facility wait for EPA to send error notices requesting revisions?

As soon as the errors are discovered, the facility should resubmit the form to the same address (i.e., the EPCRA Reporting Center). The box that says 'Enter 'X' here if this is a revision' (in the upper right-hand corner of Page 1) should be checked. The data elements that are different from the initial report should be made and circled in dark ink. The original, incorrect elements should be crossed out.

Form R; Negative Declaration; Reporting Requirements

801. If a facility is not required to report under EPCRA section 313, is there any form that is available to report that EPCRA section 313 does not pertain to this facility?

There is no negative declaration form available to facilities not covered by EPCRA section 313.

Form R; Form R Submissions

802. How can a facility be assured that the Agency has received a submitted form?

To be notified of receipt of submissions, facilities should send forms using the U.S. Postal Service 'Return Receipt Request' mail service. The Agency will not respond to cover letters requesting acknowledgment.

Facility; Process; Processing

803. How do I use TRI-MEweb to view my electronic receipt?

Preparers and certifying officials who submitted non-trade secret TRI forms can view their e-receipts by navigating to the "Submission History" tab in the TRI-MEweb application. In "Submission History," users can view the chemical forms that were included in each submission and choose "Form Receipt" to view a specific e-receipt.

Information Access

804. A facility would like to receive information on who requested their Section 313 Form R's. Can they request this information from the EPCRA Reporting Center?

No. The request for the names cannot be made to the EPCRA Reporting Center. EPA purposely does not keep a record of individuals or organizations that make requests to the EPCRA Reporting Center. This protects the anonymity of the requestor.

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Withdrawal

805. Has EPA allowed facilities to withdraw Form Rs submitted under EPCRA section 313?

Yes. EPA has permitted facilities that have filed a Form R under EPCRA section 313 to request that EPA withdraw the Form R data from EPA's database (i.e., the Toxics Release Inventory System (TRIS)) and from the public version of the database.

Facility; Form A; Form R; Withdrawal

806. How do I withdraw my data using TRI-MEweb?

Facilities that filed a TRI Form R or Form A Certification Statement may submit their requests to EPA to withdraw the data from EPA's database (i.e., the Toxics Release Inventory Processing System (TRIPS)) and public versions of the database (e.g., Envirofacts and TRI Explorer) for a form that was previously submitted. If EPA withdraws the submission, the chemical release record will be permanently deleted from the public databases and cannot be restored afterwards.

Some specific types of form revisions require a withdrawal of the facility's submission. For example, if a facility wishes to change the chemical name and CAS number of a previously certified report, they must first withdraw the submission that has the incorrect chemical name and then prepare a new report with the correct chemical name and CAS number associated with it. For only this type of revision, a withdrawal and subsequent revision of a chemical name and CAS number on a TRI form will result in the loss of the original submission date.

In order to have a submission deleted from the TRI database, facilities must use TRI-MEweb to submit their withdrawal request to EPA and the appropriate state/tribal agency. To submit a TRI form withdrawal request, enter the "Form Submitted" section to select the form you would like to be withdrawn. You can also provide optional information for what prompted the withdrawal. All withdrawal requests need to be certified by the certifying official.

TRI-MEweb will notify you that the form has been sent to CDX for processing. After a request for withdrawal has been submitted, an e-mail will be sent to both the certifying official and the preparer with instructions for certifying the pending submission.

Additional information on how to withdraw TRI submissions, including a list of withdrawal codes, is provided in the Reporting Forms and Instructions. A tutorial on withdrawing submitted forms ("Form Review, Revise, or Withdraw") is available at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

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Form A; Form R; Withdrawal

807. What is the procedure for requesting a withdrawal of a Form R or Form A submission?

In order to have a submission deleted from the TRI database, facilities must use TRI-MEweb to submit their withdrawal request to EPA and the appropriate state/tribal agency. To submit a TRI form withdrawal request, enter the "Form Submitted" section to select the form you would like to be withdrawn. You can also provide optional information for what prompted the withdrawal. All withdrawal requests need to be certified by the certifying official.

Additional information on how to withdraw TRI submissions, including a list of withdrawal codes, is provided in the Reporting Forms and Instructions. A tutorial on withdrawing submitted forms ("Form Review, Revise, or Withdraw") is available at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

Withdrawal

808. What is the effect of a withdrawal?

If EPA approves the request, the data contained in the Form R, that is the subject of the request, is deleted from EPA's database and from the public database when it is updated the next time. However, the Form R submission itself, the withdrawal request, and EPA's approval are retained in a miscellaneous document file.

EPA Review; Withdrawal

809. What information does EPA consider when reviewing requests to withdraw a Form R?

When EPA reviews a request to withdraw a Form R submitted under EPCRA section 313, the only information that the Agency considers, is the information contained in the withdrawal request and/or the Form R that was submitted.

EPA Contact; Withdrawal

810. To approve a withdrawal request, has EPA ever contacted the submitter of the withdrawal request?

In a few cases, EPA has contacted the submitter of the withdrawal request to clarify certain aspects of the information submitted on the Form R or on the request for withdrawal of the Form R.

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Validity; Withdrawal

811. In approving a withdrawal request, does EPA verify the validity of a request to withdraw a Form R through inspections or audits?

No. For purposes of approving a withdrawal request, EPA has never attempted to verify the validity of a request for withdrawal by inspecting the facility or auditing the information filed with the Form R or withdrawal request. Therefore, when EPA approves a withdrawal request EPA is merely granting the request on the basis of the representations and information provided by the submitter in its request and, in some cases, on its Form R.

EPA Approval; Withdrawal

812. Is EPA's approval of a request to withdraw a Form R a determination by the Agency that the submitter was not required to report under EPCRA section 313?

No. EPA's approval of a withdrawal request does not communicate an Agency determination that the submitter was not required to file the Form R that is the subject of the withdrawal request. EPA's approval merely grants the request. An inspector would need to visit the facility and review the facility's records for EPA to determine that a Form R, in fact, did not need to be filed. However, as noted above, for purposes of approving a withdrawal request, EPA has never attempted to verify the validity of a withdrawal request through inspections or audits.

Electronic Data; States; Withdrawal

813. If a facility submits a request to withdraw a previously submitted TRI form using TRI-MEweb, is the withdrawal request automatically sent to the state or tribe?

A request for a withdrawal submitted in TRI-MEweb is automatically submitted to the state/tribe if the facility's state/tribe is participating in the TRI Data Exchange (TDX). A user in a non-TDX state or tribe must prepare a separate request for withdrawal, and TRI-MEweb can help the user create the request form to the state/tribe. A current list of states and tribes participating in TDX is available here: https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-exchange.

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Withdrawal; Withdrawal-Withdrawal Requirements

814. A covered facility mistakenly determined a toxic chemical to be otherwise used, rather than processed, at their facility. As a result, the facility reported the listed toxic chemical on the Form R with 15,000 pounds used during the previous reporting year. Since they will not be reporting this toxic chemical for the next reporting year, is there any need to withdraw the previous year's reporting forms to prevent an enforcement contact by EPA?

The facility is not required to withdraw the report. A facility may request to withdraw a form submitted unnecessarily (i.e., a legitimate case of over reporting). Since the facility over-reported as a result of a threshold determination error, it should thoroughly document the mistake in its recordkeeping for that Form R. No documentation, in addition to the withdrawal request, need be sent to the state or EPA at this time.

Inappropriate; Withdrawal

815. A covered facility submitted a Form R for isopropyl alcohol, CAS number 67-63-0, but does not manufacture the toxic chemical by the strong acid process. How should the facility notify EPA about the correction?

The facility should submit a withdrawal request through TRI-MEweb. EPA will take action on the request based on the information provided by the facility. If EPA approves the withdrawal request, the data will be removed from the EPA database, TRIS. The facility will be notified whether the request is approved or not. The request should also be copied and sent to the state/Indian Country for their information.

Form A; Form R; Form R Revisions

816. What is the procedure for voluntarily revising previously submitted Forms R or Form A reports?

Voluntary revisions (as opposed to revisions required to correct errors that prohibit further Form R/Form A processing) must be submitted to the EPCRA Reporting Center and the appropriate state agency. EPA requires covered facilities to submit all revisions using TRI-MEweb, even if the original submission was on hard copy. Standard revisions (i.e., revising a Form R with another Form R, or revising a Form A with another Form A) may be completed may be completed through TRI-MEweb. See the mini-tutorials webpage for more information on revising submitted TRI forms: https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

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Form R Revisions; Receipt of New Information

817. A covered treatment, storage, and disposal (TSD) facility receives a corrected waste profile in September for a type of waste that the facility has been receiving since January 1. The corrected waste profile indicates that a listed toxic chemical is in the waste stream at a higher concentration than was indicated on previous waste profiles. Must the TSD facility revise its threshold determinations and release and other waste management calculations back to the beginning of the reporting year or only from the date (September) that the corrected information was received?

The facility must revise its threshold determinations and release and other waste management calculations back to the beginning of the year, if the facility receives information that they believe is more accurate in depicting amounts of toxic chemicals that they manage. Covered facilities are required to use their best readily available information as provided by EPCRA section 313(g)(2). If facilities obtain information that they believe is better than the information that they applied for previous report submissions, the facility may submit a revision for prior periods provided that they document the basis for the revision.

Form A; Form R; Withdrawal

818. What is the procedure for replacing a Form A with a Form R and vice versa?

A Form R submitted after a Form A for the same chemical and reporting year is considered to be a late submission of a Form R and a request for a withdrawal of the previously filed Form A. A Form A submitted to replace a previously filed Form R is treated as both a withdrawal request and a replacement for the original Form R, and is subject to EPA review and approval. See the TRI-MEweb mini-tutorials webpage for more information on withdrawing submitted TRI forms: https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials.

Effective Date; Form A

819. If my facility meets the Form A criteria on reporting years prior to 1995, may I withdraw my Form Rs and submit Form As instead?

No. Facilities may use the Form A beginning with the 1995 reporting year. Facilities may not use this form for prior years.

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Facility; Form A; Form R; Revisions

820. How do I revise my data using TRI-MEweb?

For step-by-step instructions on how to revise forms in TRI-MEweb, please view the "Form Review, Revise, Withdraw" tutorial on TRI's website at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-meweb-mini-tutorials. EPA no longer accepts hard copy revisions of TRI Form R and Form A Certification Statements. Any revisions of TRI reporting forms should also be submitted to the state, tribe, or territory that received the initial TRI report.

Facility; Form A; Form R

821. For EPCRA section 313 TRI reporting, if a covered facility determines that it erroneously submitted a Form A in a given reporting year, can the facility change the Form A to a Form R by submitting a revision?

A TRI-covered facility that submitted a Form A for a given reporting year but later determines that it should have submitted a Form R must withdraw its Form A and submit a Form R for that reporting year as soon as possible. In this case, the withdrawal of the Form A and subsequent submission of a Form R will result in the loss of the original submission date of the Form A. If the Form R is submitted after the deadline for the applicable reporting year, then the Form R is considered a late submission.

Additionally, the facility may wish to consult the Environmental Protection Agency's (EPA) Audit Policy, a policy offering incentives to promote self-disclosure and expeditious correction of violations, to see whether it is applicable to the facility's situation. Information on the Audit Policy and EPA Audit Policy Contacts is accessible at: https://www.epa.gov/compliance/epas-audit-policy. The TRI Regional Coordinator for your facility should also be able to assist you should you have any questions on TRI reporting or the Audit Policy.

Form R; Form R Revisions

822. By what date must withdrawals and revisions be completed?

There is no deadline for withdrawals and revisions. However, voluntary revisions and withdrawal requests must be submitted by October 15th of the same year as the reporting deadline in order for the revised or withdrawn data to be reflected in the corresponding TRI public data release.

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Electronic Data; Form R; Recordkeeping

823. How do I check the status of my Form R submissions in TRI-MEweb? How do I perform other activities, such as canceling a submission not yet certified or printing forms for recordkeeping, for previously submitted forms in TRI-MEweb?

To verify the status of a submission in TRI-MEweb, navigate to the "Submission History" tab. The "Submission Summary" page will display only the forms which have been certified and submitted to EPA. Select "View Reports" to access your Copy of Record of your Form R or Form A Certification Statement.

Facility; Manufacture; NAICS; Otherwise Use; Process

824. Can a facility that does not meet the threshold criteria voluntarily submit a TRI report?

EPA allows for voluntary reporting under EPCRA section 313 if a facility does not meet all three threshold criteria but would still like to submit a TRI report. TRI-MEweb will allow a facility to submit a TRI form even if it does not meet the thresholds as the application does not require information from the preparer on the threshold calculations for the facility.

Notification Date; Supplier Notification

825. By what exact date must supplier notification be done?

A supplier must notify each customer of any toxic chemical present in a mixture or trade name product with at least the first shipment of the mixture or trade name product in each reporting year (40 CFR Section 372.45(c)(1)).

De minimis Exemption; Supplier Notification

826. Is a facility subject to supplier notification requirements if it distributes products containing more than the *de minimis* level of a listed metal compound?

Yes. If you are in a NAICS code corresponding to SIC codes 20 through 39 and you distribute these products to other facilities in TRI-covered NAICS codes, you are subject to the supplier notification requirements. Articles and consumer products are exempt from supplier notification. However, if the supplier has knowledge that articles are distributed to customers whose use will negate the article exemption, he/she should provide notification of toxic chemicals present in the articles.

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Article Exemption; Releases; Supplier Notification

827. A covered facility uses plastic containing di-(2-ethylhexyl) phthalate (DEHP) to wrap its products. The plastic is cut by a hot wire, a process during which minute quantities of DEHP are released. Is the plastic exempt from reporting and from supplier notification because it can be considered an article?

The plastic wrap containing DEHP is not exempt as an article because quantities of DEHP are released during the cutting process. If a facility releases 0.5 pounds or less of DEHP during the reporting year from all like items, this amount can be rounded to zero and therefore would be exempt. If the facility can reasonably document that none of its customers are likely to release more than 0.5 pounds, no supplier notification is required.

De minimis Exemption; Supplier Notification

828. Does a supplier have to tell a customer that a toxic chemical is present below the *de minimis* level (1.0 percent; or 0.1 percent for OSHA carcinogens)?

No. This information is not required (40 CFR Section 372.45(d)(1)).

Supplier Notification

829. Do supplier notification requirements apply only to a situation where the customer is in NAICS codes corresponding to SIC codes 20 through 39 and has more than 10 employees?

A company in a NAICS code that corresponds to SIC codes 20 through 39 is responsible for providing supplier notification to all facilities in covered NAICS codes, and to customers who, in turn, may sell or distribute to facilities in a covered NAICS code. Such a customer may be a wholesale distributor who is not in a covered NAICS code but sells to other facilities in a covered NAICS code. Facilities in a covered NAICS code but not in one corresponding to SIC codes 20 through 39, however, are not required to initiate supplier notification (40 CFR Section 372.45(a)).

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Supplier Notification

830. The requirements for supplier notification for mixtures or trade name products containing listed toxic chemicals are found in 40 CFR Section 372.45. The requirements specify in Section 372.45(a) that supplier notification is required for persons who meet the following criteria:

1) Is in a NAICS code corresponding to SIC codes 20 through 39;

2) Manufactures (including imports) or processes a toxic chemical; and

3) Sells or otherwise distributes a mixture or trade name product containing the toxic chemical.

When the second criterion says a toxic chemical, does this refer to the toxic chemical being distributed or to any toxic chemical which is manufactured or processed at the facility? For example, a person processes benzene at their facility and also distributes a mixture containing xylene which they buy from another facility. The xylene is simply redistributed, not processed, by the facility. Is a supplier notification required for the mixture which contains xylene because the facility processed benzene?

When the second criterion says a toxic chemical, it is referring to the toxic chemical in the mixture that is being distributed from the facility. Therefore, a facility owner/operator would not be responsible for preparing a supplier notification for a mixture that contains a toxic chemical that he/she did not manufacture or process. The requirement for developing a supplier notification for a mixture is ultimately the responsibility of the facility which processed or manufactured the toxic chemical in the mixture. The facility that is redistributing the toxic chemical is not repackaging it and thus is not processing it.

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Chemical Conversion; Mixture; Supplier Notification

831. Are some mixtures of toxic chemicals exempted from the supplier notification requirements? A mixture as defined in EPCRA section 313 does not include a combination of toxic chemicals produced as the result of a chemical reaction (40 CFR Section 372.3).

Mixtures are not exempt from supplier notification unless the amount of the toxic chemical in the mixture is below *de minimis* levels. A mixture is defined as a combination of two or more chemicals if the chemicals are not part of a waste stream and they were not combined as a result of a chemical reaction. However, if this combination was formed by a chemical reaction but could have been formed without one, it is also considered a mixture. Any other combination formed by a chemical reaction is not considered a mixture. If a toxic chemical is present in a mixture at a concentration below the *de minimis* level, this quantity of the substance is exempt from Section 313 supplier notification requirements.

Mixture; Supplier Notification

832. Is supplier notification required for mixtures of water and a listed acid if the facility distributes the mixture under the name of the acid? Note that EPA interprets mixture to exclude, for example, a water and phosphoric acid mixture distributed as phosphoric acid.

Supplier notification would be required for mixtures of water and an acid as with any other mixture, regardless of the name it is distributed under if the concentration of the Section 313 chemical in the mixture is greater than the *de minimis* level (40 CFR Section 372.45).

Supplier Notification

833. 40 CFR Section 372.45(b)(l) states that to fulfill the supplier notification requirement the notification shall include 'a statement that the mixture or trade name product contains a toxic chemical or toxic chemicals subject to the reporting requirements of Section 313...' Does a facility have to include the word 'toxic' in its notifications?

The word 'toxic' does not have to appear in the statement to fulfill the requirement of 40 CFR Section 372.45(b)(1). However, the statement should clearly state that the toxic chemical is subject to EPCRA section 313.

Sales Samples; Supplier Notification

834. Are sales samples covered for purposes of supplier notification?

Sales samples are covered unless they meet one of the stated exemptions in 40 CFR Section 372.45(d) of the regulation, such as articles or products distributed to the general public.

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Consumer Product Exemption; Supplier Notification

835. A company that makes conveyors for bottling facilities also sells small cans of spray paint to them for use in touch-ups of the paint on the conveyors. The paint is not distributed to or used by the general public. Is the company exempt from supplier notification under the consumer product exemption because the paint is packaged and used like a consumer item?

No. The exemption does not apply because the paint is not packaged for distribution to the general public (40 CFR Section 372.45(d)(2)(iii)).

Consumer Product Exemption; Supplier Notification

836. A facility manufactures 16-ounce boxes of a detergent that contains a Section 313 toxic chemical. The facility primarily distributes its detergent to consumers, however, it distributes to some covered facilities also used by industry. The Consumer Product Safety Act defines the detergent as a consumer product. The manufacturer distributes the 16-ounce boxes of detergent to three facilities within a covered NAICS code. Each facility uses the detergent in a different way. The first facility exclusively uses the detergent to supply the company lunchroom for the employees to wash their dishes. The second facility uses the detergent in industrial size washers to clean metal articles. The third facility uses the detergent to clean and degrease their distillation towers. To which of these facilities would the manufacturer be required to provide supplier notification?

The manufacturer would not be required to include supplier notification with the shipment of the 16-ounce boxes of detergent sent to any of these facilities.

For the product to be exempt from supplier notification under 40 CFR Section 372.45(d)(2)(iii), it must be packaged for distribution to the general public. This detergent is being distributed to covered facilities in the same form that it is packaged for distribution to the general public (i.e., the 16-ounce box). Therefore, no supplier notification is required. If the same detergent was sold to manufacturing facilities in drums or other 'industrial quantity' packages, then supplier notification would be required, regardless of the end use at the facility.

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Distributors; Supplier Notification

837. Is supplier notification required for distributors in NAICS codes corresponding to SIC codes other than 20 through 39 which do not manufacture or process listed toxic chemicals or mixtures containing toxic chemicals?

Distributors outside the NAICS codes covered under 40 CFR Section 372.45 who do not manufacture or process toxic chemicals are not required to prepare notices that the mixture or trade name products which they distribute contain a toxic chemical. They should, however, pass along such notices prepared by their supplier to any facility in a covered NAICS code who purchases a mixture or trade name product containing a toxic chemical.

Distributors; Supplier Notification

838. If a distributor does not receive supplier notification from his/her supplier, will he/she be in violation for not sending the supplier notification with his/her first shipments to other covered facilities or facilities who will in turn send the shipments to covered facilities?

No, if the secondary supplier does not receive the information, he/she cannot develop a notice (see 40 CFR Section 372.45(g)).

Negative Declaration; SDS; Supplier Notification

839. A manufacturer lists toxic chemicals on Section II of the SDS under hazardous ingredients. It is possible that none of the chemicals listed are subject to Section 313 reporting. Is the supplier required to state that none of the chemicals are subject to 313 reporting, removing the need for customers to audit Section II?

A manufacturer is required, and a supplier should include, the Section 313 statement in their SDS if one or more of the chemicals in the mixture or trade name product are listed Section 313 toxic chemicals (40 CFR Section 372.45(c)(5)). The facility is not required to make a 'negative declaration' that none of the components in the mixture are subject to Section 313. A manufacturer or supplier may, however, provide this statement on his/her own initiative.

Manufacture; Mixture; Otherwise Use; Process; Supplier Notification

840. Why is supplier notification not required for isopropyl alcohol (CAS 67-63-0) and saccharin (CAS 81-07-2)?

Supplier notification is not required because isopropyl alcohol and saccharin have a manufacturing qualifier. Facilities that only process or otherwise use either of these TRI chemicals are not required to file TRI reports (40 CFR Section 372.65). Therefore, manufacturers of these chemicals do not need to notify their customers that these are reportable TRI chemicals.

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Distributors; Supplier Notification

841. To what extent is a facility covered under 40 CFR Section 372.45 required to determine if the facility receiving a shipment distributes the toxic chemical to a manufacturer?

The facility should use the best readily available information. The manufacturer of the mixture must send the supplier notification to the middle man distributor if he/she has a reasonable basis to conclude that the distributor provides the product to covered facilities. Such a conclusion could be based on the nature of the product and its intended market.

Reasonable Estimates; Supplier Notification

842. What burden must the covered facility undertake to verify the accuracy/completeness of information provided to it under the requirements of supplier notification?

A facility must use the best readily available information in making threshold determinations and release and other waste management calculations. If the facility has an indication that information provided by the supplier is unreasonable, they should look to other sources of information that they believe are more representative of any listed toxic chemicals and their concentrations contained in mixtures or trade name products received from their suppliers. Facilities must document assumptions and calculations used in making threshold determinations and release and other waste management calculations.

Distributors; Supplier Notification

843. Is supplier notification required for products produced by a facility and then distributed directly to a manufacturing facility or through a distributor to another manufacturer?

Yes, supplier notification is required in both instances. The intent is to provide a notification that will be passed on by the non-covered distributor. That distributor may be transshipping, re-labeling or even repackaging, but because they are not in the covered NAICS codes, they are not required to develop and distribute such notice. They are encouraged to pass the notice through to their customers.

Intra-Company Transfer; Supplier Notification

844. Do transfers of products or materials from one of our company's facilities to another facility require supplier notification?

Yes. The language of the regulations covers material that it 'sells or otherwise distributes.' In this sense, the 'otherwise distributes' language would apply to intra-company transfers. However, if the company has developed an internal communications procedure that alerts their other facilities to the presence and content of toxic chemicals in their products, then the Agency would accept this as satisfying the supplier notification requirement.

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Supplier Notification

845. A company distributes toxic chemicals through satellite facilities. SDSs are distributed from a central facility. The SDSs arrive either prior to or after the shipment of the toxic chemical. Is it acceptable for the supplier notification to be attached to the SDS and for current distribution operations to remain the same? If not, must the supplier notification be sent in the same package as the chemical?

No. The requirement states that the notice must accompany at least the first shipment during the year to a customer. If the SDS does not accompany that shipment, then the supplier notification must still be sent in the package. The SDS, however, also must incorporate or have attached to it the supplier notification information.

Repackaging-Supplier Notification; Supplier Notification

846. A covered facility repackages and distributes some toxic chemicals manufactured by other companies. Is the facility responsible only for passing on the manufacturer's information to its customers or is it required to provide supplier notification?

The repackaging facility must provide supplier notification to its customers only if it is in a NAICS code corresponding to SIC codes 20 through 39. If the only information the facility knows is from the SDS, all it can do is provide this same information to its customers. If the facility knows the product contents or concentrations are different from what appears on the supplier's notice, the facility must provide the more accurate information to its customers. EPA suggests, but does not require, that the repackager inform the supplier of the inaccuracy in their SDS.

If the facility is not in a NAICS code corresponding to SIC codes 20 through 39, but instead is a covered facility in a newly added industry beginning in 1998, it would not be required to initiate supplier notification. It should, however, pass along such notices prepared by their supplier to any facility in a covered NAICS code who purchases a mixture or trade name product containing a toxic chemical

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Generic Name; Part II Section 1; Supplier Notification; Trade Name

847. SDSs for the solvents we use give trade names or generic names only. Do we have to contact the manufacturer for more information to report under Part II of the Form R?

If a trade name or generic name is provided and if the presence of a Section 313 toxic chemical is known, then that can be reported in Part II, Section 2 of the Form R. Suppliers are required to provide the identity of the listed toxic chemical (CAS number and toxic chemical name) and concentration in mixtures. The manufacturer may claim the information trade secret, but must provide a name that is descriptive of the toxic chemical, provide at least an upper bound concentration in the mixture, and indicate that the mixture contains a toxic chemical (40 CFR Section 372.45(e))

CAS Number; Supplier Notification

848. I own a small chemical company that supplies some Section 313 toxic chemicals to customers. My customers are requesting SDS information and want the CAS number for every toxic chemical in my mixtures. I thought I only had to supply that information for the listed toxic chemicals.

If you wish, you may provide them with the CAS numbers for all of the toxic chemicals in your mixtures, but under Section 313 you are only required to provide information on the listed toxic chemicals (i.e., those toxic chemicals and chemical categories subject to reporting under Section 313).

SDS; Supplier Notification

849. Is a company required to contact suppliers if an SDS does not contain complete or consistent language and/or information?

No. The company must use the best readily available information, but the EPCRA regulations do not require them to contact the supplier. If, however, the company does voluntarily contact the supplier and the supplier provides more detailed information, then that becomes the best readily available information and the facility must use it.

SDS; Supplier Notification

850. A covered facility produces industrial non-consumer products and includes supplier notification information on the product label. Is this sufficient? Must the SDS be distributed as the primary vehicle of notification?

Inclusion of Section 313 supplier notification information on the product label will satisfy the notification requirements. However, the regulations state that if the products are required to have an SDS then the supplier notification must be included with the SDS for those non-consumer products. The SDS, however, does not have to be distributed as the primary vehicle of notification.

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SDS; Supplier Notification

851. The supplier notification provision requires that the notice be attached to the SDS for the first shipment, if an SDS is required. What options would a facility have to give this notice if no SDS were required under OSHA for the shipment?

The facility may use a number of other mechanisms such as a letter, a label, or a written notice within whatever shipping papers accompany the shipment.

SDS; Supplier Notification

852. EPCRA section 313 supplier notifications must be attached to the SDS and must not be detached. However, SDSs must be submitted only one time unless changes are made, while the supplier notification must be submitted annually. How should this inconsistency be handled?

The supplier notification is to be part of the SDS if the product is required to have an SDS. If an SDS is not required for the product, the notice must be in writing. Thus, in subsequent years, the supplier should submit the notification in writing.

SDS; Supplier Notification

853. Would an annual notification by letter to customers satisfy the supplier notification provisions under 40 CFR Part 372, Subpart C?

Once customers have been supplied with the SDS containing the Section 313 information, then it would be acceptable for a facility to refer to the SDS by letter in subsequent years, provided the customer has the most current version of the SDS. The letter must accompany the first shipment of the mixture or trade name product for the year. Also, the supplier notification regulations require that a new notification be provided when the presence or composition of a listed toxic chemical in the product changes (40 CFR Section 372.45(c)).

Pesticides; Supplier Notification

854. Is supplier notification required for pesticide products packaged for distribution to the general public?

If the pesticides products are distributed for use by the general public, supplier notification is not required (40 CFR Section 372.45(d)(2)(iii)).

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Chemical Categories; Mixture; Supplier Notification

855. If a mixture contains a listed toxic chemical compound that is a member of a reportable Section 313 toxic chemical category, how should that be addressed on the supplier notification? Is it acceptable to provide the percent of the parent metal?

If a mixture contains a toxic chemical compound (e.g., 12 percent zinc oxide) that is a member of a reportable chemical category (e.g., zinc compounds), the supplier is required to notify his/her customers that the mixture contains a zinc compound at 12 percent by weight. Supplying only the weight percent of the parent metal (zinc) does not fulfill the requirement, but may be provided to aid receiving facilities in estimating releases and other waste management. The customer must be told the weight percent of the entire compound for threshold determinations.

Pure Chemical; Supplier Notification; Trade Name

856. Do the supplier notification requirements under 40 CFR Section 372.45 require notification for a shipment of a pure (i.e., 100 percent) toxic chemical that has not been assigned a trade name?

A manufacturer is not required to provide supplier notification for a pure toxic chemical (i.e., a product labeled with the listed Section 313 chemical or identified by CAS number). The identity of the toxic chemical will be known based on label information and CAS numbers as long as a trade name is not used. Supplier notification applies to mixtures and trade name products (40 CFR Section 372.45(a)).

Concentration; Pure Chemical; Supplier Notification

857. Supplier notification is required for mixtures and trade name products containing listed toxic chemicals. The notification is not required for toxic chemicals labeled as pure. If a facility covered by the supplier notification requirements receives a substance which is labeled as a toxic chemical but no concentration is given, are they required to notify the recipient when selling or otherwise distributing the substance?

No. Supplier notification is not required for pure substances labeled as the toxic chemical (see 40 CFR Section 372.45(a)). If a substance is labeled as a toxic chemical and no concentration is given, then the processor (supplier) and the recipient of the toxic chemical should consider it to have a concentration of 100 percent.

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Concentration; Supplier Notification

858. When a manufacturer considers the actual weight percent concentration of a toxic chemical in a mixture to be a trade secret, the Section 313 final rule states that an upper bound concentration can be used, but can be no larger than necessary to adequately protect the trade secret. Does that mean that a lower bound (i.e., not less than 5 percent) or a range (5-10 percent) is not acceptable in a supplier notification?

A lower bound is not acceptable. A range that includes the upper bound concentration is acceptable (40 CFR Section 372.45(f)). An upper bound was chosen so the user would not underestimate the quantity for purposes of threshold and release determinations and other waste management calculations.

Import; Supplier Notification

859. How will the supplier notification work for imported products? Do exporters from Japan have to comply?

No. Foreign suppliers are not required to comply with supplier notification. However, under the Toxic Substance Control Act (TSCA), an importer must certify that the chemicals in the imported mixture, as well as pure substances, meet the TSCA requirements. Therefore, the importer should have requested content and composition data on imported mixtures.

Supplier Notification; Waste

860. A covered facility sends empty drums containing toxic chemicals residue to a drum recycler (within a covered NAICS code). Must the facility provide supplier notification?

No. The supplier notification requirement only applies to mixtures and trade name products that are supplied or distributed. The only toxic chemicals being transferred are in the form of waste, and notification does not apply to wastes (40 CFR Section 372.45(a)).

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Multi-Establishment; Supplier Notification

861. A multi-establishment facility is not covered (i.e., does not meet the NAICS code criterion) but one of the establishments within the facility is within a covered NAICS code. Does the language 'facility or establishment' in the supplier notification part of the EPCRA section 313 regulations subject this one establishment to the supplier notification provisions?

No. EPA has determined as a matter of policy that the phrase 'or establishment' does not extend coverage of the supplier notification provisions beyond that of a facility as defined by 40 CFR Section 372.22(b)(3) of the regulations. Therefore, in the case of a multi-establishment facility not subject to the regulations, an establishment in a covered NAICS code within that facility would not be required to provide Section 313 supplier notification. However, the Agency encourages such an establishment to comply voluntarily so that its customers will have the information necessary to make proper compliance determinations under the Section 313 rules. The 'or establishment' language provides an option similar to that available to establishments that submit reports as a part of a covered facility. For example, if only one establishment in a covered facility is actually distributing a product containing a toxic chemical then that establishment may assume the supplier notification responsibility for that facility.

Manufacture; Supplier Notification

862. Is a facility owner/operator responsible for preparing EPCRA section 313 supplier notification information for a mixture or trade name product which contains a listed toxic chemical that they did not manufacture?

The owner/operator may be responsible. The requirement for developing supplier notification for a mixture or trade name product containing a listed toxic chemical is the responsibility of the facility in a NAICS code corresponding to SIC codes 20 through 39 that manufactures or processes a Section 313 toxic chemical and sells or otherwise distributes a mixture or trade name product containing that toxic chemical.

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Activity Threshold; Supplier Notification

863. A manufacturing facility otherwise uses nitric acid to clean reaction vessels. The same facility also buys nitric acid solution (bought as 'Trade Name X') and resells it to other customers (no repackaging or relabeling of the solution takes place). Is the owner/operator of the manufacturing facility in a NAICS code corresponding to SIC codes 20 through 39 required to develop supplier notification for the nitric acid it sells under 40 CFR Section 372.45?

No. A manufacturing facility in a NAICS code corresponding to SIC codes 20 through 39 is required to prepare and distribute supplier notification if it '...manufactures (including imports) or processes a toxic chemical...' and ... 'sells or otherwise distributes a mixture or trade name product containing the toxic chemical...' to a facility that is required to file Form Rs or to a person who may sell or otherwise distribute such mixture or trade name product to a covered facility (40 CFR Section 372.45(a)(2) and (3)). In the above example, the manufacturing facility does not manufacture, import, or process nitric acid (it only otherwise uses nitric acid) and so it is not required to develop supplier notification for the nitric acid it sells. However, if a supplier notification is provided with Trade Name X nitric acid solution, the manufacturing facility is encouraged to pass this information along to its customers. (Note: if a supplier notification is incorporated in or attached to the SDS received by the manufacturing facility with the Trade Name X nitric acid solution it buys, '...any copying and redistribution of the SDS shall include copying and redistribution of the notice attached to copies of the SDS subsequently redistributed.' (40 CFR Section 372.45(c)(5))

Article Exemption; Supplier Notification

864. A chemical manufacturing facility distributes an item to its customers. Some of the customers use the item in such a way that allows them to claim the article exemption (40 CFR Section 372.38(b)). However, some of the customers use the supplied item in such a way that negates the article exemption. When should the manufacturer provide a supplier notification for the items it distributes since it is not required to provide such a notification for articles (40 CFR Section 372.45(d)(1)(i)), and may not know the end result of the distributed items?

If the manufacturer knows that normal processing or otherwise use of the item by recipients would not negate its article status, no notification is necessary. If, however, the manufacturer believes the recipient may use an item in such a way that negates its article status, the manufacturer must provide a notification to that recipient.

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Applicability; Article Exemption; Electroplating; Supplier Notification

865. A company manufactures metal parts which it sends to an electroplating job shop to be plated, and which are then returned. Is this manufacturing company considered to be a 'supplier' and thus subject to supplier notification?

No, if the metal parts can be considered articles. In that case, the manufacturing company is not considered to be a supplier to the electroplater and does not need to meet the requirements for supplier notification.

Article Exemption; Supplier Notification

866. A facility manufactures paper products. Is the facility subject to the supplier notification provision of Section 313?

A paper product can generally be considered an article. Supplier notification would be required only if the release of a toxic chemical occurred upon further processing or otherwise use by a covered manufacturing facility of those products. This release would negate the article status of the product.

Janitorial Products; Paint; Supplier Notification

867. Are manufacturers shipping 'maintenance products' such as paint or janitorial products exempt from supplier notification since they are exempt from threshold determinations by the receiving facility?

No. These manufacturers are still required to provide the supplier notification.

Consumer Product Exemption; Supplier Notification

868. Company A packages a listed chemical as a root destroyer and sells it to Company B, who then sells it directly to the public. (Company B does not use the product commercially and is not in a covered NAICS code.) Is this considered a consumer product and thus considered to be exempt from supplier notification provisions?

Yes, the product is exempt from supplier notification because it is being packaged for sale to the public (40 CFR Section 372.45(d)(2)(iii)). Even if the product were being used commercially by Company B, no supplier notification would be required because Company B is not in the covered NAICS codes.

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Corporate Headquarters; Supplier Notification

869. A manufacturing facility is required to provide a Section 313 supplier notification for a mixture. One of the facilities receiving the supplier notification has requested that its notification go to that facility's corporate headquarters, and the headquarters has guaranteed that they will deliver the notification to the facility. By sending the notification to the corporate headquarters, is the manufacturing facility fulfilling its supplier notification requirement even though the manufacturing facility is not directly giving the notification to the facility to which it supplies the chemical?

As long as the corporate headquarters can guarantee that the receiving facility will obtain the notification by the first shipment in the reporting year, the manufacturing facility is fulfilling its supplier notification requirement by sending the notification to the corporate headquarters as requested.

Chemical Compounds; De minimis Exemption; Supplier Notification

870. A manufacturing facility distributes a mixture containing three different manganese compounds. Each manganese compound, taken separately, would be below the *de minimis* level for Section 313 reporting. However, if the three manganese compounds are added together, the *de minimis* level is exceeded. Is this facility required to fulfill the supplier notification requirement (40 CFR Section 372.45) for this mixture?

The compounds are included in the manganese compound category. Therefore, the facility must add together the weight percent of all manganese compounds when making *de minimis* and threshold determinations. Since the percent of manganese compounds exceeds the *de minimis* level, the facility would have to fulfill the supplier notification requirements for this mixture.

Concentration; Supplier Notification

871. A facility in a NAICS code corresponding to SIC codes 20 through 39 distributes a product containing nitric acid, a listed toxic chemical, to other covered facilities and therefore is required to provide these other covered facilities with supplier notification. The concentration of nitric acid in the product varies from batch to batch. The facility knows the concentration of nitric acid in each batch. Can this facility give a range of concentrations for the nitric acid in this product in order to fulfill its supplier notification requirement?

No. Every time a concentration of a toxic chemical in a mixture changes, the supplier must provide an updated notification with the new concentration. Therefore, this facility cannot provide a concentration range value in order to fulfill the notification requirement. Instead, the facility must provide a new notification with each product that has a different concentration of the toxic chemical.

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Concentration; Supplier Notification

872. Is there any margin of error allowed in the weight percent listed in a supplier notification (i.e., ± 0.5 percent)?

The Agency does not specify any margin of error or degree of precision in the percentage figures for the notice.

Supplier Notification; Trade Secret

873. A facility is required to provide the supplier notification (40 CFR Section 372.45) for some of its products that contain toxic chemical(s). The products contain antimony compounds, a listed toxic chemical category. However, the facility considers the chemical names of the antimony compounds in their products a trade secret. Does this facility have to give the exact chemical names of these antimony compounds in order to fulfill the supplier notification requirement?

No. This facility's antimony compounds are not specifically listed in the Section 313 toxic chemicals list. However, they do fall into the antimony compounds category. Since the name of the toxic chemical is not listed, the facility does not need to provide the chemical name to fulfill the supplier notification requirement. This facility needs to identify that the products contain an antimony compound subject to Section 313, the concentration of the compound in the mixture, and the stoichiometric amount of antimony in the compound.

Supplier Notification; Trade Secret

874. Regarding supplier notification, when a facility decides that it will consider a toxic chemical component of a product as a trade secret, is it required to fill out and submit a substantiation form under provisions of Section 322?

No. The trade secret conditions in the supplier notification provisions of the regulations apply to state law, not to EPCRA Section 322 (40 CFR Section 372.45(f)). Facilities are, however, required to keep a record of the reasons for considering specific chemical identity or composition a trade secret.

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Deleted Chemicals; Supplier Notification

875. The regulations at 40 CFR Section 372.45(c)(1) state that 'the person shall provide the written notice described in paragraph (b) of this Section to each recipient of the mixture or trade name product with at least the first shipment of each mixture or trade name product to each recipient in each reporting year beginning January 1, 1989.' Is the supplier required to notify customers if a Section 313 toxic chemical that is present in the mixture is later delisted by EPA, since the chemical is no longer a Section 313 toxic chemical?

As stated in 40 CFR Section 372.45(c)(l), the supplier is only required to notify recipients if the mixture or trade name product contains a listed toxic chemical. The supplier is not responsible for providing modified notice as an immediate result of the Agency's delisting activity. If the mixture contains other Section 313 toxic chemicals, then the supplier would simply delete the delisted chemical from the next year's notification.

Effective Date; New Chemicals; Supplier Notification

876. When must I begin providing a supplier notification (40 CFR Section 372.45) for a newly added chemical?

For a chemical added on or after January 1 and before December 1 of any reporting year, supplier notifications are to be provided with the first shipment of the chemical in the following reporting year and every year thereafter. For example, a chemical added on April l, 1998, requires a notification beginning with the first shipment of the chemical in the 1999 reporting year.

For a chemical added on or after December 1 of any reporting year and before January l of the next reporting year, supplier notifications are to be provided with the first shipment of the chemical in the year following the next reporting year and every year thereafter. For example, a chemical added on December 10, 1998, requires a notification beginning with the first shipment of the chemical in the 2000 reporting year.

SDS; Supplier Notification

877. Could a manufacturer do a mass mailing of notifications to all customers at one time in the beginning of the year instead of sending an individual supplier notification with each shipment?

Yes. Note that the regulations require that supplier notification be made to each customer by 'at least the first shipment' (40 CFR Section 372.45(c)(2)), so the timing of the mass mailing is important. Also, the notification must be included with the SDS if one is required for the product. The supplier also must be cautious of formulation changes that could occur between the mass mailing and the actual first shipment.

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Chemical Identity; Trade Secret

878. How can the identity of a listed toxic chemical be protected from disclosure for trade secrecy purposes?

Section 313 allows only the specific identity of a toxic chemical to be claimed as a trade secret. The rest of the Form R must be completed. This information is accessible to the public, including information on releases and other waste management of the toxic chemical. For trade secrecy claims, two versions of the Form R (one identifying the toxic chemical, the other containing only a generic chemical identity) and two versions of a trade secret substantiation form (July 28, 1988; 53 FR 28772) must be completed and sent to EPA.

Confidentiality Agreement Public Disclosure; Trade Secret

879. For claiming trade secrets under EPCRA section 313, would disclosure, without a confidentially agreement to the state and/or city having jurisdiction, negate a toxic chemical identity's trade secret status under federal provisions?

In general, disclosure of information claimed as trade secret to a federal, state or local government officer or employee, or to the reporter's own employee, would not negate the claim of trade secrecy. However, disclosure of a toxic chemical identity to any other person without a confidentiality agreement would negate the toxic chemical identity's trade secret status under federal provisions. Where a trade secret claim is made, state governors are permitted to request that EPA provide access to all materials relating to this claim. The decision to provide information to any state employee is left to the governor's discretion

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Confidentiality Agreement Foreign Government; Public Disclosure; Trade Secret

880. A company with both domestic and foreign operations wishes to claim on a Form R that the identity of a toxic chemical that it processes is a trade secret. The company has entered into confidentiality agreements with all non-government entities that have knowledge of the identity and/or usage of the toxic chemical. These confidentiality agreements prevent the non-government entities from disclosing information about the chemical's identity or usage. The company, however, has not entered into a confidentiality agreement with one of the foreign governments where it operates because the government is required by its laws to keep information regarding foreign business interests confidential. If the company discloses the identity of the chemical to this foreign government, is it required to report this disclosure on a Trade Secret Substantiation Form?

Yes. Because the company has not entered into a tangible confidentiality agreement with the foreign government, it must report the disclosure on the Trade Secret Substantiation Form. In other words, it should check 'yes' when answering question 3.2 on the form. However, because the foreign government's laws guarantee confidentiality of the TRI chemical's identity and usage, regardless of the existence of a confidentiality agreement, the identity of the chemical is protected. The company should explain this when answering question 3.1 on the form.

Activity Threshold; Applicability; Facility; Mining

881. Are there any reference tools that can help a facility determine if it is subject to TRI reporting?

EPA has developed the TRI Threshold Screening Tool to assist facilities in making applicability determinations. The Threshold Screening Tool uses a step-by-step questionnaire to assist facilities in determining whether they meet or exceed established facility, employee, and activity thresholds, and thus, whether they are required to submit a TRI report.

As a reference tool, the TRI Threshold Screening Tool is only intended to help facilities determine whether they are required to report TRI data. It does not conclusively determine whether a facility is legally obligated to report TRI data, nor does it conclusively indicate whether an exemption might apply to the facility. Information entered into the TRI Threshold Screening Tool will not be pre-populated into forms that may be required for submission via TRI-MEweb. For this reason, it is suggested that users print out the Threshold Screening Report on the Summary Threshold Screening page in the tool for reference when completing their TRI forms.
The Threshold Screening Tool is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/tri-threshold-screening-tool.

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Facility; Reporting Requirements; Threshold Determination

882. Does EPA offer any training for TRI reporting compliance?

EPA has created several trainings that owners or operators of facilities can utilize to gain a basic understanding of TRI applicability and reporting requirements. The basic concepts course will assist an owner or operator in determining whether the facility is covered by EPCRA section 313, and, if it is, for which chemicals the facility must submit a TRI report. The advanced concepts course covers complex issues related to threshold determinations, TRI reporting, and exemptions; reporting for PBTs; and information on chemicals with special TRI reporting considerations (e.g., hydrochloric and sulfuric acid aerosols, ammonia, or metal compounds). These training resources are available as online modules, PowerPoint slides, or PDF slides. Training materials and additional information are available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/reporting-tri-facilities.

Owners and operators may also contact their respective state, tribe, or EPA regional TRI contact to determine whether there are additional local training resources. State, tribal, and regional contacts are available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/forms/tri-program-contacts.

Mixture; Reporting Requirements

883. Who can I contact if I have questions on TRI regulations, reporting requirements, or guidance?

Users may request assistance from the TRI Information Call Center to request assistance to report mixtures or chemicals with trade secret data, completing TRI forms, or other general information about TRI reporting thresholds and requirements. These regulatory and reporting issues can be resolved if you can contact the TRI Information Call Center (800) 424-9346 - Toll Free. Normal operating hours are 10 am to 5 pm EST Monday through Friday.

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Communities; Disposal; Electronic Data; Releases; States; Tribes; Waste; Waste Management Activities

884. What are the benefits of TRI data?

TRI provides the public with unprecedented access to information about toxic chemical releases and other waste management activities on a local, state, regional, and national level. TRI data help the public, government officials, and industry in the following ways: - to identify potential concerns and gain a better understanding of potential risks; - to identify priorities and opportunities to work with industry and government to reduce toxic chemical disposal or other releases and potential risks associated with them; and - to establish reduction targets and measure progress toward those targets. TRI data are widely used across EPA programs. For example, the National Partnership for Environmental Priorities, an element of the Resource Conservation Challenge (RCC), uses TRI data to identify facilities that may present pollution prevention opportunities. EPA also uses TRI data in the Risk Screening Environmental Indicator (RSEI) tool, which provides users with additional understanding of chronic human health issues and potential exposures associated with TRI chemicals. Other EPA programs and tools that utilize TRI data may be searched by visiting EPA's Web site at https://www.epa.gov or from EPA's publication, "How are the Toxics Release Inventory Data Used?" at: https://www.epa.gov/toxics-release-inventory-tri-program/how-are-toxics-release-inventory-data-used.

Disposal; Releases; Waste

885. What are the limitations of the TRI data?

Users of TRI data should be aware that TRI data reflect disposal or other releases and other waste management of chemicals, not whether (or to what degree) the public has been exposed to them. Both the toxicity of a chemical and exposure considerations should be taken into account when using the data. - TRI chemicals vary widely in toxicity and in their capacity to produce toxic effects. Some high-volume releases of less toxic chemicals may appear to be more serious than lower-volume releases of highly toxic chemicals, when just the opposite may be true. - The potential for exposure may be greater the longer the chemical remains unchanged in the environment. Sunlight, heat, or microorganisms may or may not decompose the chemical. Smaller releases of a persistent, highly toxic chemical may create a more serious problem than larger releases of a chemical that is rapidly converted to a less toxic form. For more detailed information on this subject refer to "Factors to Consider When Using TRI Data".

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Data Quality

886. How does EPA ensure that TRI data are accurate?

The Toxics Release Inventory (TRI) Program conducts a number of activities every year to ensure the high quality of TRI data reported to EPA. These activities include providing extensive reporting guidance, intelligent reporting software, and training to facilities prior to the reporting deadline, as well as conducting data validation checks and analyses after the data are received. For more information on the TRI Program's Data Quality Program, go to https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-quality.

Communities; Electronic Data; Releases; Waste; Waste Management Activities

887. What is TRI Explorer?

The TRI Explorer is a database tool that provides access to the Toxics Release Inventory (TRI) to help communities identify facilities and chemical releases or other waste management activities that warrant further study and analysis. Combined with hazard and exposure information, the TRI Explorer can be a valuable tool for identifying potential chemical hazards in communities.

Communities; Electronic Data; Facility; Waste

888. What is Envirofacts?

Envirofacts provides an easy point of Internet access to select U.S. EPA environmental data. This Web site provides access to several EPA databases that contain information about environmental activities that may affect air, water, and land anywhere in the United States. With Envirofacts, users can learn more about these environmental activities in their area or generate maps of environmental information.

Information in Envirofacts is accessible in a variety of ways from the TRI homepage. We suggest that users unfamiliar with Envirofacts begin with Quick Start. This feature allows the user to retrieve a sampling of information pertaining to an area by entering a specific zip code, city and state, or county and state. If users want more in-depth information about a particular subject area, they may select from a list of available topics, which includes waste, water, toxics, air, radiation, land, other, and by facility. Experienced users, however, may be interested in the Advanced Capabilities option. This option allows users to go directly to the Queries, Maps, or Reports feature that interests them.

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Communities; Electronic Data; Facility; Form R; Releases; States

889. Why would I use TRI Explorer and/or Envirofacts?

TRI Explorer allows users to create custom data searches of TRI data. These searches can then be exported to a Microsoft Excel spreadsheet. Users can find TRI data for their zip code, county, and state. National-level data are also easily queried through TRI Explorer.
With Envirofacts, users can determine which facilities in designated areas have reported releases of TRI chemicals, including air emissions, surface water discharges, releases to land, underground injections, and transfers to off-site locations. Envirofacts allows the user to query and view all fields for each TRI Form R submitted by a facility.

Facility; Form A; Process; Releases

890. What has the TRI program done to reduce the TRI reporting burden?

Over the years, EPA has been mindful of the reporting burden that the TRI Program imposes on covered facilities and has sought to reduce that burden through modifications to the reporting forms. In 1994, EPA introduced an alternate reporting form, "Form A," to streamline reporting for smaller releases. In July 2005, a rule was finalized that revised the TRI reporting forms by eliminating unnecessary information, simplifying reporting codes, and no longer requiring facilities to submit locational data, which are already available from EPA's Facility Registry System (FRS). EPA also released TRI-MEweb, a web-based version of the TRI-ME reporting software. EPA will continue to examine ways to reduce the TRI reporting burden while maintaining the TRI Program's commitment to providing information on toxic chemical releases to the public.

International

891. Have programs similar to TRI been developed internationally?

EPA's Toxics Release Inventory (TRI) is one of several similar programs established, or being established, by countries around the world. The term used internationally for these TRI-like systems is Pollutant Release and Transfer Register (PRTR). The United States works with other countries and international organizations to facilitate PRTR development. More information on pollutant transfer registries outside the United States can be found at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-around-world.

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Communities

892. What TRI guidance documents are available to the public?

EPA provides extensive industry-specific, chemical-specific, and general TRI guidance for the public and the regulated community. A list of available TRI guidance documents can be found at: https://ofmpub.epa.gov/apex/guideme_ext/f?p=guideme:gd-list.

Recordkeeping

893. What is TRI.NET?

TRI.NET was EPA's desktop application that allowed users to create complex queries based on specific variables derived from the TRI National Analysis. TRI.NET was developed for analysts who require a highly interactive environment in order to refine queries and analyses. To build queries, users could select variables found in hierarchical folders that cover general variable counts, releases, waste transfers, waste quantities and hazard categories (a generated toxicity rating multiplied by chemical weight in pounds). After the user selected general variables, the application also allowed users to filter out variables, leaving only the most pertinent data points. TRI.NET utilized interactive features such as maps, My TRI Neighborhood, Drill Down, Advanced Trends, EPA Reports, and Data Layering; these features allowed users to further focus their interests. Raw data sets from the TRI National Analysis must be downloaded separately from the TRI.NET application; this can be done individually for each year or for a grouping of years. Each year that EPA releases a new data, the dataset will be available for download. TRI data and tools are available at https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-and-tools.

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Data Quality; Facility; Reporting Requirements

894. What hotlines are available to answer questions via telephone regarding different aspects of TRI reporting?

There are three main hotlines that can assist callers via phone with questions about different aspects of the TRI reporting requirements. The Superfund, TRI, EPCRA, RMP & Oil Information Center can assist callers in understanding the TRI regulations, guidance, and reporting requirements, as well as properly completing forms with TRI-MEweb. The Central Data Exchange (CDX) Help Desk can assist TRI-MEweb Preparers and Certifiers with CDX technical issues, such as registration for or access to CDX accounts, CDX user IDs, and passwords; the status of reports submitted via TRI-MEweb; access to CDX data flows; step-by-step instructions for TRI-MEweb submission and receipt; and, TRI-MEweb technical problems (e.g., Data Quality Alerts (DQAs), Notices of Significant Errors (NOSEs), and critical errors). The TRI Data Processing Center (DPC) can answer questions about the processing and status of Electronic Signature Agreements (ESAs); verify EPAs receipt of facility reports; and, answer questions about Electronic Facility Data Profiles (e-FDPs). Please note that all calls received by the TRI DPC will automatically go to a voice-mail system. Phone calls will be returned within 24 hours. If you need immediate assistance, please call the CDX Hotline. Contact information for these hotlines is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/forms/tri-program-contacts.

Ash; Communities; States; Tribes

895. What is ChemicalRight2Know.org?

Through a cooperative agreement with EPA, the Environmental Council of the States (ECOS) developed ChemicalRight2Know.org as a collaborative forum for users of TRI and other environmental data to vet their analyses, share success stories and best practices, and collaborate on solving community chemical-related problems. Users can create accounts on the Web site to participate in blogs and may submit TRI-related documents, web links, articles, mash ups, and events to be posted. The site provides TRI data in action, highlighting real world stories of people using TRI data at local levels. Additionally, research and analysis are posted from academia and other sources, giving users an overview of how TRI data can be used. The ChemicalRight2Know.org forum is available at the following URL: http://www.chemicalright2know.org/.

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Recordkeeping

896. What is the Toxics Release Inventory-Chemical Hazard Information Profiles (TRI-CHIP)?

TRI-CHIP is a searchable database system that contains hazard information on EPCRA section 313 chemicals. This downloadable application allows users to create customized searches across a single chemical, a set of specific chemicals, or a TRI chemical category of interest. TRI-CHIP pulls hazard information from TRI Federal Register notices, the Integrated Risk Information System (IRIS), EPA's Office of Pesticide Programs registration documents, the Agency for Toxic Substances and Disease Registry (ATSDR), California EPA's Office of Environmental Health Hazard Assessment, the National Toxicology Program's Report on Carcinogens, and the International Agency for Research on Cancer. This database application is designed in Microsoft Access and provides users with advanced queries for isolating data based on certain adverse health effects and/or quantitative toxicity values. Through these queries, users can isolate chemicals with specific toxicity criteria such as the lowest observed adverse effect levels, print customized toxicity profile reports, and access Web sites to locate additional toxicity information. Users are also able to export chemicals of interest into TRI.NET, where industrial release and geographic location information on the chemicals is available. For additional information on TRI-CHIP or to download the application, visit the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/tri-chemical-hazard-information-profiles.

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Facility; Releases

897. What is myRight-to-know or myRTK?

The myRight-to-Know tool is an EPA Web application designed for mobile devices. The application takes existing EPA information and packages it in a format and with a level of detail that is appropriate for mobile devices and mobile users. The myRTK tool can map any location or address, showing nearby facilities that report to TRI, as well as large permit holders under the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act that are expected to produce, manage, or release TRI-reportable chemicals. The application compares individual facility releases to releases by other facilities in the county, as well as to other facilities in the same industrial sector. In addition to helping mobile users locate and identify nearby facilities, the tool describes what chemicals are released into the air, water, and land; the health effects associated with these chemicals; and the facility's history of compliance with environmental laws. The current version of the application works well on i-Phone, Droids 2.0 and higher, Firefox and Chrome browsers. A new multi-platform version, currently under development, will work on newer Blackberry phones, most other web enabled phones and the Internet Explorer browser. Additional information about this mobile application is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/my-right-know-application.

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Disposal; Releases; Waste

898. Does EPA provide any reports or documents that provide an analysis of TRI reporting data?

The TRI National Analysis is an annual report that displays EPAs analysis of the most recent TRI data. On the National Analysis Web site, there are documents and Web pages that outline national and local trends in toxic chemical disposal or other releases to the environment. For example, the RY13 National Analysis contains information for Reporting Year 2013 (RY13). The RY13 National Analysis showed that 21,598 facilities reported 4.14 billion pounds of toxic chemicals disposed of or otherwise released into the environment, up 15% from RY12 to RY13. The long-term trend, however, showed that disposal or other releases of TRI chemicals had generally decreased, down 7% from RY03 to RY13.

The RY13 National Analysis also:

Presented trends in toxic chemicals managed and the types of pollution prevention activities that facilities have implemented;
Reported trends in releases of toxic chemicals, including a focus on selected chemicals of concern;
Highlighted toxic chemical waste trends for four industry sectors;
Provided analyses of TRI chemicals by state, city, county, zip code, metropolitan area or micropolitan area, and by Large Aquatic Ecosystems (LAEs) such as the Chesapeake Bay, as well as information about facilities in Indian Country; and
Combined TRI data with other EPA data, such as greenhouse gas emissions, to provide a more complete picture of national trends in chemical use, management and releases.

Additional information about the TRI National Analysis, including access to specific analyses and datasets, is available at the following URL: https://www.epa.gov/trinationalanalysis.

The TRI National Analysis is also published in Spanish every year and is available on the National Analysis website.

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Communities; Facility; Facility Reporting

899. If a citizen is concerned about emissions from a facility in their neighborhood, what is the best way for them to determine if that facility has ever filed a TRI report?

There are many ways to access TRI data, but one of the easiest ways to search for a facility reporting to TRI in a particular neighborhood is the Envirofacts website. Envirofacts provides access to several EPA databases that contain information about environmental activities that may affect air, water, and land in the United States. Within Envirofacts, the TRI Search allows users to search for facilities by geographical location, either by city and state or by zip code. The results display any facility that has reported from 1987 to present, even though the facility may or may not have submitted TRI data in the most recent reporting year. The last year of data displayed represents the last year TRI data was reported.

The TRI Search on the Envirofacts website is available at the following URL: https://www.epa.gov/enviro/tri-search.

Additional information about access to analysis of TRI data is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-and-tools.

EO 13148

900. When was Executive Order 13148 signed, and when was it published in the Federal Register?

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

EO 13148

901. What phone number can people call to receive information on EO 13148?

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

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EO 13148; States

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

No. EO 13148 does not require federal facilities to comply with state and local right-to-know requirements that are more stringent than EPCRA requirements. However, federal facilities are encouraged to be "leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations." In addition, EO 13148 does not remove any reporting obligation for private sector facilities or federal facilities if the state right-to-know laws require compliance by those facilities.

EO 13148; Reporting Requirements

903. Can EPA fine a federal facility if the facility does not comply with EO 13148?

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

Reporting Requirements

904. When did federal facilities begin reporting under EPCRA section 313?

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

EO 13148; Facility; Manufacture; Otherwise Use; Process; Waste

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

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

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Communities; EO 13148; Facility; Manufacture; Otherwise Use; Process

906. What federal facilities are subject to EPCRA section 313 reporting under EO 13148?

According to Executive Order 13148, EPCRA section 313 applies to each federal facility, both government-owned, government-operated and government-owned, contractor-operated, in which the total number of work hours meets or exceeds 20,000 in a year (roughly 10 or more full time employees) and meets or exceeds the "manufacture," "process," or "otherwise use" thresholds for any EPCRA section 313 chemical. However, federal facilities that do not meet these minimum requirements also are encouraged to submit EPCRA section 313 reports. As EO 13148 states in its preamble, "the federal government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals...at federal facilities."

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Definition of Facility; GOCOs; Right-of-Way

907. The definition of facility under EPCRA Section 329(4) includes "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)." Two Government-Owned, Contractor-Operated (GOCO) sites are separated by a street. The GOCOs are owned by the same federal agency, but operated by different contractors. When, as required by Executive Order (EO) 13148, the federal agency is making threshold determinations under EPCRA section 313, must it consider the two GOCOs as part of the same federal facility?

Yes. The two GOCOs are considered to be a single federal facility for the purposes of EPCRA section 313 threshold determinations and release and other waste management reporting as required by EO 13148. EPA has interpreted "contiguous or adjacent sites" to include sites separated only by a public right-of-way. Therefore, the two GOCOs are considered to occupy sites that are contiguous or adjacent. Each GOCO should provide any information required by the federal facility in making threshold determinations and reporting releases and other waste management under EPCRA section 313.

EO 13148 does not alter any separate obligation(s) a GOCO may have under EPCRA and the Pollution Prevention Act (PPA). Private contractors operating at federal facilities must continue to meet any legal reporting requirements they have under EPCRA and PPA. Thus, a GOCO that operates a covered facility under 40 CFR Section 372.22 must file a Form R or an Alternate Certification Statement (Form A) for each toxic chemical for which the facility exceeds an activity threshold as specified in 40 CFR Section 372.25.

EO 13148 (65 FR 24595, April 26, 2000) supersedes EO 12856 (August 1993).

EO 13148; Establishment

908. Executive Order 13148 requires federal agencies to comply with EPCRA section 313 and section 6607 of PPA. What is a "federal agency"?

"Federal agency" is equivalent to an "Executive agency" as defined in 5 USC 105. Title 5 USC 105 defines an "Executive agency" as "an Executive department [including military departments under the auspices of the Department of Defense], a Government corporation and an independent establishment." Examples of federal agencies are the Department of Defense (DOD), the Department of Interior (DOI), the Tennessee Valley Authority (TVA), and the National Aeronautics and Space Administration (NASA).

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EO 13148

909. How should a federal facility determine if it is a "federal agency," and, therefore, subject to comply with EO 13148?

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

Facility

910. What is a federal "facility" for EPCRA purposes?

EPCRA section 329(a) defines "facility" as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person)."

Activity Threshold; EO 13148; Facility; Tribes

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

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

EO 13148; States

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

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

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Facility; Threshold Determination; Waste

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

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

Facility; Threshold Determination; Waste

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

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

Facility; Threshold Determination; Waste

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

Under EPCRA section 313, the owner or operator of a facility is responsible for reporting. If the owner of the facility has a "landlord or real estate interest only" in the operations conducted at the facility, then the obligation for reporting falls to the operator who typically has the most knowledge of any EPCRA section 313 chemicals used at the facility. In this example, the agency is the operator and responsible for making threshold determinations and release and other waste management calculations assuming that GSA had a "landlord or real estate interest only" in the facility.

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Facility; Mining

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

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

Facility; Reporting Requirements

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

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

Facility; Motor Vehicle Exemption; Threshold Determination; Waste

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

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

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

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EPCRA Reporting; Establishment; Facility; Form R; Manufacture; Multi-Establishment; Otherwise Use; Process; Threshold Determination; Waste

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

Yes. All of the buildings and other stationary items located on multiple contiguous or adjacent properties are part of one facility for EPCRA reporting. Therefore, the amount of each EPCRA section 313 chemical manufactured, processed, or otherwise used and the number of employees must be aggregated for all of these contiguous or adjacent properties to determine whether the entire facility meets reporting thresholds. A manager of an individual establishment, however, does have the option of filing as a separate establishment within a multi-establishment facility. The establishment would make its release and other waste management calculations and report the information on the separate Form R. If a manager chooses to file a Form R report for an establishment, he or she must check that the establishment is "part of a facility" in Facility Identification, Part I, section 4.2 of the Form R report. While the establishment can make separate release and other waste management calculations from the rest of the facility, the threshold determinations must be based on the entire facility.

EPCRA Reporting; Facility; Form R; Releases; Threshold Determination; Waste; Waste Management Activities

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

For purposes of EO 13148, military departments are covered under the auspices of the Department of Defense, a federal agency. This means that the entire base, regardless of whether multiple DOD organizations conduct operations on the property, is one facility for the purposes of EPCRA reporting, and quantities of EPCRA section 313 chemicals would be aggregated across the facility for making threshold determinations. DOD is ultimately responsible for ensuring that all non-exempt releases and other waste management activities of the reportable EPCRA section 313 chemical are accounted for in the individual Form R reports.

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Activity Threshold; Ash; Facility; Manufacture; Otherwise Use; Process; Threshold Determination; Waste

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

Yes. When multiple federal agencies "manufacture," "process," or "otherwise use" EPCRA section 313 chemicals in excess of threshold amounts at buildings at a single location, each federal agency is responsible for activities conducted by, or solely for, that federal agency. In the above example, NASA, DOE, DOD, and DOT are engaged in separate activities at one location. Each of these agencies would be considered an operator of a separate facility, and separately would make threshold determinations and release and other waste management calculations if appropriate.

Reporting Requirements

922. If one federal agency is the primary tenant of a site, and it and other federal agencies conduct operations on that site, how do those agencies meet EPCRA section 313 reporting requirements for the site?

The primary tenant of the site is responsible for reporting under EPCRA section 313 if the other agencies' activities on that site are in support of the primary tenant. If the activities conducted by the other agencies on that site are independent of, and do not support the primary tenant, then each agency files its own EPCRA section 313 reports.

EO 13148; Facility; NAICS; NAICS Code; Threshold Determination; Waste

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

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

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EO 13148; Facility; NAICS Code; Reporting Criteria; Threshold Determination; Waste

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

Yes. The federal facility must report, not the contractor. EO 13148 makes EPCRA section 313 applicable to federal facilities without regard to NAICS code. EO 13148 also requires each federal agency, when its facilities are meeting their EPCRA section 313 reporting responsibilities, to include the activities at the GOCO facilities when making threshold determinations and release and other waste management calculations.

EO 13148; Facility; Reporting Requirements; Threshold Determination; Waste

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

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

Facility; Manufacture; Releases; Threshold Determination

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

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

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Establishment; Facility; Form R; Releases; NAICS; Threshold Determination; Waste; Waste Management Activities

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

Each establishment ("distinct and separate economic activities [e.g., separate NAICS codes] [that] are performed at a single location") at a federal facility has the option of filing separately under EPCRA section 313, as long as all the releases and other waste management activities at the entire facility are accounted for. In addition, the threshold determinations must be made for the entire facility, not for each establishment. If a facility is filing separate Form Rs for each establishment, enter in Facility Identification, Part I, section 4.5 of the Form R report, only the NAICS code of the establishment for which data is included in the report. The NAICS code for the other establishments at the federal facility would be included in the Form R reports for those establishments. Also, managers should check that the establishment is "part of a facility" in Facility Identification, Part I, section 4.2 of the Form R report.

Facility; Import; Manufacture; Manufacturing; Threshold Determination

928. If a federal facility manufactures 19,000 pounds of an EPCRA section 313 chemical and imports another 7,000 pounds of that same chemical during the reporting year, is the facility required to report for this chemical?

Yes. For the reporting year, the federal facility would have exceeded the manufacture threshold of 25,000 pounds ([19,000 manufacturing] + [7,000 importing] = 26,000) for this EPCRA section 313 chemical. Note that importing is the equivalent of manufacturing, and therefore the two "manufactured" quantities must be added for threshold determinations.

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Activity Threshold; Facility; Landfill; Manufacture; Otherwise Use; Process; Releases; Threshold Determination; Waste; Waste Management Activities

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

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

Facility; Threshold Determination; Waste

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

No. EPA does not require a covered federal facility to account for quantities of EPCRA section 313 chemicals in office supplies (e.g., correction fluid, copier machine fluids, etc.) when the facility makes threshold determinations and release and other waste management calculations. EPA interprets these items to be personal use items and the chemicals contained in them are exempt from threshold determinations and release and other waste management calculations under the "personal use" exemption.

Facility; Process; Releases; Solvents; Structural Component Exemption; Threshold Determination; Waste

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

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

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Activity Threshold; De minimis; Facility; Form R; Process; Processing; Releases; Threshold Determination; Waste; Waste Management Activities

932. A federal facility that produces electricity by burning coal stores the coal in an on-site stockpile that is exposed to the outside atmosphere. The facility meets one of the activity thresholds for filing a Form R report for benzene, an EPCRA section 313 chemical. Because the stockpiled coal contains benzene and is exposed to the outside atmosphere, must all the benzene in the coal be reported on the Form R report as an on-site release to land?

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

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Facility; Reporting Requirements; Threshold Determination; Waste

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

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

If the contractor is the lessee as stated in the question, then DOE does not need to evaluate the contractor's activities because the activities are not being performed at a facility owned or operated by DOE. If the contractor's operations are in a covered NAICS code, and the contractor has 10 or more full-time employees, the contractor will need to perform threshold determinations and release and other waste management calculations if applicable.

Facility; Form R; Tribes

934. To what entities does a federal agency's facility operating on tribal lands report under EPCRA section 313?

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

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Facility; Form R; Manufacture; Otherwise Use; Process; Releases; Reporting Requirements; Waste

935. Is a federal facility meeting the employee hours and "manufacture," "process," or "otherwise use" thresholds required to report if it had no releases of EPCRA section 313 chemicals during the calendar year?

Yes. For federal facilities, the reporting requirements under section 313 are based only on the number of employees and the quantity of an EPCRA section 313 chemical that was manufactured, processed, or otherwise used during the calendar year. The amount of chemical released or managed as a waste does not affect the reporting requirements (except in the case of exemptions for articles). The facility would report "zeros" or "NA" (not applicable) in the appropriate fields of Part II, Sections 5 and 6 of the Form R.

Employee Threshold; Facility

936. How does a federal facility determine if it has met the 10 or more full-time employee threshold under Section 313?

A "full-time employee" for the purpose of Section 313 reporting, is defined as 2,000 hours per year (40 CFR Section 372.3). In other words, if the total number of hours worked by all employees (i.e., federal and contractor) is 20,000 hours or more, the federal facility meets the "full-time employee" threshold.

Employee Threshold; Facility

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

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

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Employee Threshold; Facility

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

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

Contractors; Facility; Recycling; Threshold Determination; Waste

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

Yes. A federal facility, when making threshold determinations and release and other waste management calculations for section 313 reporting purposes, should include the amount of EPCRA section 313 chemicals used in the operations of contractors under its control, even if the federal facility neither owns nor operates the equipment used in the contractor's operations. In the above example, the private contractor, under contract to the federal facility, conducts recycling operations involving EPCRA section 313 chemicals on-site at a federal facility, and uses equipment that the contractor owns and operates. The contractor is under the control of the federal facility, and the facility should include the amount of EPCRA section 313 chemicals used in the contractor's operations when making threshold determinations and release and other waste management calculations.

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Facility; Manufacture; Otherwise Use; Process; Threshold Determination

940. The Postal Service is prohibited from opening any of the mail that it handles. Will EPA assume that the Postal Service should have known that an EPCRA section 313 chemical was present at the facility? Is the Postal Service required to include in its threshold determination those quantities of an EPCRA section 313 chemical at its facilities when those chemicals are present only in the mail being processed at the facilities?

No. The Postal Service need not include in its threshold determinations the quantities of EPCRA section 313 chemicals that are present in the mail being handled at its facilities. The Postal Service's activities in handling any packages containing EPCRA section 313 chemicals are not "manufacture," "process," or "otherwise use" (see 40 CFR Section 372.3).

Facility; Manufacture; Otherwise Use; Process; Threshold Determination

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

All quantities of EPCRA section 313 chemicals "manufactured," "processed," or "otherwise used" in all non-exempt activities at a facility should be counted in threshold determinations (40 CFR Section 372.30(a)).

Facility; Import

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

Yes. Although the EPCRA section 313 chemical was transferred between facilities of the same federal agency, the U.S. based DOD facility "imported" the chemical for purposes of EPCRA section 313.

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EO 13148; Facility; Release Calculation; Releases; Threshold Determination; Waste

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

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

Facility; Fuel; Otherwise Use; Process; Processing; Releases; Repackage; Threshold Determination; Waste; Waste Management Activities

944. A DOD facility has a petroleum bulk terminal for storing fuel that contains EPCRA section 313 chemicals. The fuel is periodically transferred from the petroleum bulk terminal to other parts of the facility. Although this transfer is "repackaging," the facility does not distribute the fuel in commerce. Must the facility consider the amount of EPCRA section 313 chemicals in the fuel towards its processing threshold? What about the otherwise use threshold?

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

Contractors; Facility; Mining; Threshold Determination; Waste

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

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

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Facility; Manufacture; NAICS Code; Otherwise Use; Process

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

Yes. Even though the contractor is performing functions under a separate NAICS Code, DOE is responsible for reporting on all of the covered activities involving EPCRA section 313 chemicals at the facility (40 CFR Section 372.30(a)). In this case, the contractor's operations are in support of the DOE facility's operations and thus process-related. The EPCRA section 313 chemicals used at cleaning operation would be applied toward the DOE facility's otherwise use threshold. The contractor, however, would not be subject to EPCRA section 313 because these operations are not in a covered NAICS code.

Facility; Process; NAICS; Solvents; Threshold Determination; Waste; Waste Treatment

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

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

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Facility; Otherwise Use; Process

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

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

Facility; Manufacture; Manufacturing; Process; Processing; Storage; Threshold Determination; Waste

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

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

Facility; Manufacture; Process; Processing; Releases; Waste

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

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

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EO 13148; Facility; Releases; Reporting Requirements; Waste; Waste Management Activities

951. Can federal facilities claim the exemptions allowed under 40 CFR 372.38?

While EO 13148 allows federal agency facilities to claim the same exemptions, stating in Section 3-304 that "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 section 3-304(a) of this order," taking these exemptions often is counter to the basic tenet of the Order. This is especially the case when the exempted activities at federal facilities result in substantial releases and other waste management activities of EPCRA section 313 chemicals. A primary goal of EO 13148, is that federal facilities shall be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations.

EO 13148; Facility; National Security Exemption

952. May a federal agency that is concerned with national security be exempted from complying with EO 13148?

No. A federal agency may not have all of its facilities exempted from the requirements of EO 13148; only a "specified site or facility" may be exempted. In the interest of national security, the head of a federal agency may request a site-specific Presidential exemption by following the procedures set forth in section 120(j)(1) of CERCLA. Such exemptions must be renewed for each individual site or facility yearly, and Congress must be notified.

National Security Exemption

953. How long does a national security exemption last?

A national security exemption may last up to one year.

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EPCRA Reporting; Facility; Form R; National Security Exemption; Reporting Requirements; Storage

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

No. The national security exemption provision in section 6-601 of EO 13148 permits the head of a federal agency to request from the President a facility or site specific exemption from any or all requirements of EO 13148 when such an exemption is determined to be in the interest of national security. EO 13148 further states that federal facilities should comply with the Executive Order to the maximum extent practicable, without compromising national security. For these reasons, the head of the agency (e.g., the Secretary of Defense) may request a Presidential order exempting the installation from EPCRA section 312 reporting requirements pertaining to the five chemicals, but the facility would not have grounds for exemption from the other portions of EPCRA.

Ammonia; Facility; Manufacture; Otherwise Use; Process; Reporting Requirements

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

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

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Facility; Releases; Reporting Requirements

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

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

Facility; Form R; National Security Exemption; Trade Secret

957. Some federal facilities use the Hazardous Materials Information System (HMIS) database of Safety Data Sheets (SDSs). Several SDSs are marked "For Official Federal Government Use Only," and the information on the SDS so marked is unavailable to the public. Should a federal facility using a product for which a supplier has submitted an SDS with "For Official Government Use Only," mark on the Form R that the product's composition is a "trade secret" under EPCRA or subject to a national security exemption?

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

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

Under EO Section 6-601, the head of a federal agency may request a yearly national security exemption for a use of a listed chemical at that facility by following the procedures set out in CERCLA Section 120(j)(1). This request must be specific to the facility, and may request relief from the obligation to comply with any of the requirements of EO 13148. EO 13148 does not require a federal facility to submit classified or national security information to EPA, to states, or to tribes.

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EO 13148; Facility; National Security Exemption

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

If the chemical composition of a particular chemical is considered national security information, a federal facility does not have to divulge the information, as long as the information has been exempted under Executive Order 13148, Section 801. Under this national security exemption, the facility would not have to provide the exact chemical composition to anyone who does not have proper security clearance.

Facility; Fuel; Motor Vehicle Exemption; Otherwise Use; Process; Processing; Threshold Determination; Waste

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

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

Facility; Fuel; Motor Vehicle Exemption; Otherwise Use; Process

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

The Air Force facility can claim the motor vehicle exemption for the fueling of aircraft based at that facility. This is an "otherwise use" activity. For the aircraft based at other Air Force facilities, however, the facility cannot claim the motor vehicle exemption. This is a "processing" activity, which is not covered by the motor vehicle exemption (40 CFR Section 372.38(c)(4)).

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Facility; Fuel; Otherwise Use; Process; Processing; Threshold Determination; Waste; Waste Management Activities

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

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

Establishment; Facility; Lead; Manufacture; Otherwise Use; Process; Processing; Threshold Determination; Waste; articles exemption; normal conditions

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

Under 40 CFR 372.3, an "article" must be a manufactured item: (1) which is formed to a specific shape or design during manufacture; (2) which has end use functions dependent in whole or in part upon its shape or design; and (3) which does not release a toxic chemical under normal conditions of processing or otherwise use of the item at the facility or establishments. If the batteries containing lead are completely sealed while present at the facility, they would be considered articles, and thus would be exempt from EPCRA section 313 reporting. If, however, lead is released from the batteries into the environment, as would occur during maintenance of the batteries, the release would negate the articles exemption. If the exemption is negated, the amount of lead and any other EPCRA section 313 chemical in these non-article batteries would be applied toward the 25,000-pound processing threshold to determine if the facility must report.

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Facility; Laboratory exemption; Manufacture; Otherwise Use; Process

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

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

Facility; Manufacture; Otherwise Use; Process; Processing; Reporting Requirements; Waste; Wastewater Treatment; Water Treatment

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

No. The type of the laboratory activity and the conditions under which the activity occurs determine whether the quantity of EPCRA section 313 chemical "manufactured," "processed," or "otherwise used" qualifies for the laboratory activities exemption. Agency managers should not assume that quantities of EPCRA section 313 chemicals are automatically exempt from section 313 reporting requirements because the facility has "laboratory" in its name. Non-exempt activities include support activities such as the use of EPCRA section 313 chemicals used to clean laboratory glassware and maintain laboratory equipment. EPCRA section 313 chemicals in pilot plant scale operations, laboratories that produce specialty chemicals, and activities conducted outside the laboratory (e.g., wastewater treatment, photo processing) are not exempt.

Activity Threshold; Facility; Manufacture; Otherwise Use; Process; Threshold Determination; Waste

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

If a laboratory is part of a larger facility, only those EPCRA section 313 chemicals used in covered laboratory activities can be considered for the exemption. A facility must still determine if quantities of EPCRA section 313 chemicals used in other activities trigger any activity threshold (i.e., manufacture, process, or otherwise use).

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Facility; Threshold Determination; Waste

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

The federal facility may exclude the quantity of the EPCRA section 313 chemical used in the exempted laboratory activity from threshold determinations and release and other waste management reporting. All other quantities of the EPCRA section 313 chemical that are not included in the "laboratory activities" exemption and are not otherwise exempt (e.g., routine janitorial and facility grounds maintenance) must be included in threshold determinations and release and other waste management calculations.

Facility; Laboratory Activity Exemption; Manufacture; Otherwise Use; Process; Testing; test

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

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

Facility; Testing

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

No. The laboratory activities exemption applies only to activities that occur in a laboratory (see 40 CFR Section 372.38(d)).

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Facility; Manufacture; Otherwise Use; Process

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

No. The laboratory activities exemption applies to the "manufacture," "process," or "otherwise use" of an EPCRA section 313 chemical in a laboratory under the supervision of a technically qualified individual (40 CFR Section 372.38(d)). It does not apply to the facility as a whole.

Facility; Form R; Manufacture; Otherwise Use; Process; Processing; Waste

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

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

Facility; Personal Use Exemption; Process

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

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

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Facility; Personal Use Exemption; Waste; Wastewater Treatment; Water Treatment

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

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

Facility; Otherwise Use; Process; Threshold Determination; Waste

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

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

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

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Facility; Process; Threshold Determination; Waste

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

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

Facility; Process; Threshold Determination; Waste

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

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

EO 13148; Facility; PBT Chemicals; Reporting Requirements

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

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

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Facility; Reporting Requirements

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

For purposes of EPCRA section 313, there is no requirement to report for chemicals not on the EPCRA section 313 list of chemicals (see 40 CFR Section 372.30(a)). Reporting on any non-listed chemical is voluntary. A federal agency may decide to require its facilities to report for other hazardous substances or pollutants.

Facility; Form R

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

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

Facility; Form R; Releases

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

When a federal facility reports on releases of a toxic pollutant that does not appear on the EPCRA section 313 list of chemicals, the facility should use either the specific Chemical Abstract Service (CAS) number and the chemical name for that CAS number found in the 9th Collective Index; or the CAS number and the most commonly used chemical name. The facility should not use trade names.

Facility; Facility Reporting; Form R; Releases; Waste; Wastewater Treatment; Water Treatment

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

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

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Disposal; Facility; Waste

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

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

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Ash; Contractors; Establishment; Facility; Form R; Releases; Reporting Requirements

982. Executive Order 13148 does not alter a GOCO facility's responsibility to report under EPCRA section 313. As a result, EPA may receive two Form R reports that cover the same releases for an EPCRA section 313 chemical -- one from the federal agency and the other from the government contractor operating at the federal facility. How does EPA avoid double-counting these releases when the data are entered into the TRIS data base?

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

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

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

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

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Facility; Form R; Import

983. How should a federal facility report its facility name on the Form R report?

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

U.S. DOE Savannah River Site

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

U.S. DOE Savannah River Site - Westinghouse Operations

Facility; Form R; Reporting Requirements

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

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

Facility; Form R; Reporting Requirements

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

The federal facility should report whatever identifier is used to identify the physical location as the facility address (e.g., 3 Miles south of I-30 and I-95). If the facility receives no mail at this location, the facility should report the mailing address information in the space provided in Part I, section 4.1.2

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Facility; Form R; Senior Management Official

986. 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 (40 CFR Section 372.85(b)(2)).

Facility; Mixture; NAICS; NAICS Code; Primary NAICS Code; Supplier Notification

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

Supplier notification is required of commercial suppliers who supply customers whose primary NAICS code corresponds to SIC codes 20-39 (40 CFR Section 372.45(a)). If a federal facility's primary NAICS code is not among the covered NAICS codes, there currently is no regulatory mechanism to ensure that this information is received by the purchasing facility. One mechanism for ensuring that suppliers identify EPCRA section 313 chemicals present in mixtures and trade name products and provide concentration information is for the federal facilities to request this type of information from their suppliers, revise existing contracts with suppliers to require this information, or ensure this information is required to be provided in any new contracts with suppliers.

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Direct Reuse; Disposal; Energy Recovery; Facility; Form R; Mining; Process; Processing; Reclamation; Recycle; Recycling; Reuse; Treatment for Destruction

988. Under Section 313 of EPCRA and Section 6607 of the Pollution Prevention Act of 1990, facilities that meet certain criteria must report annually the quantities of toxic chemicals that they dispose or otherwise release, treat for destruction, combust for energy recovery, and recycle, as well as quantities that they transfer off-site for disposal, treatment for destruction, energy recovery, or recycling. If a TRI covered facility sends metal scraps containing a toxic chemical off-site to be melted and subsequently reused, is the toxic chemical in the metal scraps considered to be transferred off-site for recycling?

Quantities of toxic chemicals that are directly reused on-site or sent off-site for direct reuse without undergoing any reclamation or recovery steps prior to that reuse need not be reported. Assuming no contaminants are removed during the melting process, the toxic chemical in the metal scraps is not actually being recovered but merely melted and reused. Therefore, the amount of the toxic chemical in the metal scraps would not be reportable in Part II, Sections 6.2 or 8 of the Form R. If the facility is repackaging and distributing the toxic chemical in commerce as part of its reuse, the facility should consider the amounts of toxic chemical toward the facility's processing threshold.

EPA has not yet promulgated regulations defining the term "recycle" for the purpose of EPCRA section 313. Even so, for the purposes of TRI reporting, EPA considers toxic chemicals "recycled" when the toxic chemicals are recovered for reuse. If toxic chemicals are directly reused without any intervening reclamation or recovery steps the toxic chemicals are not considered recycled for Form R reporting purposes. Reclamation or recovery would not include simple phase changing of the toxic chemical before further reuse (e.g., simple remelting of scrap metal). Changing the relative amounts of the chemicals in an alloy (which may occur when mixed scrap metal is melted together) would constitute a reclamation or recovery step. Another example of a recovery step would be removing toxic chemicals using a pollution control device or removing contaminants from the toxic chemical after it has been used and can no longer be reused for its intended purpose without reclamation or recovery. Accordingly, if the scrap metal is not mixed with other scrap with varying concentrations of chemicals and can be melted and directly reused, without any recovery steps, then the toxic chemicals in the scrap metal are being directly reused and do not need to be reported as recycling. Facilities should use their best readily available information in determining if the scrap sent off-site is being directly reused or instead is recycled because of an intervening reclamation or recovery step prior to reuse. Additional information regarding direct reuse can be found in the Toxic Chemical Release Inventory Reporting Forms and Instructions.

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Facility; Form R; Waste

989. If a TRI-covered facility transfers waste to a facility located in a foreign country, how does the facility complete the RCRA identification (ID) number and address fields on the Form R for transfers to off-site locations?

The facility should enter NA in the RCRA ID field. For the address, the facility should enter the complete address of the receiving facility in the off-site address fields, the city in the city field, the foreign state or province in the county field, the postal code in the zip code field, and the foreign country code in the country field. The most commonly used foreign country codes are listed in Table IV of the Reporting Forms and Instructions. The facility does not need to enter information in the state field. Additional guidance can be found in the Toxic Chemical Release Inventory Reporting Forms and Instructions.

NAICS; PBT Chemicals; Reporting Requirements; Toxic Chemical List; Tribes

990. How has TRI changed over time?

In 1986, when Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA) §313 of the Act included manufacturing sector facilities (classified then as SIC codes 20 through 39) to report releases of more than 300 chemicals and chemical categories in the "TRI Chemical List." Data coverage was initially confined to information on releases and certain transfers off-site for further waste management.

Passage of the Pollution Prevention Act in 1990 expanded TRI to include additional information on toxic chemicals in waste and also on source reduction methods. Beginning in 1991, covered facilities were required to report quantities of TRI chemicals recycled, combusted for energy recovery, and treated on- and off-site. Over time, EPA has expanded TRI to cover more industrial sectors and chemicals than were originally included.

Chemical Expansion

The original TRI chemical list combined two existing lists: the New Jersey Environmental Hazardous Substance List and the Maryland Chemical Inventory Report List. Over time, through EPA's petition process, the original list has been modified as the Agency responded to petitions to add and delete chemicals, given the law's toxicity listing criteria. These criteria focus on both acute and chronic health effects as well as environmental effects, as outlined in EPCRA §313(d).

The first chemical expansion occurred in 1993 with the addition of certain chemicals that appear on the Resource Conservation and Recovery Act (RCRA) (58 FR 63500) list of hazardous wastes and certain hydrochlorofluorocarbons (HCFCs) (58 FR 63496) to EPCRA §313.

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The second expansion was the addition of 286 chemicals and chemical categories on November 30, 1994 (59 FR 61432). The additional chemicals can be characterized as high or moderately high in toxicity, and currently manufactured, processed or otherwise used in the United States. Many are high production volume (HPV) chemicals. This list expansion raised the number of chemicals and chemical categories reported to TRI to more than 600. Specifically, the rule added more than 150 pesticides, certain Clean Air Act chemicals, certain Clean Water Act priority pollutants, and certain Safe Drinking Water Act chemicals. Many of the chemicals are carcinogens, reproductive toxicants, or developmental toxicants. Of particular note is the addition of industrial chemicals such as diisocyanates, n-hexane, N-methyl-2-pyrrolidone, and chemicals such as polycyclic aromatic compounds that result from the combustion of fuels.

Facility Expansion

When EPCRA was first enacted, the TRI Program focused on the releases and other waste management activities of the manufacturing sector – facilities in SIC codes 20-39. To provide the public with a more complete picture of the toxics in their community, EPA undertook a detailed examination of non-manufacturing industries to determine which may be significant generators of toxic chemical releases and other wastes. This effort focused particular attention on sectors linked to manufacturing – those providing energy, further managing products, or further managing waste from the manufacturing sector.

On May 1, 1997, EPA published a final rule (62 FR 23833) adding seven industry sectors to TRI: metal mining, coal mining, electrical utilities that combust coal and/or oil, hazardous waste treatment and disposal facilities, chemical wholesale distributors, petroleum bulk stations and terminals, and solvent recovery services.

Persistent Bioaccumulative Toxic Chemicals (PBTs)

Beginning with Reporting Year 2000, lower reporting thresholds were applied to TRI facilities that manufacture, process, or otherwise use certain PBT chemicals. Also, additional PBT chemicals that TRI had not previously covered were added to the section 313 toxic chemical list. These new reporting requirements were issued on October 29, 1999 (64 FR 58666) and on January 17, 2001 (66 FR 4500) for lead and lead compounds.

PBT chemicals include substances such as mercury, lead, and polychlorinated biphenyls (PCBs), already on the TRI list, and dioxin and dioxin-like compounds, which were among the chemicals added for

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Reporting Year 2000. The PBT chemicals are of particular concern not only because they are toxic, but also because they remain in the environment for long periods of time and are not readily destroyed (i.e., they are persistent), and build up or accumulate in body tissue (i.e., they bioaccumulate). Relatively small releases of PBT chemicals can pose human and environmental health threats. Consequently, these chemicals warrant recognition by communities as potential health threats and information about their releases and other waste management activities need to be captured by the TRI. Under the existing thresholds of 25,000 pounds for manufacturing or processing of a listed chemical and 10,000 pounds for otherwise using a listed chemical, important information on the releases and other waste management activities of the PBT chemicals were not reported.

In the October 1999 PBT chemical rulemaking, EPA created three new thresholds for PBT chemicals: 10 pounds for certain highly persistent, highly bioaccumulative toxic chemicals, 100 pounds for other PBT chemicals, and a special threshold of 0.1 grams for dioxin and dioxin-like chemicals. The threshold for a PBT chemical is the same for manufacturing, processing, or otherwise use (i.e., either 100 pounds or 10 pounds or 0.1 grams for dioxin and dioxin-like compounds). In addition to the chemical category of dioxin and dioxin-like compounds (a total of 17 substances), six other PBT chemicals were added to TRI: benzo(g,h,i)perylene, benzo(j,k)fluorine (fluoranthene) (as part of the PACs category), 3-methylcholanthrene (as part of the PACs category), octachlorostyrene, pentachlorobenzene, and tetrabromobisphenol A. In addition, new reporting thresholds were applied to the following PBT chemicals already on the TRI list: aldrin, chlordane, heptachlor, hexachlorobenzene, isodrin, methoxychlor, pendimethalin, polycyclic aromatic compounds, polychlorinated biphenyls, toxaphene, trifluralin, lead and lead compounds, and mercury and mercury compounds.

TRI Forms Modification Rule

On July 12, 2005, the TRI Program published a final rule (70 FR 39931) that modifies the TRI reporting forms. The final rule eliminates certain information from the TRI reports, simplifies other reporting elements, and in some cases, reduces duplicate data collection. It also reduces the cost of compiling and submitting TRI reports, while ensuring that the public continues to receive high quality data with practical utility.

With the rule, TRI facilities are no longer required to report locational information (latitude and longitude data) and several facility identifiers (regulatory assigned identification codes for each facility). Instead, these data will be obtained from other existing EPA databases and made available to TRI data users. The TRI Forms Modification Rule also includes several minor reporting changes related to waste management activities, simplifies

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the reporting of pollution prevention activities, and improves public access to information about source reduction and pollution control activities undertaken by some facilities.

TRI Reporting with North American Industry Classification System (NAICS) Codes

In June 2006, EPA published a final rule to link Toxic Chemical Release Reporting to North American Industry Classification System (NAICS) codes. Owners and operators of facilities subject to TRI reporting must identify their principal business activities using NAICS codes beginning with reports due July 1, 2007, for releases and other waste management activities for Reporting Year 2006.

TRI Burden Reduction

In December 2006, EPA published a final rule that expanded the eligibility for use of the Form A to allow more facilities to use the short form while retaining the full Form R reporting on the large majority of releases and other waste management activities. The rule also extended the use of the Form A to certain PBT chemicals for the first time. For more information on the December 2006 final rule, please visit our Web site.

TRI Burden Reduction Rescission Rule

In April 2009, EPA published a final rule returning the Form A Certification Statement eligibility to the eligibility requirements that were in effect prior to the 2006 TRI Burden Reduction Rule. For PBT chemicals, this final rule eliminates Form A eligibility for those chemicals listed in 40 CFR section 372.28. For non-PBT chemicals, the rule reinstates the 500-pound annual reporting amount (where the annual reportable amount is equal to the combined total quantities released at the facility (the total of releases and other waste management)) and 1,000,000 pounds manufactured, processed or otherwise used Form A eligibility threshold in effect prior to December 22, 2006. This includes releases and waste management activities (Section 8.1 through and including Section 8.7) which are counted against the 500-pound threshold criterion.

TRI Dioxin and Dioxin-like Compounds Toxic Equivalency (TEQ) Information Rule

On May 10, 2007, the Toxics Release Inventory Program issued a new rule expanding reporting requirements for dioxins and dioxin-like compounds. The expanded reporting requirements will enhance information provided to

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the public regarding dioxin and dioxin-like compound releases. Additional information is available on GuideME.

TRI Reporting in Indian Country Rule

On April 19, 2012, EPA published a final rule that improves and clarifies certain opportunities allowing tribal governments to participate more fully in the TRI Program (77 FR 23409). Beginning with Reporting Year 2012, facilities located in Indian Country are required to submit annual TRI reports to EPA and the appropriate tribal representative, rather than to the state in which the facility is geographically located. This rule also clarifies the opportunities available to tribal governments to modify the list of covered chemicals and TRI reporting facilities. In particular, EPA included a provision that provides the following opportunity for the Tribal Chairperson or equivalent elected official to request that EPA apply the TRI reporting requirements to a specific facility located within their respective tribal land. The Tribal Chairperson may also petition EPA to add or delete a particular chemical to or from the list of chemicals covered by TRI.

Electronic Reporting of TRI Data Rule

On August 27, 2013, EPA published a final rule that requires covered facilities to report non-trade secret TRI forms to EPA using the electronic software provided by the Agency. This rulemaking also requires facilities to submit all revisions or withdrawals of previously submitted TRI reporting forms electronically via the Internet. Additionally, EPA will no longer accept submissions, revisions, or withdrawals of TRI reporting forms submitted for reporting years prior to 1991. Facilities that submit trade secret information are exempted from this rule and will continue to submit their trade secret reporting forms and substantiation forms in hard copy. EPA will also accept revisions or withdrawals of previously submitted trade secret information on paper forms; however, it will no longer allow these revisions or withdrawals for reporting forms dating back prior to Reporting Year 1991.

This rule is effective on January 21, 2014, and applies for Reporting Year 2013 (forms due on July 1, 2014) and all subsequent reporting years. Further information about this rule is available at the following URL: https://www.epa.gov/toxics-release-inventory-tri-program/tri-laws-and-regulatory-activities#tab-3

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SECTION 3.0 CROSSWALK TABLES BETWEEN THE PRIOR Q&As AND THE 2019 CONSOLIDATION Q&As

Table 1: Updating SIC Codes to NAICS Codes

Previous Q&A	2019 Q&A
1998 EPCRA 313 Q&A #3	21
1998 EPCRA 313 Q&A #4	24
1998 EPCRA 313 Q&A #10	34
1998 EPCRA 313 Q&A #11	36
1998 EPCRA 313 Q&A #12	38
1998 EPCRA 313 Q&A #13	46
1998 EPCRA 313 Q&A #14	47
1998 EPCRA 313 Q&A #15	53
1998 EPCRA 313 Q&A #16	48
1998 EPCRA 313 Q&A #17	54
1998 EPCRA 313 Q&A #18	4
1998 EPCRA 313 Q&A #19	49
1998 EPCRA 313 Q&A #20	50
1998 EPCRA 313 Q&A #60	51
1998 EPCRA 313 Q&A #61	52
1998 EPCRA 313 Q&A #62	106
1998 EPCRA 313 Q&A #64	105
1998 EPCRA 313 Q&A #66	30
1998 EPCRA 313 Q&A #70	109
1998 EPCRA 313 Q&A #74	112
1998 EPCRA 313 Q&A #79	33
1998 EPCRA 313 Q&A #163	222
1998 EPCRA 313 Q&A #180	280
1998 EPCRA 313 Q&A #184	285
1998 EPCRA 313 Q&A #199	290
1998 EPCRA 313 Q&A #214	304
1998 EPCRA 313 Q&A #217	307
1998 EPCRA 313 Q&A #225	31
1998 EPCRA 313 Q&A #227	35
1998 EPCRA 313 Q&A #228	171
1998 EPCRA 313 Q&A #229	170
1998 EPCRA 313 Q&A #231	133
1998 EPCRA 313 Q&A #232	42
1998 EPCRA 313 Q&A #296	385
1998 EPCRA 313 Q&A #363	462
1998 EPCRA 313 Q&A #478	584
1998 EPCRA 313 Q&A #536	214
1998 EPCRA 313 Q&A #613	90
1998 EPCRA 313 Q&A #615	776
1998 EPCRA 313 Q&A #620	116
1998 EPCRA 313 Q&A #643	795
1998 EPCRA 313 Q&A #669	826
1998 EPCRA 313 Q&A #671	829
1998 EPCRA 313 Q&A #677	837
1998 EPCRA 313 Q&A #682	843
1998 EPCRA 313 Q&A #684	846
1998 EPCRA 313 Q&A #691	853
1998 EPCRA 313 Q&A #696	860
1998 EPCRA 313 Q&A #698	861
1998 EPCRA 313 Q&A #699	862
1998 EPCRA 313 Q&A #700	863
1998 EPCRA 313 Q&A #706	868
1998 EPCRA 313 Q&A #710	871
1998 EPCRA 313 Q&A #714	836
1998 EPCRA 313 Q&A #715	830
1999 Federal Addendum #19	927
1999 Federal Addendum #24	923
1999 Federal Addendum #27	924
1999 Federal Addendum #28	933
1999 Federal Addendum #32	68
1999 Federal Addendum #50	946
1999 Federal Addendum #51	947
1999 Federal Addendum #121	123
1999 Federal Addendum #132	119
1999 Federal Addendum #134	987
2004 Q&A Addendum #1	3
2004 Q&A Addendum #2	9
2004 Q&A Addendum #4	110
2004 Q&A Addendum #5	37
2004 Q&A Addendum #6	113
2004 Q&A Addendum #7	114
2004 Q&A Addendum #15	163
2004 Q&A Addendum #36	44
2004 Q&A Addendum #37	45
2004 Q&A Addendum #74	728
Frequent Questions #58	40

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Table 2: Updated Citations or URL

Previous Q&A	2019 Q&A
1998 EPCRA 313 Q&A #8	32
1998 EPCRA 313 Q&A #9	23
1998 EPCRA 313 Q&A #60	51
1998 EPCRA 313 Q&A #110	185
1998 EPCRA 313 Q&A #177	277
1998 EPCRA 313 Q&A #178	278
1998 EPCRA 313 Q&A #187	287
1998 EPCRA 313 Q&A #189	548
1998 EPCRA 313 Q&A #209	299
1998 EPCRA 313 Q&A #212	302
1998 EPCRA 313 Q&A #236	39
1998 EPCRA 313 Q&A #238	317
1998 EPCRA 313 Q&A #245	325
1998 EPCRA 313 Q&A #250	330
1998 EPCRA 313 Q&A #265	346
1998 EPCRA 313 Q&A #286	371
1998 EPCRA 313 Q&A #294	383
1998 EPCRA 313 Q&A #296	385
1998 EPCRA 313 Q&A #298	387
1998 EPCRA 313 Q&A #303	395
1998 EPCRA 313 Q&A #304	396
1998 EPCRA 313 Q&A #324	420
1998 EPCRA 313 Q&A #391	7
1998 EPCRA 313 Q&A #404	503
1998 EPCRA 313 Q&A #420	514
1998 EPCRA 313 Q&A #424	273
1998 EPCRA 313 Q&A #438	536
1998 EPCRA 313 Q&A #439	537
1998 EPCRA 313 Q&A #477	583
1998 EPCRA 313 Q&A #487	599
1998 EPCRA 313 Q&A #524	647
1998 EPCRA 313 Q&A #534	652
1998 EPCRA 313 Q&A #550	332
1998 EPCRA 313 Q&A #670	828
1998 EPCRA 313 Q&A #671	829
1998 EPCRA 313 Q&A #673	832
1998 EPCRA 313 Q&A #677	837
1998 EPCRA 313 Q&A #678	838
1998 EPCRA 313 Q&A #679	839
1998 EPCRA 313 Q&A #694	856
1998 EPCRA 313 Q&A #696	860
1998 EPCRA 313 Q&A #701	857
1998 EPCRA 313 Q&A #707	858
1998 EPCRA 313 Q&A #713	874
1998 EPCRA 313 Q&A #718	877
1998 Newly Added Industries #44	82
1999 Federal Addendum #33	936
1999 Federal Addendum #36	940
1999 Federal Addendum #37	941
1999 Federal Addendum #43	149
1999 Federal Addendum #50	946
1999 Federal Addendum #64	960
1999 Federal Addendum #74	406
1999 Federal Addendum #79	968
1999 Federal Addendum #80	969
1999 Federal Addendum #99	977
1999 Federal Addendum #131	986
2004 Q&A Addendum #1	3
2004 Q&A Addendum #3	108
2004 Q&A Addendum #7	114
2004 Q&A Addendum #12	260
2004 Q&A Addendum #45	436
2004 Q&A Addendum #67	494
Frequent Questions #3	739
Frequent Questions #7	757
Frequent Questions #13	770
Frequent Questions #15	806
Frequent Questions #18	747
Frequent Questions #27	755
Frequent Questions #28	773
Frequent Questions #35	8
Frequent Questions #60	726
Frequent Questions #61	319
Frequent Questions #74	1
Frequent Questions #75	884
Frequent Questions #77	886

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Previous Q&A	2019 Q&A
Frequent Questions #82	891
Frequent Questions #83	892
Frequent Questions #85	893
Frequent Questions #87	894
Frequent Questions #90	897
Frequent Questions #93	898
Frequent Questions #94	899
Frequent Questions #97	495
Frequent Questions #103	553
Frequent Questions #105	422
Frequent Questions #109	533
Frequent Questions #112	615
Frequent Questions #191	28

Table 3: Deleted Due to Repetition

Previous Q&A
1998 Newly Added Industries #6
1998 Newly Added Industries #29
1998 Newly Added Industries #31
1999 Federal Addendum #103
2004 Q&A Addendum #62
Frequent Questions #29
Frequent Questions #30
Frequent Questions #32
Frequent Questions #43
Frequent Questions #48
Frequent Questions #65
Frequent Questions #66
Frequent Questions #67
Frequent Questions #68

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Table 4: Other

Previous Q&A	2019 Q&A	Revision Notes
1998 EPCRA 313 Q&A #51	95	Updated example reporting years
1998 EPCRA 313 Q&A #66	30	Deleted outdated reference
1998 EPCRA 313 Q&A #84	128	Updated example reporting years
1998 EPCRA 313 Q&A #97	158	Updated MSDS to SDS
1998 EPCRA 313 Q&A #99	167	Deleted outdated reference; Added updated information
1998 EPCRA 313 Q&A #217	307	Added updated information
1998 EPCRA 313 Q&A #224	41	Added updated information
1998 EPCRA 313 Q&A #225	31	Added updated information
1998 EPCRA 313 Q&A #228	171	Added updated information
1998 EPCRA 313 Q&A #229	170	Added updated information
1998 EPCRA 313 Q&A #231	133	Added updated information
1998 EPCRA 313 Q&A #232	42	Added updated information
1998 EPCRA 313 Q&A #233	43	Added updated information
1998 EPCRA 313 Q&A #234	733	Updated MSDS to SDS
1998 EPCRA 313 Q&A #281	365	Deleted outdated reference
1998 EPCRA 313 Q&A #378	481	Deleted outdated reference
1998 EPCRA 313 Q&A #440	538	Updated MSDS to SDS
1998 EPCRA 313 Q&A #447	542	Updated MSDS to SDS
1998 EPCRA 313 Q&A #451	550	Updated MSDS to SDS; Deleted outdated reference
1998 EPCRA 313 Q&A #461	562	Updated MSDS to SDS
1998 EPCRA 313 Q&A #595	717	Updated example reporting years
1998 EPCRA 313 Q&A #615	776	Updated example reporting years
1998 EPCRA 313 Q&A #616	777	Updated example reporting years
1998 EPCRA 313 Q&A #620	116	Updated to reflect current TRI-MEweb reporting
1998 EPCRA 313 Q&A #654	807	Updated to reflect current TRI-MEweb reporting
1998 EPCRA 313 Q&A #662	816	Updated to reflect current TRI-MEweb reporting
1998 EPCRA 313 Q&A #664	818	Updated to reflect current TRI-MEweb reporting
1998 EPCRA 313 Q&A #667	815	Updated to reflect current TRI-MEweb reporting
1998 EPCRA 313 Q&A #671	829	Deleted outdated reference
1998 EPCRA 313 Q&A #679	839	Updated MSDS to SDS
1998 EPCRA 313 Q&A #683	845	Updated MSDS to SDS
1998 EPCRA 313 Q&A #684	846	Updated MSDS to SDS
1998 EPCRA 313 Q&A #685	847	Updated MSDS to SDS
1998 EPCRA 313 Q&A #686	848	Updated MSDS to SDS
1998 EPCRA 313 Q&A #687	849	Updated MSDS to SDS
1998 EPCRA 313 Q&A #688	850	Updated MSDS to SDS
1998 EPCRA 313 Q&A #689	851	Updated MSDS to SDS
1998 EPCRA 313 Q&A #690	852	Updated MSDS to SDS
1998 EPCRA 313 Q&A #691	853	Updated MSDS to SDS
1998 EPCRA 313 Q&A #700	863	Updated MSDS to SDS
1998 EPCRA 313 Q&A #714	836	Streamlined question

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Previous Q&A	2019 Q&A	Revision Notes
1998 EPCRA 313 Q&A #718	877	Updated MSDS to SDS
1998 Newly Added Industries #9	88	Deleted outdated reference
1998 Newly Added Industries #44	82	Deleted outdated reference
1998 Newly Added Industries #110	666	Updated example reporting years
1999 Federal Addendum #32	68	Updated to reflect current TRI-MEweb reporting
1999 Federal Addendum #40	136	Updated example reporting years
1999 Federal Addendum #43	149	Question is not limited to federal facilities
1999 Federal Addendum #59	957	Updated MSDS to SDS
1999 Federal Addendum #97	159	Updated MSDS to SDS
1999 Federal Addendum #133	783	Deleted outdated reference
2004 Q&A Addendum #9	129	Updated example reporting years
2004 Q&A Addendum #36	44	Added updated information
2004 Q&A Addendum #37	45	Added updated information
2004 Q&A Addendum #38	354	Deleted outdated reference
2004 Q&A Addendum #40	410	Updated MSDS to SDS
2004 Q&A Addendum #48	417	Updated MSDS to SDS
2004 Q&A Addendum #49	418	Updated MSDS to SDS
2004 Q&A Addendum #67	494	Added updated information
2004 Q&A Addendum #78	581	Deleted outdated reference
Frequent Questions #35	8	Provided additional reference
Frequent Questions #41	18	Updated example reporting years
Frequent Questions #44	92	Updated example reporting years
Frequent Questions #45	91	Updated example reporting years
Frequent Questions #49	142	Deleted outdated reference
Frequent Questions #51	26	Deleted outdated reference
Frequent Questions #64	409	Updated MSDS to SDS
Frequent Questions #85	893	Deleted outdated reference
Frequent Questions #97	495	Added updated information
Frequent Questions #110	178	Updated MSDS to SDS
Frequent Questions #117	215	Streamlined question
Frequent Questions #191	28	Updated to reflect current TRI-MEweb reporting
Frequent Questions #212	750	Added updated information

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