

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(ENVIRONMENT, SAFETY & OCCUPATIONAL HEALTH)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ENVIRONMENT AND SAFETY)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(ENVIRONMENT, SAFETY & OCCUPATIONAL HEALTH)

SUBJECT: Guidance on Applying the Emergency Planning and Community Right-to-Know Act (EPCRA) to Munitions to Meet Requirements for EO 12856

The attached document provides guidance on applying EPCRA to munitions to meet requirements for EO 12856. The guidance:

- < Reiterates that DoD installations will comply with EPCRA sections 302 and 304 and notes that DoD facility emergency plans will support Local Emergency Planning Committee efforts.
- < States that installations will fully comply with EPCRA sections 311-312 and notes that the hazardous chemicals contained in stored munitions end items will not be included in sections 311-312 threshold requirements. Also states that Chemical Stockpile Emergency Preparedness Programs (CSEPPs) meet the requirement of EPCRA sections 311-312 for hazardous chemical components (of chemical munitions) stored in bulk.
- < States that the EPCRA section 313 reporting will apply to munitions manufacturing immediately, and that reporting for demilitarization activities will commence with the Calendar Year 1999 TRI data submitted to EPA by July 1, 2000.
- < States that DoD will provide installations with technical guidance in 1998 to aid in reporting munitions activities.
- < Clarifies the laboratory exemption for munitions testing.

The guidance demonstrates DoD's commitment to providing the public information associated with our munitions activities. Please distribute this guidance to all installations within your organization. My point of contact is Mr. Andrew Porth (703-604-1820, DSN 664-1820, email: portham@acq.osd.mil). DoD Component POCs are listed in Appendix A of the attachment.

Sherri W. Goodman  
Deputy Under Secretary of Defense  
(Environmental Security)

Attachment

**MARCH 1998**

**Updated Guidance**

**EPCRA Compliance for Munitions Related  
Issues**

**Note: This Guidance Supplements DoD's March 1995  
and Supplemental June 1996 Guidance**

## **Introduction**

The following document provides updated guidance on Emergency Planning and Community Right-to-Know Act (EPCRA) and Toxic Chemical Release Inventory (TRI) reporting and compliance for munitions. This guidance supplements the DoD March 1995 and June 1996 guidance. This guidance is to be used along with DoD's March 1995 and June 1996 guidance for DoD installations to complete EPCRA reporting as required by Executive Order 12856 and DoD implementing instructions.

## **General Guidance**

General principles, approach, applicability, and definitions of the DoD March 1995 and June 1996 guidance apply to the application of EPCRA in the munitions community. DoD personnel should pay particular attention to national security issues when reviewing and reporting information associated with munitions.<sup>1</sup> The following provides specific direction for munitions related issues.

## **Documentation**

Ensure documentation is in place to support TRI reporting efforts. Threshold and release calculations provide support documentation for installations that meet thresholds and must file Form R reports. Threshold calculations provide support documentation for installations that do not meet thresholds, and therefore, need not file Form R reports. EPA routinely requests this documentation when determining whether or not private sector facilities have complied with TRI reporting. For Federal facilities, EPA is analyzing permit and other regulatory information to determine whether facilities that did not report should have reported TRI information. To be prepared for possible EPA inquiries, DoD installations should have appropriate documentation available that demonstrates how thresholds were calculated. In any case, all installations must maintain TRI reporting documentation for 5 years. Examples of documents that should be kept include the following:

- Previous years' Form Rs,
- Engineering calculations and other notes used to determine reporting thresholds, releases, and transfers;
- Inventory records and purchasing data;
- Routine and non-routine monitoring data from other statutes and permits (UIC, NPDES, RCRA, state and local) if used in TRI reports;
- RCRA hazardous waste reports, manifests, etc.;

- Invoices from waste management companies;
- Other Environmental reports (EPCRA Section 312, NPDES monitoring, CAA permit applications and other state or local air permit monitoring/applications);
- Process information, equipment manufacturers specifications, industry guidelines, references used; and,
- Support data and documents (copies of DoD guidance documents and EPCRA regulations) that demonstrate why an exemption was taken.

**Emergency Planning And Reporting Requirements Applicable Immediately  
(EPCRA Section 301-305)**

The primary purpose of the emergency planning and reporting notifications in sections 301-305 is to protect public health, safety, and the environment, and to establish and coordinate the nation's chemical emergency planning activities. Local Emergency Planning Committees (LEPCs) are responsible for developing local emergency plans. Existing DoD explosives safety policy discourages the use of local fire departments in fighting fires involving explosives because this places local fire department personnel at greatly increased risk. Therefore, DoD installations that have munitions maintain their own fire departments and train personnel in the nature and type of hazards represented by stored munitions. These installations have detailed emergency plans for munitions related incidents. DoD installations should provide their emergency response plans to LEPCs to support the local emergency plans and cooperate with LEPCs to the maximum extent possible to protect public safety.

The purpose of section 302 of EPCRA is to inform emergency planners about the presence of extremely hazardous substances (EHS). Facilities shall fully comply with this requirement for munitions and munitions related items. Munitions and munitions related items containing EHSs, as listed in 40 CFR Part 355 Appendices A and B, must be included in all facility calculations for Section 302 threshold requirements and facilities will report as required.

The primary purpose of the emergency release notification requirements of Section 304 is to protect the public in the event of hazardous chemical releases through the establishment and formation of local and state emergency response capabilities. The accidental release of EHSs, as listed in 40 CFR Part 355 Appendices A and B, and CERCLA Hazardous Substances (HSs), as listed in 40 CFR Table 302.4, from munitions and munitions related items is covered under Section 304 requirements. Facilities will fully comply with the requirements of Section 304 for munitions and munitions related items.

When reporting, facilities will provide as much information as possible to the LEPCs, including the effects of energy releasing reactions as well as information on listed EHS or HS characteristics.

### **Hazardous Chemical Inventory Requirements (EPCRA Sections 311-312) Applicable Immediately**

The primary purpose of the chemical inventory requirements of Sections 311-312 is to increase community awareness of chemical hazards; provide comprehensive information about the identity and amounts of stored chemicals; and make the information available to the public, emergency planners and responders. Facilities shall fully comply with the requirements of section 311-312 EPCRA for munitions and munitions related items.

For the purposes of determining section 311-312 threshold calculations and inventories, the term “hazardous chemical” means any chemical that is a physical hazard or a health hazard as defined in 29 CFR 1910.1200 (The Hazardous Communication Standard, an Occupational Safety and Health Administration regulation). Section 311(e) of EPCRA (42 USC Section 11021(e)) states that the definition of hazardous chemical does not include:

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

DoD and OSHA have consistently interpreted stored munitions end items, (rockets, bombs, fuses, initiators, bursters, etc.) to be “a solid in any manufactured item” and therefore the chemicals contained in the munitions end items are exempt from section 311-312 threshold calculation requirements.

Hazardous chemical components of munitions and munitions related items stored in bulk are not ordnance or munition end items and are subject to section 311-312 EPCRA reporting. Due to the unique nature of the material stored, materials that are controlled under the Chemical Stockpile Emergency Preparedness Programs (CSEPP) meet the requirements of section 311-312. As allowed by national security regulations, CSEPP information can should be shared with LEPCs to the maximum extent practicable.

**NOTE:** It is important to remember that the various rules and regulations of different sections of EPCRA are distinct. The Section 311-312 exemption for solids present in a manufactured item is

not the same as the “article exemption” contained in Section 313. Exemptions must be applied separately for each EPRCA section.

### **Toxic Release Inventory (TRI) Requirements (EPCRA Section 313)**

The primary purpose of the TRI Reporting is to establish a facility-wide inventory of toxic chemical releases, as listed in 40 CFR 372.65 (a) and (b), to all environmental media, to support State and local planning efforts, and inform the public about routine releases of toxic chemicals to the environment. Munitions related items are covered as follows:

#### **Manufacturing (Applicable Immediately)**

The manufacture, processing, or other use of listed toxic chemicals to produce munitions related items is covered by Section 313 requirements. Pilot scale or larger manufacturing operations should both be included in threshold and release calculations. Facilities shall fully comply with this requirement for munitions and munitions related items.

#### **Testing (Applicable to CY 1999 Reporting (reports due July 1, 2000))**

The manufacture, process, or other use of toxic chemicals for the purpose of testing of munitions, weapons systems or qualifying munitions by personnel as part of the testing process is considered part of “laboratory” use and is therefore exempt from section 313 threshold calculations. DoD Components should apply this exemption as narrowly as possible. The laboratory exemption is not intended as a blanket exemption for any facility which has the title "laboratory" in its name. To qualify, the munitions or munitions related items must be tested as part of a laboratory activity at a DoD facility designated to test munitions or munitions related items on a regular basis. Activities that do not directly support research and development, sampling and analysis, or quality assurance and control are not exempt. For example, a Naval facility that regularly engages in the testing of munitions to ensure that the munitions function as designed would not need to include in the facility’s threshold calculations chemicals involved in the testing.

Further details on applying this guidance will be published in a separate technical guidance document to be provided later in 1998.

**Demilitarization (Applicable to CY 1999 reporting (reports due July 1, 2000))**

The demilitarization of munitions and munitions related items is an activity that includes many operations, among which is the demilitarization of conventional and chemical munitions. The following demilitarization operations may be considered processing activities for the purposes of section 313 of EPCRA:

- Disassembly
- Dismantling
- Recycling
- Recovery
- Reclamation
- Reuse

For these activities, installations shall report on each toxic chemical that exceeds the 25,000 pound processing threshold.

Demilitarization activities considered to be treatment for the purposes of EPCRA section 313 include:

- Open Burning and Open Detonation (OB/OD)
- Incineration
- Chemical neutralization
- Other methods of final treatment which alter the chemical composition of the munitions and/or its components.

EPCRA regulations state that if a product is brought from off-site for the purposes of disposal, stabilization, or treatment for destruction, then the 10,000 pound “otherwise used” threshold for reporting applies to each toxic chemical present in the product. For demilitarization activities, the key part of this analysis is whether munitions are brought from off-site for the purpose of treatment or not. Under the RCRA Military Munitions Rule, unused munitions are not considered a solid waste until the munitions are removed from storage for the purpose of disposal or treatment prior to disposal. Not until the decision is made to treat the munition prior to disposal, does the munition become a solid waste. By applying the reasoning of the Military Munitions Rule to the issue of how to apply the EPCRA “otherwise used” regulation, most munitions brought onto a site would not be considered to be solid waste brought on-site for the purposes of disposal, stabilization, or treatment for destruction. Using this logic, most DoD demilitarization treatment activities would not be counted when calculating the 10,000 pound otherwise used threshold.

Nonetheless for EPCRA reporting purposes, it is DoD policy that all military munitions treated on-site shall be counted in the 10,000 pound “otherwise used threshold.” Therefore, if an installation uses any of the above treatment processes for military munitions that are to be treated prior to disposal the 10,000 pound “otherwise used” threshold applies. The 10,000 pound threshold applies whether or not the treated munitions exist on-site or were brought from off-site. DoD is setting this policy to fulfill the intent of EO 12856 to provide the public with as much information about activities involving toxic chemical releases as practical. It should not be interpreted as a disagreement with logic of the Military Munitions Rule, but rather a decision to maximize reporting authority under EO 12856.

Details on applying this guidance to demilitarization activities will be published in a separate technical guidance document provided later this year.

### **Toxic Chemical Release Reduction Goals (EO 12856 Sections 3-302(b) and 3-304)**

DoD facilities meeting threshold reporting levels for toxic chemicals pursuant to EPCRA section 313 must develop goals to help reduce DoD's total releases and off-site transfers of TRI chemicals 50 percent by December 31, 1999. The 50 percent reduction goal is applied on a DoD-wide basis allowing for variation in the achievement of these reductions at individual facilities. The baseline will consist only of those toxic chemicals that were reported to EPA as part of the CY 1994 EPCRA Section 313 reporting. Since DoD policy does not require munitions and munitions related items to be reported for CY 1994-1998, the baseline and reduction efforts do not include releases and off-site transfers associated with munitions and munitions related items.

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<sup>1</sup> The following is from the March 1995 DoD Guidance for TRI reporting and applies to munitions issues: “Section 6-601 of EO 12856 states that the ‘head of a Federal agency may request from the President an exemption from complying with the provisions of any or all aspects of this order for particular Federal agency facilities, provided that the procedures set forth in section 120(j)(1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980” (CERCLA) as amended (42 USC 9601 et. seq.) are followed.’ This exemption and the 120(j)(1) process applies for facilities that need a blanket exemption for the entire facility. Only in rare circumstances, should facilities request a 120(j)(1) exemption. However, for individual classified activities section 120(j)(2) of CERCLA states ‘Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive Orders concerning the handling of restricted data and national security information, including ‘need to know’ requirements, shall be applicable to any grant of access to classified information under the provisions of [CERCLA] or under [EPCRA].’ Consequently, notwithstanding the provisions of EO 12856, classified information may not be provided unless doing so can be accomplished in strict accordance with all requirements of the Atomic Energy Act

and all Executive Orders concerning the safeguarding of national security information. This restriction on the disclosure of **classified information** exists whether or not the President issues an order exempting a **specified site or facility** from the requirements of EO 12856.” A copy of EO 12356 “National Security Information” is included in the March 1995 guidance for reference.

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