

NLWJC - Kagan

Counsel - Box 022- Folder 010

EPA Executive Order [1]

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 OFFICE OF THE GENERAL COUNSEL

(202)260-8040

FACSIMILE COVER SHEET

TO: ELENA KAGAN

OFFICE: _____

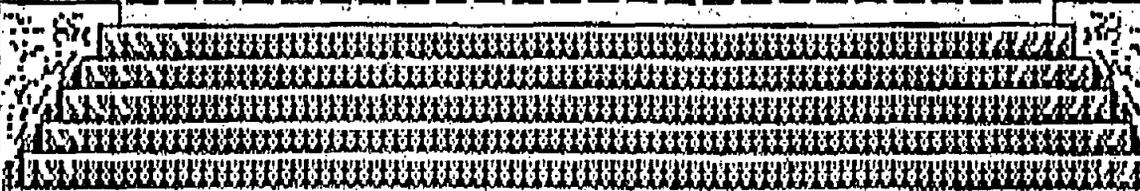
OFC./FAX NO. 456-1647

FROM: GARY GUZY

OFFICE: (202) 260-8067

OFC./FAX NO. _____

RE: Draft TRI EO #1



DRAFT -- DO NOT RELEASE OR CITE

DRAFT -- 8/7/95 3:30 pm

Executive Order _____ of August __, 1995

Federal Acquisition and Community Right-to-Know; Preserving Existing Reporting

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) ("PPA") established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land, and water in their communities by manufacturing facilities.

The Toxics Release Inventory ("TRI") established pursuant to section 313(j) of EPCRA, 42 U.S.C. 11023(j), based on information required to be reported under section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106, provides the public, industry, and federal, state, and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals that can have significant adverse effects on human health and the environment. TRI data allow the public, industry, and government to gauge the progress of industry and government efforts to reduce toxic chemical wastes.

Sharing vital TRI information with the public has provided a strong incentive for reduction in the generation, and, ultimately, the release into the environment of toxic chemicals. Since the inception of the TRI program, reported releases to the environment under TRI have decreased significantly.

The efficiency of the Federal Government is served when it purchases high quality supplies and services that have been produced with a minimum impact on the public health and environment of communities surrounding government contractors. Savings associated with reduced raw materials usage, reduced use of costly, inefficient end-of-pipeline pollution controls, and reduced liability and remediation costs from worker and community claims all serve to increase the economic and efficient provision of essential supplies and services to the government. As a result of TRI reporting, many manufacturers have learned of previously unrecognized significant efficiencies and cost savings in their production processes.

The Federal Government's receipt of timely and quality supplies

and services is also served by the general enhancement of relations between government contractors and the communities in which they are situated, as well as the cooperative working relationship between employers and employees who may be subject to exposure to toxic materials.

Information concerning chemical release and transfer can assist the government to purchase efficiently produced, lower cost, and higher quality supplies and services that also have a minimum adverse impact on community health and the environment.

NOW, THEREFORE, to promote economy and efficiency in government procurement of supplies and services, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including EPCRA, 42 U.S.C. 11001 et seq., PPA, 42 U.S.C. 13101 et seq., 40 U.S.C. 471 and 486(a), and 3 U.S.C. 301, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the executive branch in procuring supplies and services that, to ensure the economical and efficient procurement of Federal Government contracts, federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals released to the environment.

Section 2. Definitions. 2-201. All definitions found in EPCRA and PPA and implementing regulations are incorporated into this order by reference, with the following exceptions for purposes of this order.

2-202. "Federal agency" means an "Executive agency", as defined in 5 U.S.C. 105. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-203. "Acquisition" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when the federal agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

2-204. "Toxic chemical" means a substance on the list described in section 313(c) of EPCRA, 42 U.S.C. 11023(c), as it exists on

← May be deleted

the effective date of this order, [and any additions or deletions thereafter pursuant to sections 313(d) and (e) of EPCRA, 42 U.S.C. 11023(d) and (e).]

2-205. "Administrator" means the Administrator of the United States Environmental Protection Agency ("EPA").

2-206. "Federal contractor" means an entity that has submitted the successful bid or proposal in response to a competitive acquisition solicitation.

← If [] deleted

expected to equal or exceed

Section 3. Applicability. 3-301. Each federal agency shall, to the maximum extent practicable, include in contract solicitations as an eligibility criterion for the award of competitive acquisition contracts with the federal contractors described in subsection 3-302, the requirement that such contractors must file (and continue to file for the life of the contract) a Toxic Chemical Release Form ("Form R"), as described in sections 313(a) and (g) of EPCRA, 42 U.S.C. 11023(a) and (g), for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility, as described in section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106.

May be deleted & returned to original 3-301 as edited

As consistent with Title IV of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, ___ U.S.C. ___, and section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11), the requirements of this order are only applicable to competitive acquisition contracts expected to equal or exceed \$100,000.

3-302. The federal contractors subject to the eligibility criterion described in subsection 3-301 above are those who currently report to the TRI pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A), that is, manufacturers having Standard Industrial Classification Code ("SIC") designations of 20 through 39 (as in effect on July 1, 1985). For SIC designations, see "Standard Industrial Classification Manual" published by the Office of Management and Budget.

3-303. Each federal agency shall find that a prospective federal contractor has satisfied the requirements in subsection 3-301 if the contractor certifies in a solicitation that it:

- (a) Does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
- (b) Does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- (c) Does not meet the reporting thresholds established

under section 313(f) of EPCRA, 42 U.S.C. 11023(f); or

- (d) Has complied fully with the reporting requirements of subsection 4-404.

3-304. Each federal agency shall require the filings described in subsection 3-301 above to include information on all chemicals identified by the Administrator pursuant to section 313(c) of EPCRA, 42 U.S.C. 11023(c), as of the date of this order, [and any additions or deletions thereafter pursuant to sections 313(d) and (e) of EPCRA, 42 U.S.C. 11023(d) and (e)]

May be deleted

3-305. Each federal agency may amend existing contracts, to the extent permitted by law and where practicable, to require the reporting of information specified in subsection 3-301 above.

Section 4. Implementation. 4-401. Not later than September 30, 1995, the EPA shall publish in the Federal Register guidance for compliance with this order, including applicability with respect to subcontractors.

4-402. Within 30 days of the issuance of the guidance provided for in subparagraph 4-401 above, each federal agency shall include in all acquisition solicitations issued on or after the effective date of this order, the provisions necessary to effect this order.

4-403. For all contracts expected to exceed \$500,000, each federal agency shall consult with the Administrator or her designee when the agency believes it is not practicable to include the eligibility requirement of section 3-301 in the contract solicitation or award.

4-404. Each federal agency shall require each federal contractor designated in subsection 3-302 above to:

- (a) Have included in its response to the contract solicitation a certification, as specified in the guidelines published pursuant to subsection 4-401 of this order, that it will comply with the requirements of subsection 3-301; and
- (b) File with the Administrator and each appropriate state pursuant to section 313(a) of EPCRA, 42 U.S.C. 11023(a), the information required by subsection 3-301, beginning on the next July 1 after the date on which the contract is awarded.

4-405. Information submitted to the EPA pursuant to subsection 4-404(b) above shall be subject to the trade secret protections provided by section 322 of EPCRA, 42 U.S.C. 11042. Information

that is not trade secret shall be made available to the public pursuant to sections 313(h) and (j) of EPCRA, 42 U.S.C. 11023(h) and (j). The Administrator is directed to review reports submitted pursuant to this order to determine the appropriateness of any ~~claims~~ ^{trade secret}] ?

4-406. When the Administrator determines that a federal contractor has not filed the necessary forms or complete information as required by subsection 3-301 above, the Administrator or her designee may recommend termination of the contract for convenience. The Administrator shall transmit that recommendation to the head of the contracting agency, and that agency should consider the recommendation and determine whether to terminate the contract. In carrying out this responsibility, the Administrator may investigate any subject federal contractor to determine the adequacy of compliance with the provisions of this order and the Administrator or her designee may hold such hearings, public or private, as she deems advisable to assist in her determination of compliance.

4-407. Each contracting agency shall cooperate with the Administrator and provide such information and assistance as the Administrator may require in the performance of her functions under this order.

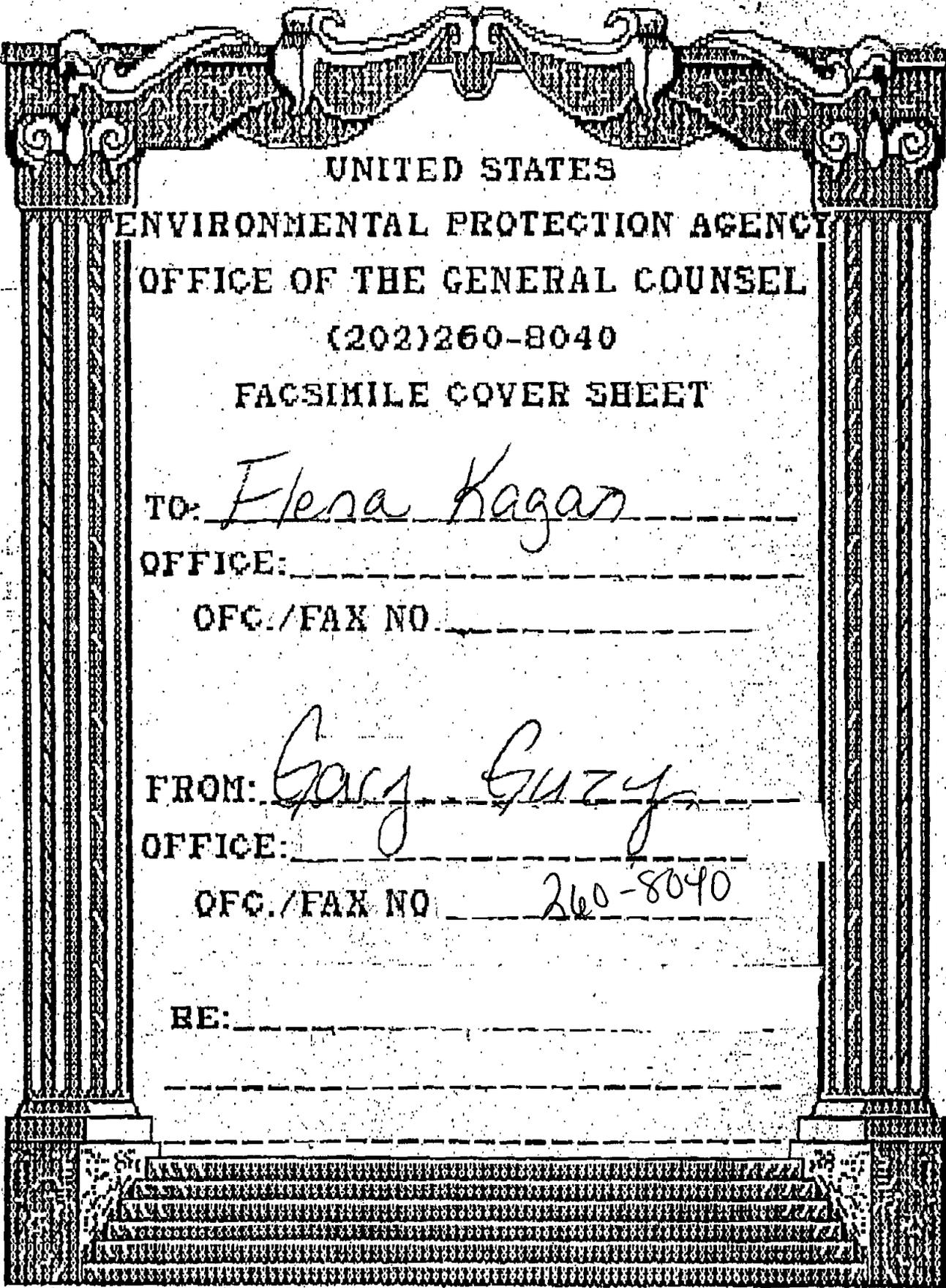
4-408. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to federal agencies in order to assist in full compliance with this order.

Section 5. General Provisions. 5-501. The requirements of this order shall be implemented and incorporated in acquisition regulations, including the Federal Acquisition Regulation (FAR), within 90 days after the effective date of this order.

5-502. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

5-503. This order shall be effective immediately, (and shall ^{necessary?} continue to be in effect until revoked.)

The White House
August __, 1995



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 OFFICE OF THE GENERAL COUNSEL
 (202)260-8040

FACSIMILE COVER SHEET

TO: Elena Kagan

OFFICE: _____

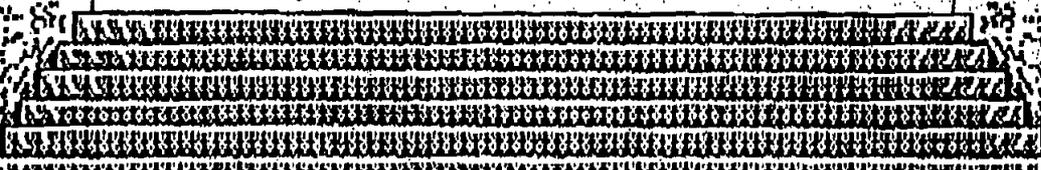
OFC./FAX NO. _____

FROM: Gary Guzy

OFFICE: _____

OFC./FAX NO. 260-8040

RE: _____



DRAFT -- DO NOT RELEASE OR CITE

DRAFT -- 8/7/95 9 am

Executive Order _____ of August __, 1995

Federal Acquisition and Community Right-to-Know; Protection of Authority to Implement Future Actions

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) ("PPA") established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land, and water in their communities by manufacturing facilities.

The Toxics Release Inventory ("TRI") reporting requirement under section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106, provides the public, industry, and federal, state, and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals, ~~that~~ can have significant adverse effects on human health and the environment. TRI data allow the public, industry, and government to gauge the progress of industry and government efforts to reduce toxic chemical wastes. *which*

Sharing vital TRI information with the public has provided a strong incentive for reduction in the generation, and, ultimately, release into the environment, of toxic chemicals. Since the inception of the TRI program, reported releases to the environment under TRI have decreased significantly.

The efficiency of the Federal Government is served when it purchases high quality supplies and services that have been produced with a minimum impact on the public health and environment of communities surrounding government contractors. Savings associated with reduced raw materials usage, reduced use of costly, inefficient end-of-pipeline pollution controls, and reduced liability and remediation costs from worker and community claims all serve to increase the economic and efficient provision of essential supplies and services to the government. As a result of TRI reporting, many manufacturers have learned of previously unrecognized significant efficiencies and cost savings in their production processes. *see other order*

The Federal Government's receipt of timely and quality supplies and services is also served by the general enhancement of relations

between government contractors and the communities in which they are situated, as well as the cooperative working relationship between employers and employees who may be subject to exposure to toxic materials.

Information concerning chemical release and transfer can assist the government to purchase efficiently produced, lower cost, and higher quality supplies and services that also have a minimum adverse impact on community health and the environment.

NOW, THEREFORE, to promote economy and efficiency in government procurement of supplies and services, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including EPCRA, 42 U.S.C. 11001 et seq., PPA, 42 U.S.C. 13101 et seq., 40 U.S.C. 471 and 486(a), and 3 U.S.C. 301, it is hereby ordered as follows:

Sec. 1. Policy. It is the intent of the Executive Branch to respect appropriate rulemaking procedures under the Administrative Procedures Act concerning the addition of any new classes of industrial facilities or the reporting of toxic chemical use pursuant to EPCRA and PPA. To the extent these provisions of the law are rendered ineffective by restrictions on the use of appropriated funds by the Executive Branch, it will be the policy of the executive branch in procuring supplies and services that, to ensure the economical and efficient procurement of Federal Government contracts, federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals used, managed, or released to the environment.

new toxic classes? where?

It is the policy - see the other EO! This does not work.

what sort of restrictions? rendered ineffective how?

Sec. 2. Definitions. 2-201. All definitions found in EPCRA and PPA and implementing regulations are incorporated into this order by reference, with the following exceptions for purposes of this order.

2-202. "Federal agency" means an "Executive agency", as defined in 5 U.S.C. 105. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-203. "Acquisition" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when the Federal department or agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract

performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

2-204. "Toxic chemical" means a substance on the list described in section 313(c) of EPCRA, 42 U.S.C. 11023(c), as it exists on the effective date of this order, and any additions or deletions thereafter pursuant to sections 313(d) and (e) of EPCRA, 42 U.S.C. 11023(d) and (e). *e*

keep. yes?

2-205. "Administrator" means the Administrator of the United States Environmental Protection Agency ("EPA").

2-206. "Federal contractor" means an entity that has submitted the successful bid or proposal in response to a competitive acquisition solicitation.

Sec. 3. Applicability. 3-301. The Administrator is directed to continue public notice and comment rulemaking proceedings to consider whether, as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b), to add to the list of Standard Industrial Classification Codes ("SIC") of those who must report to the TRI pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A). Such rulemaking proceedings shall be developed in consultation with the Office of Management and Budget and other federal agencies, pursuant to Executive Order 12866.

Diff from rulemaking?

3-302. The Administrator is directed to develop an expeditious process for consideration of reporting under EPCRA on information on the use of toxic chemicals at facilities, including information on mass balance, materials accounting, or other chemical use data, pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A). This process shall include public participation and consultation with the Office of Management and Budget and other federal agencies, to the maximum extent practicable, with a goal of publishing guidance on the specific filing requirements within 60 days of the effective date of this order.

on all facilities. yes? not just those added by 3-301?

Aming on this, not in other New classes

3-303. In the event the activities under subsection 3-301 above are prohibited or challenged under a legislative appropriations restriction, each Federal agency shall, to the maximum extent practicable, include in contract solicitations as an eligibility criterion for the award of competitive acquisition contracts expected to equal or exceed \$100,000 with the federal contractors described in subsection 3-305, the requirement that new classes of contractors identified for 3-305(b) must file (and continue to file for the life of the contract) a Toxic Chemical Release Form ("Form R"), as described in sections 313(a) and (g) of EPCRA, 42 U.S.C. 11023(a) and (g), for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility, as described in section 313 of EPCRA, 42 U.S.C. 11023, and section

What does this mean?

6607 of PPA, 42 U.S.C. 13106.

again, what does this mean?

3-304. In the event the activities under subsection 3-302 above are prohibited or challenged under a legislative restriction, each Federal agency shall, to the maximum extent practicable, include in contract solicitations as an eligibility criterion for the award of competitive acquisition contracts expected to equal or exceed \$100,000 with the federal contractors described in subsection 3-305(a), the requirement that such contractors must file (and continue to file for the life of the contract) a Toxic Chemical Release Form ("Form R"), as described in sections 313(a) and (g) of EPCRA, 42 U.S.C. 11023(a) and (g), for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility, as described in section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106, and the chemical use information specified by guidance developed pursuant to subsection 3-302 above. In this event, the requirements of this subsection shall not affect the substantive outcome of any future rulemaking concerning the activities under subsection 3-302 above.

then use

already have to do this by OPA EO

?? what future rulemaking? what if reverse, circumvented + inconsistent w/ this?

3-305. The federal contractors subject to the eligibility criterion described in subsection 3-303 above are:

- (a) Those who currently report to the TRI pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A), that is, manufacturers having Standard Industrial Classification Code ("SIC") designations of 20 through 39 (as in effect on July 1, 1985); and
- (b) Those who are engaged in activities closely aligned with manufacturing sectors identified in (a) above or other facilities meeting the criteria specified in 313(b)(2) that manufacture, process, or otherwise use quantities of toxic chemicals, as identified pursuant to the rulemaking process in subsection 3-301 above.

But the elig. criterion refers only to new classes of firms.

Don't really get this.

3-306. Each Federal agency shall find that a prospective federal contractor has satisfied the requirement in subsections 3-303 and 3-304 if the contractor certifies in a solicitation that they:

- (a) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
- (b) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- (c) Do not meet the reporting thresholds established under section 313(f) of EPCRA, 42 U.S.C. 11023(f); or
- (d) Have complied fully with the reporting requirements of

subsection 4-404.

3-307. Each Federal agency shall require the filings described in subsections 3-303 and 3-304 above to include information on all chemicals identified by the Administrator pursuant to section 313(c) of EPCRA, 42 U.S.C. 11023(c), as of the date of this order, and any additions or deletions thereafter pursuant to sections 313(d) and (e) of EPCRA, 42 U.S.C. 11023(d) and (e).

3-308. The Administrator annually shall publish or cause to be published, in the Federal Register, a list of SIC classifications subject to this requirement. The Administrator may adjust the list in subsection 3-301 as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b); however, any additions to the list will apply to solicitations issued after the addition has been published in the Federal Register.

3-309. Each Federal agency may amend existing contracts, to the extent permitted by law and where practicable, to require the reporting of information specified in subsections 3-302 and 3-303 above.

3-310. Title IV of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103-355, encourages Federal agencies to limit restrictions placed on simplified acquisitions as defined under section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11). Accordingly, the requirements of this order are applicable to competitive acquisition contracts of \$100,000 or more.

see other

Sec. 4. Implementation. 4-401. This order shall take effect on the date that the activities under either subsections 3-301 or 3-302 above are prohibited or challenged under a legislative appropriations restriction, as determined by the Administrator.

4-402. Not later than 30 days after the effective date of this order, the EPA shall publish in the Federal Register guidance for compliance with this Order, including applicability with respect to subcontractors. Not later than 60 days after the effective date of this order, each Federal agency shall include in all acquisition solicitations issued on or after the effective date of this order, the provisions necessary to effect this order.

4-403. For all contracts expected to exceed \$500,000, each Federal agency shall consult with the Administrator or her designee when the agency believes it is not practicable to include the eligibility requirement of section 3-303 and 3-304 in the contract solicitations.

4-404. Each Federal agency shall require each federal contractor designated in subsection 3-305 above to:

She gets discretion to decide what this means?

- (a) Have included in its response to the contract solicitation a certification, as specified in the guidelines published pursuant to subsection 4-401 of this order, that it will comply with the requirements of subsections 3-303 and 3-304; and
- (b) For each successful bidder entering into a contract with a Federal agency, file with the Administrator and each appropriate state pursuant to section 313(a) of EPCRA, 42 U.S.C. 11023(a), the information required by subsections 3-303 and 3-304, beginning on the next July 1 after the date on which the contract is awarded.

4-405. Information submitted to the EPA pursuant to subsections 3-304 and 4-404 above shall be subject to the following protections:

- (a) TRI information submitted pursuant to subsection 4-404(b) above shall be subject to the trade secret protections provided by section 322 of EPCRA, 42 U.S.C. 11042. Information that is not trade secret shall be made available to the public pursuant to sections 313(h) and (j) of EPCRA, 42 U.S.C. 11023(h) and (j).
- (b) Chemical use information submitted pursuant to subsections 3-304 and 4-404(b) above shall be subject to the disclosure provisions of section 14 of the Toxic Substances Control Act, 15 U.S.C. 2613.

The Administrator is directed to review reports submitted pursuant to this order to determine the appropriateness of any claims.

*see other
wan.*

4-406. When the Administrator determines that a federal contractor has not filed the necessary forms or complete information as required by subsections 3-303 or 3-304 above, the Administrator or her designee may recommend termination of the contract for convenience. The Administrator shall transmit that recommendation to the head of the contracting agency, and that agency should consider the recommendation and determine whether to terminate the contract. In carrying out this responsibility, the Administrator may investigate any subject federal contractor to determine the adequacy of compliance with the provisions of this order and the Administrator or her designee may hold such hearings, public or private, as she deems advisable to assist in her determination of compliance.

4-407. Each contracting agency shall cooperate with the Administrator and provide such information and assistance as the Administrator may require in the performance of her functions under this order.

4-408. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to

Federal agencies in order to assist in full compliance with this order.

Sec. 5. General Provisions. 5-501. The requirements of this order shall be implemented and incorporated in acquisition regulations, including the Federal Acquisition Regulation (FAR), within 60 days after the effective date of this order.

under order

5-502. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

5-503. This order shall be effective immediately, and the eligibility criterion of subsections 3-303 above shall cease upon the termination of any legislative restriction on reporting by new classes facilities under subsection 3-301 above, and the eligibility criterion of subsection 3-304 above shall cease upon the termination of any legislative restriction on reporting of chemical uses under subsection 3-302 above.

The White House
August __, 1995

as opposed to a prohibition or challenge?

no - see 4-401.

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 OFFICE OF THE GENERAL COUNSEL
 (202)260-8040
 FACSIMILE COVER SHEET

TO: ELNA KAGAN

OFFICE: _____

OFC./FAX NO. 456-1647

FROM: GARY GUZY

OFFICE: (202) 260-8067

OFC./FAX NO. _____

RE: ~~Draft TRT EO #1~~
Directive

DRAFT

Memorandum

Expediting Community Right-to-Know Initiatives

August 8, 1995

Memorandum for the Administrator of the Environmental Protection Agency and the Heads of Other Executive Departments and Agencies

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) provide an innovative approach to protecting public health and the environment by ensuring that communities are informed about the toxic chemical being released into the air, land, and water by manufacturing facilities. I am committed to preserving this law, because Community Right-to-Know protections provide the basic informational tool to encourage informed community-based environmental decision making and provide a strong incentive for businesses to find their own ways of preventing pollution in the first place.

The law provides the Environmental Protection Agency with substantial authority to add (1) new chemicals; (2) new classes of industrial facilities; and (3) additional types of information concerning toxic chemical use at facilities. Community Right-to-Know should be enhanced wherever possible. EPA currently is engaged in an on-going process to address potential facility expansion and the collection of use information. I am committed to a full and open process on the policy issues posed by EPA's exercise of these authorities. I am therefore directing EPA to expedite its consideration of the facilities and chemical use rulemakings so that consideration of these issues can be fully accomplished during this Administration.

1. Objectives.

The objectives of this community right-to-know initiative are to:

- (a) assess the appropriateness of expanding the scope of Toxics Release Inventory ("TRI") reporting to additional facilities;
- (b) determine the need for and nature of chemical use information reporting on TRI;
- (c) put in place on an expedited basis any regulatory measures needed to implement appropriate additional reporting;
- (d) ensure that the activities in (a)-(c) above are conducted in a full and open public process as possible, including where appropriate, through notice and comment rulemaking

under the Administrative Procedures Act; and

- (e) provide for consultation with the Office of Management and Budget and other federal agencies, pursuant to Executive Order 12866.

2. Implementation.

The Administrator of the Environmental Protection Agency, in consultation with the Office of Management and Budget and appropriate Federal agencies with applicable technical and functional expertise, as necessary, shall provide overall leadership, management oversight, and policy direction to implement this community right-to-know initiative through the following actions:

- (a) Continuation on an expedited basis of the public notice and comment rulemaking proceedings to consider whether, as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b), to add to the list of Standard Industrial Classification ("SIC") Code designations of 20 through 39 (as in effect on July 1, 1985). For SIC Code designations, see "Standard Industrial Classification Manual" published by the Office of Management and Budget. This Directive establishes a goal of completing the rulemaking process by September 1996.
- (b) Development and implementation of an expedited, open, and transparent process for consideration of reporting under EPCRA on information on the use of toxic chemicals at facilities, including information on mass balance, materials accounting, or other chemical use data, pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A). Such expedited process shall include rulemaking, as appropriate. EPA shall report on the progress of this effort by October 1, 1995, with a goal to be able to put a pilot program in place by that date or soon thereafter as possible and a plan for an aggressive expansion of that program, should the process determine that use reporting is appropriate.

7. [These actions should continue unless specifically prohibited by law. The head of each executive department or agency shall assist the Environmental Protection Agency in implementing this community right-to-know initiative as quickly as possible [in accordance with the schedules established herein].

3. No Private Rights Created.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM CLINTON,
THE WHITE HOUSE
Washington, August 5, 1995

OCC - Growth Washington

- PM

- supplies / invoices

- 3-306 - the art

3-204 / 2-204 } put back in??

5-503 - try P's hands, Don't do.

or - shall remain effective until revoked.

Patricia Roberts -

OCC - expanded concerns

- directive

- future

~~2/20~~
~~Run~~

GEVerre

- Directive to administrator

- Everything else should be put on hold.

- back idea - mirror of EO procedures.

-

Exec order

~~Exec~~ order re ^{had} contractors disclosing certain things relating to the production of toxic chemicals

latest draft? Haven't seen

EO contingent on leg action
otherwise - follow normal admin process

Anyone heard of anything like that.
Obvious problems w/?

Bob Danner

Trace: why not
just do them?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF GENERAL COUNSEL
PESTICIDES AND TOXIC SUBSTANCES DIVISION
FAX NUMBER (703) 235-5350

FACSIMILE REQUEST/COVER SHEET

(Please type or print clearly in black ink only)

SEND FAX TO:

Name: FLEWA KAGAN

Office: _____

Office Phone No.: _____

Fax No.: (202) 456-1647

FROM:

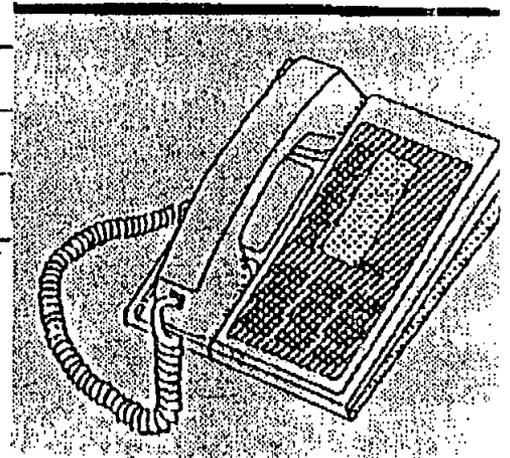
Name: PATRICIA ROBERTS

Office Phone No.: (703) 235-5320 Date: 8/3/95

Number of Pages (including cover sheet): 2

SPECIAL MESSAGE:

Re Gary Guzy



Mandatory Use Option

2-201. Each Federal department or agency shall, to the maximum extent practicable, include as eligibility criteria for acquisition contracts for more than [\$200,000] for goods and services from the federal contractors described in subsection 2-202 the requirement that Federal contractors must file (and continue to file for the life of the contract) for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility:

- (a) A Toxic Chemical Release Form ("Form R"), published pursuant to section 313(g) of EPCRA, as described in section 313 of EPCRA and section 6607 of PPA; and
- (b) Information on the use of the toxic chemical, including information on mass balance, materials accounting, or other chemical use data, as specified by the Administrator in guidance to be issued within 150 days of this order.

[Delete 2-207]

4-405. Information submitted to EPA pursuant to subsection 4-404 above shall be subject to the following protections:

- (a) Information submitted pursuant to subsection 2-201(a) above shall be subject to the trade secret protections provided by section 322 of EPCRA;
- (b) Information submitted pursuant to subsection 2-201(b) above shall be subject to the disclosure provisions of section 14 of the Toxic Substances Control Act, 15 U.S.C. 2613.

The Administrator is directed to review reports submitted under subsection 4-404 above to determine the appropriateness of any claims.

VP - Jack Quinn

Bill Coleman;
Art Frost; Mack Reed
Sally Katzen; Steve Kellerman;

Major concern -

certification process - competitive disadvantage.

preference ↓

no incentive to seek federal recognition w/ NPR principles.

How



Law
456-1647

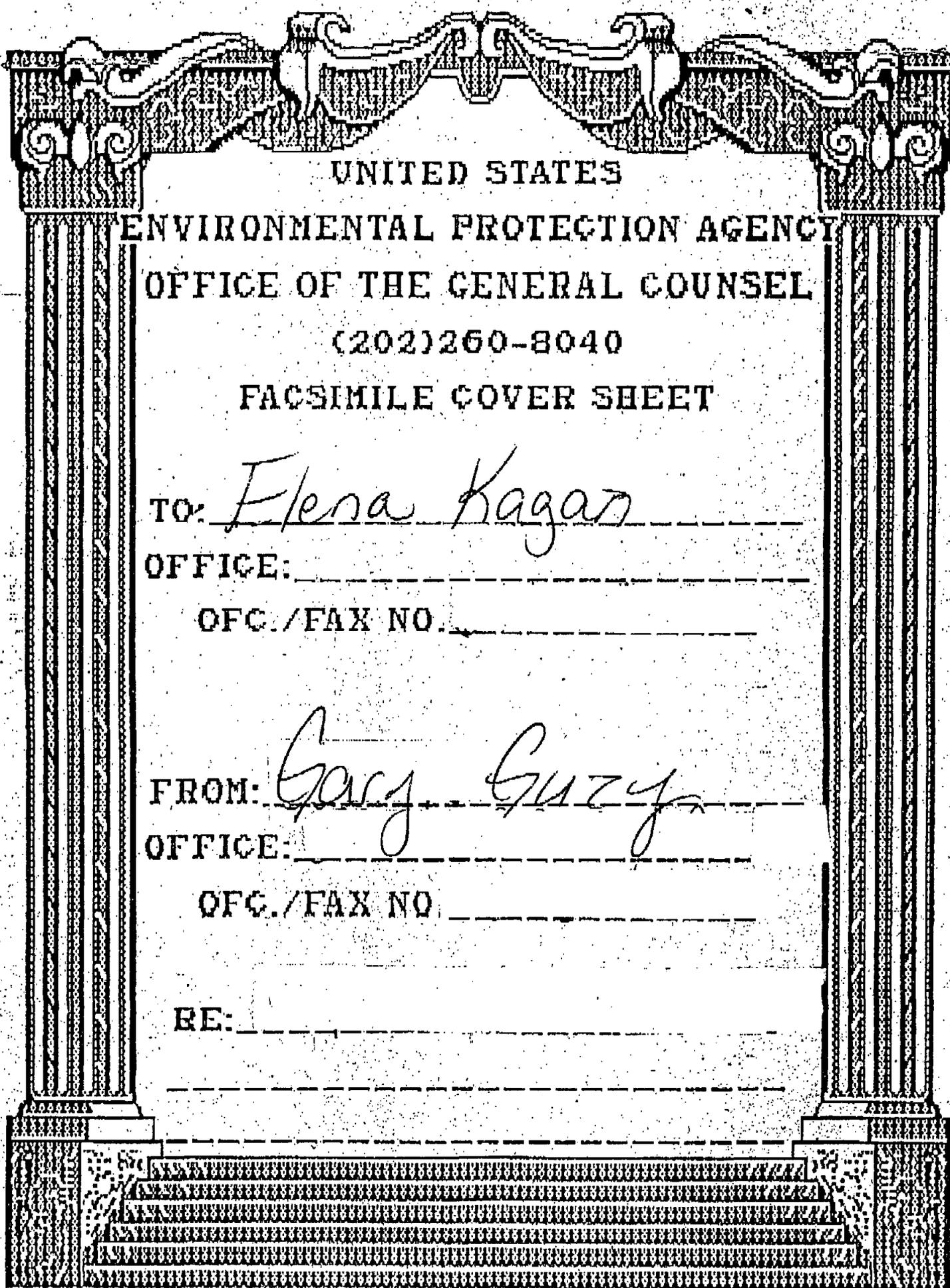
-EO

-pres directive

-discussion draft -
circulate to press.

As envisaged w/ T:rk

Pat Roberts



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 OFFICE OF THE GENERAL COUNSEL
 (202)260-8040
 FACSIMILE COVER SHEET

TO: *Elena Kagan*

OFFICE: _____

OFC./FAX NO. _____

FROM: *Gary Guzy*

OFFICE: _____

OFC./FAX NO. _____

RE: _____



DRAFT -- DO NOT RELEASE OR CITE

DRAFT -- 8/7/95 9 am

Executive Order _____ of August __, 1995

Federal Acquisition and Community Right-to-Know; Preserving Existing Reporting

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) ("PPA") established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land, and water in their communities by manufacturing facilities.

The Toxics Release Inventory ("TRI") reporting requirement under section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106, provides the public, industry, and federal, state, and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals, *which* that can have significant adverse effects on human health and the environment. TRI data allow the public, industry, and government to gauge the progress of industry and government efforts to reduce toxic chemical wastes.

Sharing vital TRI information with the public has provided a strong incentive for reduction in the generation, and, ultimately, release into the environment, of toxic chemicals. Since the inception of the TRI program, reported releases to the environment under TRI have decreased significantly.

The efficiency of the Federal Government is served when it purchases high quality supplies and services that have been produced with a minimum impact on the public health and environment of communities surrounding government contractors. Savings associated with reduced raw materials usage, reduced use of costly, inefficient end-of-pipeline pollution controls, and reduced liability and remediation costs from worker and community claims all serve to increase the economic and efficient provision of essential supplies and services to the government. As a result of TRI reporting, many manufacturers have learned of previously unrecognized significant efficiencies and cost savings in their production processes.

expand each sentence -- leads to savings in -- because...

The Federal Government's receipt of timely and quality supplies and services is also served by the general enhancement of

how lead to savings - or at least that lead to savings

relations between government contractors and the communities in which they are situated, as well as the cooperative working relationship between employers and employees who may be subject to exposure to toxic materials.

Information concerning chemical release and transfer can assist the government to purchase efficiently produced, lower cost, and higher quality supplies and services that also have a minimum adverse impact on community health and the environment. ✓

NOW, THEREFORE, to promote economy and efficiency in government procurement of supplies and services, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including EPCRA, 42 U.S.C. 11001 et seq., PPA, 42 U.S.C. 13101 et seq., 40 U.S.C. 471 and 486(a), and 3 U.S.C. 301, it is hereby ordered as follows:

Sec. 1. Policy. It is the policy of the executive branch in procuring supplies and services that, to ensure the economical and efficient procurement of Federal Government contracts, federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals released to the environment.

Sec. 2. Definitions. 2-201. All definitions found in EPCRA and PPA and implementing regulations are incorporated into this order by reference, with the following exceptions for purposes of this order.

2-202. "Federal agency" means an "Executive agency", as defined in 5 U.S.C. 105. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-203. "Acquisition" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when the Federal department or agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

2-204. "Toxic chemical" means a substance on the list described in section 313(c) of EPCRA, 42 U.S.C. 11023(c), as it exists on the effective date of this order, (and any additions or deletions

thereafter pursuant to sections 313(d) and (e) of EPCRA, 42 U.S.C. 11023(d) and (e).]

2-205. "Administrator" means the Administrator of the United States Environmental Protection Agency ("EPA").

2-206. "Federal contractor" means an entity that has submitted the successful bid or proposal in response to a competitive acquisition solicitation.

Sec. 3. Applicability. 3-301. Each Federal agency shall, to the maximum extent practicable, include in contract solicitations as an eligibility criterion for the award of competitive acquisition contracts expected to equal or exceed \$100,000 with the federal contractors described in subsection 3-302, the requirement that such contractors must file (and continue to file for the life of the contract) a Toxic Chemical Release Form ("Form R"), as described in sections 313(a) and (g) of EPCRA, 42 U.S.C. 11023(a) and (g), for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility, as described in section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106.

3-302. The federal contractors subject to the eligibility criterion described in subsection 3-301 above are those who currently report to the TRI pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A), that is, manufacturers having Standard Industrial Classification Code ("SIC") designations of 20 through 39 (as in effect on July 1, 1985).

3-303. Each Federal agency shall find that a prospective federal contractor has satisfied the requirement in subsection 3-301 if the contractor certifies in a solicitation that they:

- (a) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
- (b) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- (c) Do not meet the reporting thresholds established under section 313(f) of EPCRA, 42 U.S.C. 11023(f); or
- (d) Have complied fully with the reporting requirements of subsection 4-404. ~~etc~~
~~of form~~

3-304. Each Federal agency shall require the filings described in subsection 3-301 above to include information on all chemicals identified by the Administrator pursuant to section 313(c) of

³ additions + deletions has been scrapped
here. Also should be scrapped in
2-204?

EPCRA, 42 U.S.C. 11023(c), as of the date of this order.

3-305. Each Federal agency may amend existing contracts, to the extent permitted by law and where practicable, to require the reporting of information specified in subsection 3-301 above.

3-306. Title IV of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103-355, encourages Federal agencies to limit restrictions placed on simplified acquisitions as defined under section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11). Accordingly, the requirements of this order are applicable to competitive acquisition contracts of \$100,000 or more.

Why necessary at all? Already said 100,000. And this may implicitly undermine policy.

Sec. 4. Implementation. 4-401. Not later than September 30, 1995, the EPA shall publish in the Federal Register guidance for compliance with this Order, including applicability with respect to subcontractors.

4-402. Within 30 days of the issuance of the guidance provided for in subparagraph 4-401 above, each Federal agency shall include in all acquisition solicitations issued on or after the effective date of this order, the provisions necessary to effect this order.

4-403. For all contracts expected to exceed \$500,000, each Federal agency shall consult with the Administrator or her designee when the agency believes it is not practicable to include the eligibility requirement of section 3-301 in the contract solicitation or award.

4-404. Each Federal agency shall require each federal contractor designated in subsection 3-302 above to:

- (a) Have included in its response to the contract solicitation a certification, as specified in the guidelines published pursuant to subsection 4-401 of this order, that it will comply with the requirements of subsection 3-301; and
- (b) For each successful bidder entering into a contract with a Federal agency, file with the Administrator and each appropriate state pursuant to section 313(a) of EPCRA, 42 U.S.C. 11023(a), the information required by subsection 3-301, beginning on the next July 1 after the date on which the contract is awarded.

4-405. Information submitted to the EPA pursuant to subsection 4-404(b) above shall be subject to the trade secret protections provided by section 322 of EPCRA, 42 U.S.C. 11042. Information that is not trade secret shall be made available to the public pursuant to sections 313(h) and (j) of EPCRA, 42 U.S.C. 11023(h)

and (j). The Administrator is directed to review reports submitted pursuant to this order to determine the appropriateness of any claims.

Don't understand

4-406. When the Administrator determines that a federal contractor has not filed the necessary forms or complete information as required by subsection 3-301 above, the Administrator or her designee may recommend termination of the contract for convenience. The Administrator shall transmit that recommendation to the head of the contracting agency, and that agency should consider the recommendation and determine whether to terminate the contract. In carrying out this responsibility, the Administrator may investigate any subject federal contractor to determine the adequacy of compliance with the provisions of this order and the Administrator or her designee may hold such hearings, public or private, as she deems advisable to assist in her determination of compliance.

4-407. Each contracting agency shall cooperate with the Administrator and provide such information and assistance as the Administrator may require in the performance of her functions under this order.

4-408. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to assist in full compliance with this order.

Sec. 5. General Provisions. 5-501. The requirements of this order shall be implemented and incorporated in acquisition regulations, including the Federal Acquisition Regulation (FAR), within 90 days after the effective date of this order.

occurred w/ 4-401 + 4-402?

5-502. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

5-503. This order shall be effective immediately, and the eligibility criterion requirement of subsection 3-301 above shall cease upon the termination of any legislative restriction on full reporting under subsection 4-404(b) above for all chemicals identified in subsection 2-204.

The White House
August __, 1995

??

What legislative restriction?

any new?

What is full reporting?

How about if it restricts only some reporting?

DRAFT TAKEN TO
DPC MTG**STILL SUBJECT TO AGENCY REVIEW
DRAFT -- DO NOT RELEASE OR CITE**

DRAFT -- 8/4/95 1:15 pm

Executive Order _____ of August __, 1995

Federal Acquisition and Community Right-to-Know

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) ("PPA") established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land, and water in their communities by manufacturing facilities.

The Toxics Release Inventory ("TRI") reporting requirement under section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106, provides the public, industry, and federal, state, and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals, *which* that can have significant adverse effects on human health and the environment. TRI data allow the public, industry, and government to gauge the progress of industry and government efforts to reduce toxic chemical wastes.

Sharing vital TRI information with the public has provided a strong incentive for reduction in the generation, and, ultimately, release into the environment, of toxic chemicals. Since the inception of the TRI program, reported releases to the environment under TRI have decreased significantly.

The Federal Government, through Executive Order 12856, has made a commitment to lead the United States in aggressively pursuing pollution prevention and adopting ways of doing business that minimize adverse impacts on human health or the environment. As the largest procurer of supplies and services in the nation, the Federal Government is in a unique position to foster technologies and processes that reduce releases of toxic chemicals to the environment, encourage recycling instead of other types of waste management, and encourage the substitution of safer alternatives and source reduction where this can be achieved.

The efficiency of the Federal Government is served when it purchases high quality supplies and services that have been produced with a minimum impact on the public health and environment of communities surrounding government contractors. Savings associated with reduced raw materials usage, reduced use

of costly, inefficient end-of-pipeline pollution controls, and reduced liability and remediation costs from worker and community claims all serve to increase the economic and efficient provision of essential supplies and services to the government. The Federal Government's receipt of timely and quality supplies and services is also served by the general enhancement of relations between government contractors and the communities in which they are situated, as well as the cooperative working relationship between employers and employees who may be subject to exposure to toxic materials.

The provision of information concerning toxic chemical use by potential government suppliers is critical to the government's ability to make informed choices about the health and environmental effects of its activities. Information concerning chemical release and transfer, on and off-site waste management data, treatment, recycling, and energy recovery data, as well as chemical use information, all can assist the government in making informed choices concerning procurement among potential suppliers. This information will allow the government to purchase efficiently produced high quality supplies and services that have a minimum adverse impact on community health and the environment.

The benefits to be realized by this order can most readily be achieved by applying its requirements to procurements other than small acquisitions. Accordingly, the requirements of this Order are only being applied to procurements in excess of small purchase thresholds.

text

NOW, THEREFORE, to promote economy and efficiency in government procurement of supplies and services, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including EPCRA, 42 U.S.C. 11001 et seq., PPA, 42 U.S.C. 13101 et seq., 40 U.S.C. 471 and 486(a), and 3 U.S.C. 301, it is hereby ordered as follows:

Sec. 1. Policy. The Toxic Release Inventory is an effective tool for protecting public health and promoting pollution prevention. The Federal Government is committed to assuring full community right-to-know for its own facilities as well as for those that do business with the government. It is the policy of the executive branch in procuring supplies and services that, to ensure the economical and efficient procurement of Federal Government contracts, federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals used, managed, or released to the environment.

Sec. 2. Definitions. 2-201. All definitions found in EPCRA and

No, No, No.
 1) Too health focused
 2) Not enough connection w/ procurement

No, no, no.

PPA and implementing regulations are incorporated into this order by reference, with the following exceptions for purposes of this order.

2-202. "Federal agency" means an "Executive agency", as defined in 5 U.S.C. 105. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-203. "Acquisition" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when the Federal department or agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

2-204. "Toxic chemical" means a substance on the list described in section 313(c) of EPCRA, 42 U.S.C. 11023(c), as it exists on the effective date of this order, and any additions or deletions thereafter pursuant to sections 313(d) and (e) of EPCRA, 42 U.S.C. 11023(d) and (e)..

2-205. "Administrator" means the Administrator of the United States Environmental Protection Agency ("EPA").

2-206. "Federal contractor" means an entity that has submitted the successful bid or proposal in response to a competitive acquisition solicitation.

Sec. 3. Applicability. 3-301. Each Federal agency shall, to the maximum extent practicable, include in contract solicitations as an eligibility criterion for the award of competitive acquisition contracts expected to exceed [\$100,000] with the federal contractors described in subsection 3-302, the requirement that such contractors must file (and continue to file for the life of the contract) a Toxic Chemical Release Form ("Form R"), as described in sections 313(a) and (g) of EPCRA, 42 U.S.C. 11023(a) and (g), for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility, as described in section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106.

3-302. The federal contractors subject to the eligibility criterion described in subsection 3-301 above are:

- (a) Those who currently report to the TRI pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A), that is, manufacturers having Standard Industrial Classification Code ("SIC") designations of 20 through 39 (as in effect on July 1, 1985); and
- (b) Those who are engaged in activities closely aligned with manufacturing or likely to manufacture, process, or otherwise use significant quantities of toxic chemicals. These activities include mining, production, transport, and distribution of metals and chemicals; burning certain fuels to generate electricity; and recycling, recovery, and disposal of toxic chemicals. In particular, these are industries having SIC designations of 10, 1221, 1222, 1311, 4226, 4911, 4931, 4953, 5093, 5169, 5171/2, and 7389 (as in effect on the effective date of this order). More detailed characterizations of these sectors are included in the attachment to this order.

3-303. Each Federal agency shall find that a prospective federal contractor has satisfied the requirement in subsection 3-301 if the contractor certifies in a solicitation that they:

- (a) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
- (b) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A); or
- (c) Do not meet the reporting thresholds established under section 313(f) of EPCRA, 42 U.S.C. 11023(f).

3-304. Each Federal agency shall require the filings described in subsection 3-301 above to include information on all chemicals identified by the Administrator pursuant to section 313(c) of EPCRA, 42 U.S.C. 11023(c), as of the date of this order, and any additions or deletions thereafter pursuant to sections 313(d) and (e) of EPCRA, 42 U.S.C. 11023(d) and (e).

3-305. The Administrator annually shall publish or cause to be published, in the Federal Register, a list of SIC classifications subject to this requirement. The Administrator may adjust the list in subsection 3-301 as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b); however, any additions to the list will apply to solicitations issued after the addition has been published in the Federal Register.

3-306. Each Federal agency may amend existing contracts, to the extent permitted by law and where practicable, to require the

reporting of information specified in subsection 3-301 above.

3-307. As consistent with Title IV of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103-355, Federal agencies shall apply the requirements of this order to contracts or subcontracts that meet or exceed the simplified acquisition threshold defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as amended by 4001 of FASA. (As used, the term simplified acquisition threshold means \$100,000.)

*Ref to 3-307?
Def section*

3-308. Each Federal agency also shall also give preference, as specified in guidance issued pursuant to subsection 4-401 of this order, in awarding contracts for the acquisition of supplies or services, to prospective federal contractors identified in subsection 3-302 that also certify that they will voluntarily provide information on the use of toxic chemicals at their facilities, including information on mass balance, materials accounting, or other chemical use data. The specific chemical use data elements will be specified in the guidance issued under subsection 4-401 of this order. Information submitted pursuant to this subsection shall be submitted on the same schedule as the information required by subsection 3-301.

any asked for all? in addn to stuff that must be given?

why is 301 to the max extent practicable - This isn't.

Sec. 4. Implementation. 4-401. [NEED TO REDRAFT TO REFLECT -- As of today, effective for firms that already report to TRI; new facilities/new information effective in 150 days] Not later than 150 days after the effective date of this order, the EPA shall publish in the Federal Register guidance for compliance with this Order, including applicability with respect to subcontractors.

4-402. Not later than 180 days after the effective date of this order, each Federal agency shall include in all acquisition solicitations issued on or after the effective date of this order, the provisions necessary to effect this order.

[4-403. For all contracts expected to exceed \$500,000, each Federal agency shall consult with the Administrator or her designee when the agency believes it is not practicable to include the eligibility requirement of section 3-301 in the contract solicitations.] [National security determination?]

And then what? Who gets decision?

4-404. Each Federal agency shall require each federal contractor designated in subsection 3-302 above to:

- (a) Have included in its response to the contract solicitation a certification, as specified in the guidelines published pursuant to subsection 4-401 of this order, that it will comply with the requirements of subsection 3-301; and

Also - what if: when not practicable to give preference (if this ever exists)?

(b) File with the Administrator and each appropriate state pursuant to section 313(a) of EPCRA, 42 U.S.C. 11023(a), the information required by subsection 3-301, beginning on the next July 1 after the date on which the contract is awarded.

Being changed - EPCRA for TRI data; TSCA §14 for use data

4-405. Information submitted to the EPA pursuant to subsection 4-404 above shall be subject to the same trade secret protections provided by section 322 of EPCRA, 42 U.S.C. 11042, as other data submitted under section 313 of EPCRA, 42 U.S.C. 11023, and 6607 of PPA, 42 U.S.C. 13106. Information that is not trade secret pursuant to section 322 of EPCRA, 42 U.S.C. 11042, shall be made available to the public pursuant to sections 313(h) and (j) of EPCRA, 42 U.S.C. 11023(h) and (j). The Administrator is directed to review reports submitted under subsection 4-404 above to determine the appropriateness of any trade secret claims.

4-406. When the Administrator determines that a federal contractor has not filed the necessary forms or complete information as required by subsection 3-301 above, the Administrator or her designee may recommend termination of the contract for convenience. The Administrator shall transmit that recommendation to the head of the contracting agency, and that agency should consider the recommendation and determine whether to terminate the contract. In carrying out this responsibility, the Administrator may investigate any subject federal contractor to determine the adequacy of compliance with the provisions of this order and the Administrator or her designee may hold such hearings, public or private, as she deems advisable to assist in her determination of compliance.

may? recommend? consider? Not much of an effort worth. why so weakly?

4-407. Each contracting agency shall cooperate with the Administrator and provide such information and assistance as the Administrator may require in the performance of her functions under this order.

4-408. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to assist in full compliance with this order.

Sec. 5. General Provisions. 5-501. The requirements of this order shall be implemented and incorporated in acquisition regulations, including the Federal Acquisition Regulation (FAR), within 180 days after the effective date of this order.

5-502. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency

decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

5-503. This order shall be effective immediately.

The White House
August __, 1995

Appendix 1.

- 10 - Metal Mining; Includes extraction of metal ores, such as iron, copper, lead, and gold, and the services that support these activities.
- 1221 - Bituminous Coal and Lignite Surface Mining; Establishments engaged in producing coal or lignite at surface mines.
- 1222 - Bituminous Coal Underground Mining; Establishments engaged in producing bituminous coal in underground mines.
- 1311 - Crude Petroleum and Natural Gas; Establishments that operate oil and gas fields, including activities such as coal gasification at the mine site.
- 4226 - Special Warehousing; Limited to petroleum and chemical bulk stations and terminals for hire.
- 4911 - Electric Services; Electric power generation, transmission, and distribution.
- 4931 - Electric and Other Services Combined; Electricity supplied in conjunction with other services, i.e., combined utilities.
- 4953 - Refuse Systems; Includes incinerators, hazardous waste disposal sites, sanitary landfills, and sludge disposal sites.
- 5093 - Scrap and Waste Materials; Establishments that handle the sorting and distribution of scrap and waste materials, e.g., oil waste, metal waste and scrap, and plastics scrap.
- 5169 - Wholesale Distribution of Chemicals and Allied Products; Establishments primarily engaged in the wholesale distribution of chemicals and related materials, e.g., industrial chemicals, petroleum chemicals, explosives.
- 5171/2 - Petroleum Bulk Stations and Terminals; Establishments primarily engaged in the wholesale distribution of petroleum and petroleum products.
- 7389 - Solvent recovery services on a contract or fee basis.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF GENERAL COUNSEL
PESTICIDES AND TOXIC SUBSTANCES DIVISION
FAX NUMBER (703) 235-5350

FACSIMILE REQUEST/COVER SHEET

(Please type or print clearly in black ink only)

SEND FAX TO:

Name: ELANA KAGAN

Office: _____

Office Phone No.: _____

Fax No.: (202) 456-1677 6279

FROM:

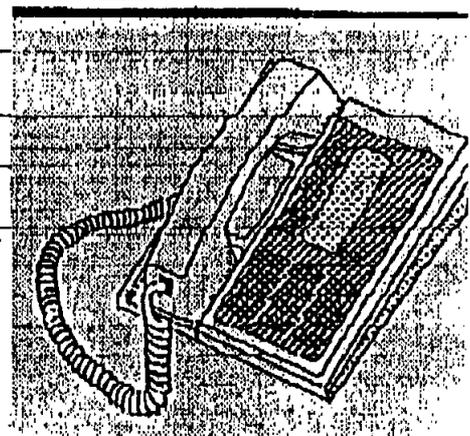
Name: PATRICIA ROBERTS

Office Phone No.: (703) 235-5320 Date: 8/3/95

Number of Pages (including cover sheet): 2

SPECIAL MESSAGE:

For Gary Guzy



Mandatory Use Option

2-201. Each Federal department or agency shall, to the maximum extent practicable, include as eligibility criteria for acquisition contracts for more than [\$200,000] for goods and services from the federal contractors described in subsection 2-202 the requirement that Federal contractors must file (and continue to file for the life of the contract) for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility:

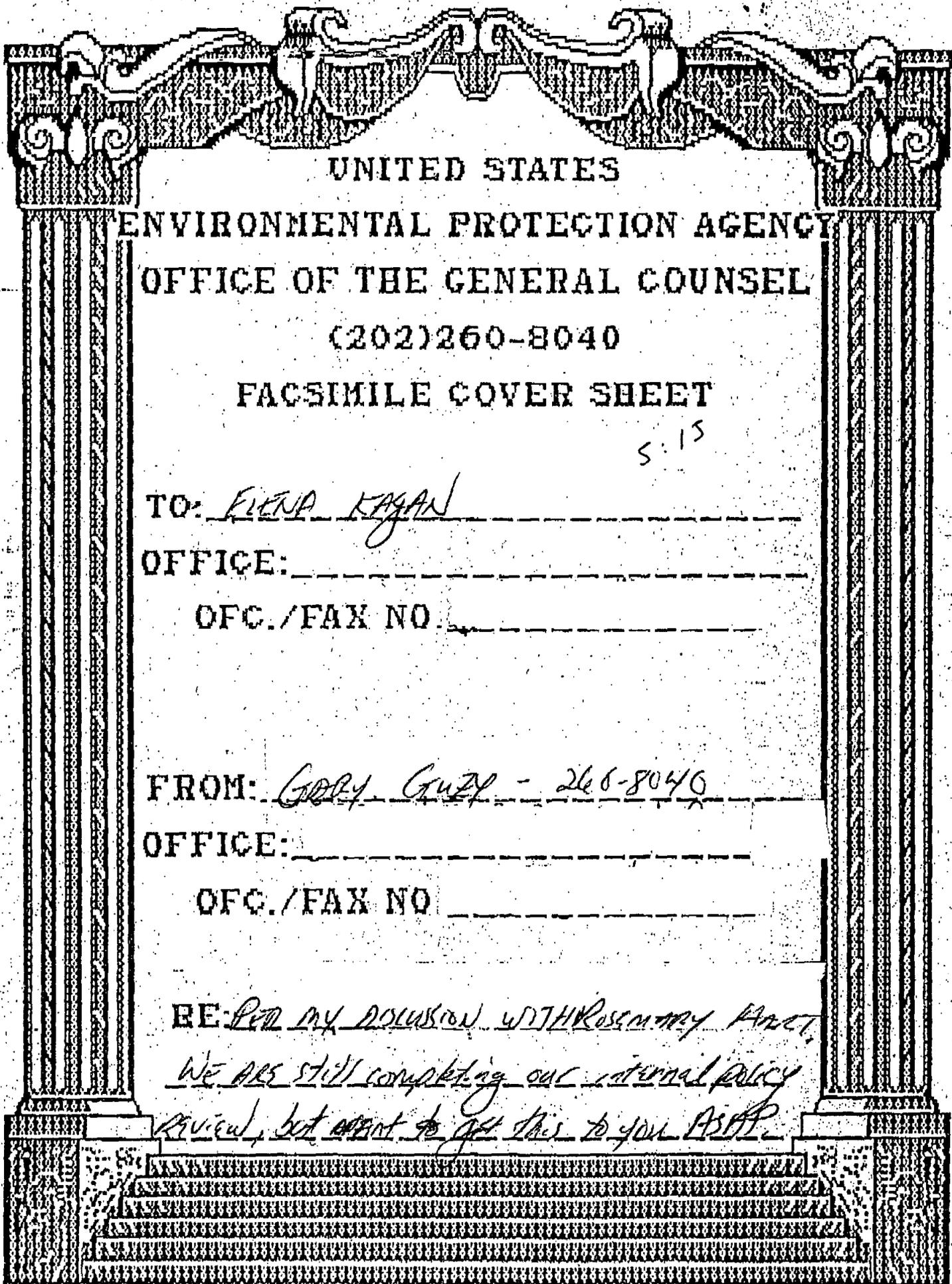
- (a) A Toxic Chemical Release Form ("Form R"), published pursuant to section 313(g) of EPCRA, as described in section 313 of EPCRA and section 6607 of PPA; and
- (b) Information on the use of the toxic chemical, including information on mass balance, materials accounting, or other chemical use data, as specified by the Administrator in guidance to be issued within 150 days of this order.

[Delete 2-207]

4-405. Information submitted to EPA pursuant to subsection 4-404 above shall be subject to the following protections:

- (a) Information submitted pursuant to subsection 2-201(a) above shall be subject to the trade secret protections provided by section 322 of EPCRA;
- (b) Information submitted pursuant to subsection 2-201(b) above shall be subject to the disclosure provisions of section 14 of the Toxic Substances Control Act, 15 U.S.C. 2613.

The Administrator is directed to review reports submitted under subsection 4-404 above to determine the appropriateness of any claims.



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 OFFICE OF THE GENERAL COUNSEL
 (202)260-8040

FACSIMILE COVER SHEET

5:15

TO: FRANK KAGAN

OFFICE: _____

OFC./FAX NO. _____

FROM: GARY GUDY - 260-8040

OFFICE: _____

OFC./FAX NO. _____

RE: Per my discussion with Rosemary Anet,

We are still completing our internal policy review, but want to get this to you ASAP.

STILL SUBJECT TO AGENCY REVIEW
DRAFT -- DO NOT RELEASE OR CITE

DRAFT -- 8/2/95 8 pm

Executive Order _____ of August __, 1995

Federal Acquisition and Community Right-to-Know

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) (EPCRA) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) (PPA) established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land, and water in their communities by manufacturing facilities.

The Toxics Release Inventory (TRI) reporting requirement under section 313 of EPCRA and section 6607 of PPA provides the public, industry, and federal, state, and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals, which can have significant adverse effects on human health and the environment. TRI data allow the public, industry, and government to gauge the progress of industry and government efforts to reduce toxic chemical wastes.

Sharing vital TRI information with the public has provided a strong incentive for reduction in the generation, and ultimately release into the environment, of toxic chemicals. Since the inception of the TRI program, reported releases to the environment under TRI have decreased by 43%.

Central link?

The Federal Government, through Executive Order 12856, has made a commitment to lead the United States in aggressively pursuing pollution prevention and adopting ways of doing business that minimize adverse impacts on human health or the environment. As the largest procurer of goods and services in the nation, the Federal Government is in a unique position to foster technologies and processes that reduce releases of toxic chemicals to the environment, encourage recycling instead of other types of waste management, and encourage the substitution of safer alternatives and source reduction where this can be achieved.

Why? how?
This approach? But + client for the basis of this exec order.

The efficiency of the Federal Government is served when it purchases high quality goods and services that have been produced with a minimum impact on the public health and environment of communities surrounding government contractors. Savings associated with reduced raw materials usage, reduced use of costly, inefficient end-of-pipeline pollution controls, and

What is the basis for this? Is there some other basis than procurement, contracting?

reduced liability and remediation costs from worker and community claims all serve to increase the economic and efficient provision of essential goods and services to the government. The Federal Government's receipt of timely and quality goods and services is also served by the general enhancement of relations between government contractors and the communities in which they are situated, as well as the cooperative working relationship between employers and employees who may be subject to exposure to toxic materials.

*any thing to
bring them
back to
state in U.S.?*

The provision of information concerning toxic chemical use by potential government suppliers is (critical to the government's ability to make informed choices about the health and environmental effects of its activities.) Information concerning chemical release and transfer, on and off-site waste management data, treatment, recycling, and energy recovery data, as well as chemical use information, all can assist the government in making informed choices concerning procurement among potential suppliers.) This information will allow the government to purchase efficiently produced high quality goods and services that have a minimum adverse impact on community health and the environment.

*Does this
provide a
basis? (same
idea if fact
not)
on what
basis?
efficiency
in health?*

*on what
basis?*

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including EPCRA and PPA and 3 U.S.C. 301, it is hereby ordered as follows:

Section 1. Policy

Check this?

It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contractors with the government shall report in a public manner on toxic chemicals used, managed, or released to the environment.

*That's
the
basis.*

Section 2. Applicability

2-201. Each Federal department or agency shall, to the maximum extent practicable, include as an eligibility criterion for acquisition contracts for more than \$200,000 for goods and services from the federal contractors described in subsection 2-202 the requirement that Federal contractors must file (and continue to file for the life of the contract) a Toxic Chemical Release Form ("Form R"), published pursuant to section 313(g) of EPCRA, for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility, as described in section 313 of EPCRA and section 6607 of PPA.

2-202. The federal contractors subject to the eligibility

such

criterion described in subsection 2-201 above are:

- (a) Those having Standard Industrial Classification Code (SIC) designations of 20 through 39 (as in effect on July 1, 1985); and
- (b) Those having SIC designations of 10 (metal mining), 12 (coal mining), 1311 (oil and gas), 14 (non-metal mining), 42 (trucking/warehousing), 4911/31 (electric utilities), 4952/53 (municipal waste), 4953/59 (commercial waste), 50/51 (wholesale distribution), and 7389 (solvent recycling) (as in effect on the effective date of this Order).

refer down to 2-205?

2-203. Each Federal department or agency shall consider the eligibility criterion set out in subsection 2-201 above as satisfied for each federal contractor that certifies that they: (a) do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA; (b) do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA; or (c) do not meet the reporting thresholds established under section 313(f) of EPCRA.

2-204. Filings described in subsection 2-201 above shall be required to include information on all chemicals identified by the Administrator pursuant to EPCRA section 313(c) as of the date of this Order, and any additions or deletions thereafter pursuant to sections 313 (d) and (e).

see 3-304

2-205. The Administrator annually shall publish or cause to be published, in the Federal Register, a list of SIC classifications subject to this requirement. The Administrator may add to the list in subsection 2-201 above to provide that each Standard Industrial Code to which the filing requirement applies is relevant to the purposes of this requirement.

but if 2-202

2-206. Each Federal department or agency shall consider amending existing contracts, to the extent permitted by law and where practicable, to require the reporting of information specified in subsection 2-201 above.

2-207. [Voluntary Option] Each Federal department or agency also shall give preference in awarding contracts for the acquisition of goods or services, to companies reporting under section 313 of EPCRA or this order that also voluntarily provide information on the use of toxic chemicals at their facilities including information on mass balance, materials accounting, or other chemical use data, as specified by the Administrator in guidance to be issued within 150 days of this order.

what other info? why not require that too?

[or]

to the max extent practicable?

broad phrase which includes all stuff 3 yrs we just talked about in manufacturing provisions. Any way to focus?

take if all this is additional?

(Mandatory Option)

Who decides?

NR

Delete section 2-207, and replace section 2-201 with attached page.

Section 3. Definitions

3-301. All definitions found in EPCRA and PPA and implementing regulations are incorporated into this Order by reference, with the following exceptions for purposes of this Order.

3-302. Federal department or agency means an Executive agency, as defined in 5 U.S.C. 105. For purposes of this Order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

3-303. Acquisition means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when the Federal department or agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

3-304. Toxic chemical means a substance on the list described in section 313(c) of EPCRA as it exists on the effective date of this Order.

check 2-204 ✓
~~2-205~~

3-305. Administrator means the Administrator of the U.S. Environmental Protection Agency.

Section 4. Implementation

4-401. Not later than 150 days after the effective date of this Order, the Environmental Protection Agency shall publish in the Federal Register guidance for compliance with this Order, (including any provisions concerning subcontractor requirements.)

There are no such provisions, are there?

4-402. Not later than 180 days after the effective date of this Order, ~~each Federal department or~~ agency shall give notice in all new ~~(acquisition solicitations)~~ that eligibility shall be governed by the provisions of this Order.

?

4-403. ~~Each Federal department or~~ agency shall consult with the Administrator or her designee when the agency believes it is not practicable to include the eligibility requirement of section 2-

201 for any contracts in excess of \$500,000.

what about this provision 2-207?

200-500??

Whose ultimate decision?

with some need d. [unclear]

to max extent practicable?

4-404. Each Federal department or agency shall require each contract bidder designated in subsection 2-202 above to:

(a) Include in its response to the contract solicitation a certification, as specified in the guidelines published by the Administrator, of compliance with the requirements of subsection 2-201; and

(b) Concurrently file with the Administrator the information required by subsection 2-201, beginning with data from the most recent calendar year at the time responses to acquisition solicitations are received.

4-405. [Option for Voluntary Use Data] Information submitted to EPA pursuant to subsection 4-404 above shall be subject to the same trade secret protections provided by section 322 of EPCRA as other data submitted under section 313 of EPCRA and 6607 of PPA. The Administrator is directed to review reports submitted under subsection 4-404 above to determine the appropriateness of any trade secret claims.

provided

or receive?

[OR]

refer to 4-404?

[Option for Mandatory Use Data] -- See attached page

over

4-406. When the Administrator determines that a contractor has not filed the necessary forms and information, the Administrator may make a recommendation that it is appropriate to terminate the contract for convenience. The Administrator shall transmit that recommendation to the head of any department or agency that contracts with the contractor, and that department or agency should consider the recommendation and determine whether to terminate the contract. In carrying out this responsibility, the Administrator may investigate a contractor to determine the adequacy of compliance with the provisions of this Order and the Administrator may hold such hearings, public or private, as she deems advisable to assist in her determination of compliance.

im of

4-407. Each contracting department and agency shall cooperate with the Administrator and provide such information and assistance as the Administrator may require in the performance of her functions under this Order.

4-408. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to assist in full compliance with this order.

ONLY MAY??

only consider?

There are options to be elig. criterion, (assuming practicable)

Section 5. General Provisions

5-501. The policies expressed in this Order shall be implemented and incorporated in the Federal Acquisition Regulation (FAR) within 180 after the effective date of this Order.

5-502. This Order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This Order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

5-503. This Order shall be effective immediately.

The White House
August __, 1995

*such
(comment w/
2-201)*

Mandatory Use Option

2-201. Each ~~Federal department or agency shall~~, to the maximum extent practicable, include as eligibility criteria for acquisition contracts for more than [\$200,000] for goods and services from the federal contractors described in subsection 2-202 the requirement that Federal contractors must file (and continue to file for the life of the contract) for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility:

*See my
comment at
this point
above.*

- (a) A Toxic Chemical Release Form ("Form R"), published pursuant to section 313(g) of EPCRA, as described in section 313 of EPCRA and section 6607 of PPA; and
- (b) Information on the use of the toxic chemical, including information on mass balance, materials accounting, or other chemical use data, as specified by the Administrator in guidance to be issued within 150 days of this order.

[Delete 2-207]

4-405. Information submitted to EPA pursuant to subsection 4-404 above shall be subject to the following protections:

- (a) Information submitted pursuant to subsection 2-201(a) above shall be subject to the trade secret protections provided by section 312 of EPCRA;
- (b) Information submitted pursuant to subsection 2-201(b) above shall be subject to the disclosure provisions of section 14 of the Toxic Substances Control Act, 15 U.S.C. 2613.

*or receive? why not whole imp part
as in 4-405?*

The Administrator is directed to review reports submitted under subsection 4-404 above to determine the appropriateness of any claims.



10:00

cont call

U. S. Department of Justice

Office of Legal Counsel

OMB -

Washington, D.C. 20530

DATE: August 3, 1995

FACSIMILE TRANSMISSION SHEET

FROM: Rosemary Hart

OFFICE PHONE: 514-2027

TO: Elena Kagan

OFFICE PHONE: 456-7594

NUMBER OF PAGES: 7 PLUS COVER SHEET

FAX NUMBER: 456-1647

REMARKS:

Elena-
Tell me what you think. We've
just FAX'd to EPA.
Rosemary

IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX, PLEASE CONTACT KATHLEEN MURPHY OF KEVIN SMITH ON 514-2057

OFFICE OF LEGAL COUNSEL FAX NUMBER: (202) 514-0563
FTS NUMBER: (202) 368-0563



lc Order

STILL SUBJECT TO AGENCY REVIEW
DRAFT — DO NOT RELEASE OR CITE

DRAFT -- 8/2/95 8 pm

Executive Order _____ of August __, 1995
Federal Acquisition and Community Right-to-Know

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) (EPCRA) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) (PPA) established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land, and water in their communities by manufacturing facilities.

42 U.S.C. 13106

The Toxic Release Inventory (TRI) reporting requirement under section 313 of EPCRA and section 6607 of PPA provides the public, industry, and Federal, state, and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals, which can have significant adverse effects on human health and the environment. TRI data allow the public, industry, and government to gauge the progress of industry and government efforts to reduce toxic chemical wastes.

42 U.S.C. 11023

that

Sharing vital TRI information with the public has provided a strong incentive for reduction in the generation, and ultimately release into the environment, of toxic chemicals. Since the inception of the TRI program, reported releases to the environment (under TRI) have decreased by ~~45%~~ *Significantly*.

The Federal Government, through Executive Order 12856, has made a commitment to lead the United States in aggressively pursuing pollution prevention and adopting ways of doing business that minimize adverse impacts on human health or the environment. As the largest procurer of goods and services in the nation, the Federal Government is in a unique position to foster technologies and processes that reduce releases of toxic chemicals to the environment, encourage recycling instead of other types of waste management, and encourage the substitution of safer alternatives and source reduction where this can be achieved.

The efficiency of the Federal Government is served when it purchases high quality goods and services that have been produced with a minimum impact on the public health and environment of communities surrounding government contractors. Savings associated with reduced raw materials usage, reduced use of costly, inefficient end-of-pipeline pollution controls, and

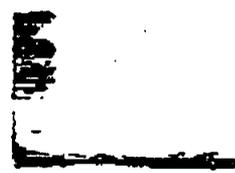
Add U.S.C. cites throughout



Place parenthetical terms in quotes, e.g.: ("EPCRA") ("PPA")

What is purpose of this P?

see my comments



04-02 08 10:16 202 240 4040 EPA OGC 002:008

reduced liability and remediation costs from worker and community claims all serve to increase the economic and efficient provision of essential goods and services to the government. The Federal Government's receipt of timely and quality goods and services is also served by the general enhancement of relations between government contractors and the communities in which they are situated, as well as the cooperative working relationship between employers and employees who may be subject to exposure to toxic materials.

The provision of information concerning toxic chemical use by potential government suppliers is critical to the government's ability to make informed choices about the health and environmental effects of its activities. Information concerning chemical release and transfer, on and off-site waste management data, treatment, recycling, and energy recovery data, as well as chemical use information, all can assist the government in making informed choices concerning procurement among potential suppliers. This information will allow the government to purchase efficiently produced high quality goods and services that have a minimum adverse impact on community health and the environment.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including EPCRA and FFA and 3 U.S.C. 301, it is hereby ordered as follows:

LAW USC ETS

Section 1. Policy

It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient procurement and completion of Federal Government contracts, contractors with the government shall report in a public manner on toxic chemicals used, managed, or released to the environment.

Section 2. Applicability

2-201. Each Federal department or agency shall, to the maximum extent practicable, include as an eligibility criterion for acquisition contracts for more than \$200,000 for goods and services from the federal contractors described in subsection 2-202 the requirement that Federal contractors must file (and continue to file for the life of the contract) a Toxic Chemical Release Form ("Form R"), published pursuant to section 113(g) of EPCRA, for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility, as described in section 113 of EPCRA and section 5607 of FFA.

2-202. The federal contractors subject to the eligibility

40 U.S.C. § 486(a)

insert definition section and re-number accordingly

to promote economy and efficiency in government procurement of goods and services and

Contracting agencies shall not contact with contractors that do not

published?

42 U.S.C. 10231a

42 U.S.C. 11023

42 U.S.C. 1310b,

such

critierion described in subsection 2-201 above are:

- (a) Those having Standard Industrial Classification Code (SIC) designations of 30 through 39 (as in effect on July 1, 1985); and
- (b) Those having SIC designations of 10 (metal mining), 12 (coal mining), 1311 (oil and gas), 14 (non-metal mining), 42 (trucking/warehousing), 4911/31 (electric utilities), 4952/53 (municipal waste), 4953/59 (commercial waste), 50/51 (wholesale distribution), and 7389 (solvent recycling) (as in effect on the effective date of this order).

what CTR? Statutorily
only required?

2-203. Each Federal department or agency shall consider the eligibility criterion set out in subsection 2-201 above as satisfied for each Federal contractor that certifies that they: (a) do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA; (b) do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA; or (c) do not meet the reporting thresholds established under section 313(f) of EPCRA.

CTR?

new P
42 U.S.C. 11023(c)

2-204. Filings described in subsection 2-201 above shall be required to include information on all chemicals identified by the Administrator pursuant to EPCRA section 313(c) as of the date of this order, and any additions or deletions thereafter pursuant to sections 313 (d) and (e) of EPCRA. - U.S.C. -

2-205. The Administrator annually shall publish or cause to be published, in the Federal Register, a list of SIC classifications subject to this requirement. The Administrator may add to the list in subsection 2-201 above to provide that each Standard Industrial Code to which the filing requirement applies is relevant to the purposes of this requirement.

2-206. Each Federal department or agency shall consider amending existing contracts, to the extent permitted by law and where practicable, to require the reporting of information specified in subsection 2-201 above.

2-207. [Voluntary Option] Each Federal department or agency also shall give preference, in awarding contracts for the acquisition of goods or services, to companies reporting under section 313 of EPCRA or this order that also voluntarily provide information on the use of toxic chemicals at their facilities, including information on mass balance, materials accounting, or other chemical use data, as specified by the Administrator in guidance to be issued within 150 days of this order.

(25)

under

Do we need an additional basis for making a preference? Does this raise a First Amendment problem?

No - If mand OK, certainly this is!! In fact, both are.

[Mandatory Option]

Delete section 2-207, and replace section 2-201 with attached page.

Section 3. Definitions

3-301. All definitions found in EPCRA and PPA and implementing regulations are incorporated into this order by reference, with the following exceptions for purposes of this order.

l.c.

3-302. ~~Federal department or agency~~ means an Executive agency as defined in 5 U.S.C. 105. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

l.c.

l.c.

3-303. Acquisition means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when the Federal department or agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

l.c.

3-304. Toxic chemical means a substance on the list described in section 313(c) of EPCRA as it exists on the effective date of this order.

allowance for addition or deletion per 2-204 + 2-205?

3-305. Administrator means the Administrator of the ~~U.S.~~ Environmental Protection Agency (EPA)

Section 4. Implementation.

4-401. Not later than 150 days after the effective date of this order, the Environmental Protection Agency shall publish in the Federal Register guidance for compliance with this order, including any provisions concerning subcontractor requirements.

l.c.

4-402. Not later than 180 days after the effective date of this order, each ~~Federal department or agency~~ shall give notice in all new acquisition solicitations that eligibility shall be governed by the provisions of this order.

l.c.

l.c.

4-403. Each ~~Federal department or agency~~ shall consult with the Administrator or ~~his~~ designee when the agency believes it is not practicable to include the eligibility requirement of section 2-

Meaning what?

*And: if Administrator disagrees?
* bulk of IC bit

201 for any contracts in excess of \$500,000.

to use different procedure?

4-404. Each Federal department or agency shall require each contract bidder designated in subsection 2-202 above to: ^{*200,000 - 500,000}

(a) Include in its response to the contract solicitation a certification, as specified in the guidelines published by the Administrator, of compliance with the requirements of subsection 2-201; and

[(b) Concurrently file with the Administrator the information required by subsection 2-201, beginning with data from the most recent calendar year at the time responses to acquisition solicitations are received.]

4-405. [Option for Voluntary Use Data] Information submitted to EPA pursuant to subsection 4-404 above shall be subject to the same trade secret protections provided by section 322 of EPCRA as other data submitted under section 313 of EPCRA and 6607 of PPA. The Administrator is directed to review reports submitted under subsection 4-404 above to determine the appropriateness of any trade secret claims.

42 M.S. 11042

WLC

WLC

[or]

[Option for Mandatory Use Data] -- See attached page

4-406. When the Administrator ^{as required by} determines that a contractor has not filed the necessary forms and information, the Administrator may ~~make a recommendation that it is appropriate to terminate the contract for convenience.~~ The Administrator shall transmit that recommendation to the head of ~~any department or agency~~ that contracts with the contractor, and that department or agency should consider the recommendation and determine whether to terminate the contract. In carrying out this responsibility, the Administrator may investigate a contractor to determine the adequacy of compliance with the provisions of this order and the Administrator may hold such hearings, public or private, as she deems advisable to assist in her determination of compliance.

ion of

each

4-407. Each ~~contracting department and~~ agency shall cooperate with the Administrator and provide such information and assistance as the Administrator may require in the performance of her functions under this order.

4-408. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to assist in full compliance with this order.

Section 5. General Provisions.

5-501. The policies expressed in this order shall be implemented and incorporated in the Federal Acquisition Regulation (FAR) within 180 after the effective date of this order.

5-502. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

5-503. This order shall be effective immediately.

The White House
August __, 1995

Mandatory Use Option

2-201. Each Federal department or agency shall, to the maximum extent practicable, include as eligibility criteria for acquisition contracts for more than [\$200,000] for goods and services from the federal contractors described in subsection 2-202 the requirement that Federal contractors must file (and continue to file for the life of the contract) for each toxic chemical manufactured, processed, or otherwise used by the federal contractor at a facility:

- (a) A Toxic Chemical Release Form ("Form R"), published pursuant to section 313(g) of EPCRA, as described in section 313 of EPCRA, and section 6607 of PPA; and
- (b) Information on the use of the toxic chemical, including information on mass balance, materials accounting, or other chemical use data, as specified by the Administrator in guidance to be issued within 150 days of this order.

Not
Required
to file

[Delete 2-207]

4-405. Information submitted to EPA pursuant to subsection 4-404 above shall be subject to the following protections:

- (a) Information submitted pursuant to subsection 2-201(a) above shall be subject to the trade secret protections provided by section 322 of EPCRA;
- (b) Information submitted pursuant to subsection 2-201(b) above shall be subject to the disclosure provisions of section 14 of the Toxic Substances Control Act, 15 U.S.C. 2613.

The Administrator is directed to review reports submitted under subsection 4-404 above to determine the appropriateness of any claims.

Timmy Henry -

703-927-3131

~~Rosamund Hart~~

~~814-2027~~

Kia

THE WHITE HOUSE
WASHINGTON

Ronmary Hart

Env. event - wk here today.
Action by EO, to enhance
common w/ to know
provision.

connected w/ Superfund
Focus on this provision because
straightforward in terms of
ent.

Auth - in procurement area.
Ags can't K w/ firms
that don't follow their
procedures.

(Replacement strikers)
same provision.
Finding - promote economic
(for govt Ks)

Kessler - was on legal issue -
under Dalton - finding is
not renewable

Someone from EPA must
recommend -

Gary Buzby - Deputy
General Counsel
Draft order.