ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-400099; FRL-4977-9]

RIN 2070-ZA00

Guidance Implementing Executive Order 12969; Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting

AGENCY: Environmental Protection

Agency (EPA).

ACTION: Notice.

SUMMARY: On August 8, 1995, President Clinton signed Executive Order (E.O.) 12969, mandating that each Federal agency include in contract solicitations as an eligibility criterion for competitive acquisition contracts expected to exceed \$100,000, the requirement that Federal contractors ensure that Toxic Chemical Release Inventory Forms (Form Rs) are filed by their covered facilities for the life of the contract. The solicitation must direct offerors to include in their response to the solicitation a certification that the offeror will (if awarded the contract) ensure that its covered facilities file Form Rs for the life of the contract unless an exemption provided by the Executive Order applies. This Notice includes guidance for compliance with E.O. 12969.

DATES: Federal Agencies are required to comply with the provisions of Executive Order 12969, as interpreted by the guidance contained in this Notice, by October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer, Mail Code 3802F, 401 M St., SW., Washington, DC 20460, in EPA's Office of Acquisition Management, 202– 260–9032, for information with respect to contract issues raised by today's guidance. For specific questions concerning the Form R or reporting requirements (including applicability), contact David Arthur, Mail Code 7408, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-2301, e-mail: arthur.david@epamail.epa.gov, in EPA's Office of Pollution Prevention and Toxic Substances. For general information on section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA), contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202 or 703-412-9877, Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 8, 1995, President William J. Clinton signed Executive Order (E.O.) 12969, entitled "Federal Acquisition and Community Right-to-Know" (60 FR 40989; August 10, 1995). E.O. 12969 initiates a new Federal procurement policy by stating that:

Sharing vital information [on release and management of toxic chemicals] with the public has provided a strong incentive for reduction in the generation, and, ultimately, release into the environment, of toxic chemicals. . . . 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, 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. .

Therefore, 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.

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 managed in waste streams or released into the air, land, and water in their communities by manufacturing facilities. The information required by section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106, is submitted annually to EPA and the States on a specific reporting form (Form R) and compiled in the publicly available Toxics Release Inventory

To implement the procurement policy of E.O. 12969, each Federal agency is required to include in competitive acquisition solicitations for the award of contracts expected to exceed \$100,000, the requirement that Federal contractors ensure that covered facilities file a Form R for covered activities for the life of the contract. In this regard, the solicitation shall direct offerors on affected Federal contracts to include in their response to the solicitation a certification that the offeror (if awarded the contract) will ensure that its covered facilities file a Form R for the life of the contract for

covered activities unless an exemption provided by E.O. 12969 applies. The resulting contract also will contain a clause to this effect.

As described in Unit II. of this document, E.O. 12969 affects Federal contractors and prospective Federal contractors, including certain subcontractors, that own or operate facilities currently required to report under EPCRA section 313 and PPA section 6607. It is not intended to expand the types of facilities currently providing information for the TRI. Rather, it is to ensure that these contractor facilities report by making certification of such reporting a requirement of solicitations and contracts with the Federal government. Once the contract is awarded, failure to comply with the terms of the certification, which will become a part of the contract, may result in termination of the Federal contract or other appropriate action.

Unit II. provides a section-by-section analysis of and interpretive guidance for E.O. 12969, and Unit III. provides a model solicitation certification and contract clause that EPA recommends contracting officers include in subject solicitations and contracts. Finally, Unit IV. clarifies the relationship between the requirements of E.O. 12969 and the reporting requirements of EPCRA section 313 and PPA section 6607, and Unit V. discusses the inter-agency review process EPA used in the development of this guidance.

II. Section-by-Section Analysis and Interpretive Guidance

In the following paragraphs, EPA provides guidance on certain provisions of the E.O. EPA believes that those sections of the E.O. not discussed herein are self-explanatory.

Section 2-201. "All definitions found in

Section 2-201. "All definitions found in EPCRA and PPA and implementing regulations are incorporated into this order. . . ."

EPCRA sections 313 and 329 (42 U.S.C. 11023 and 11049) and PPA section 6603 (42 U.S.C. 13102) define terms relevant to the reporting requirements. The EPCRA implementing regulations codify these and other definitions at 40 CFR parts 350 and 372. EPA's Toxic Chemical Release Inventory Reporting Form R and Instructions document further clarifies the statutory and regulatory definitions and is available from the EPCRA Hotline (1–800–535–0202).

Section 2-202. "Federal Agency means."

A "Federal agency" is equivalent to an "executive agency" as defined in 5 U.S.C. 105. For purposes of E.O. 12969