other appropriate action (for subcontractors, EPA may recommend to the prime contractor that it consider a termination of the subcontract for convenience or other appropriate action). Although a Contracting Officer is not obligated to actually determine compliance or non-compliance with the requirements of the E.O., that individual should forward to EPA any information it receives regarding non-compliance. Section 4-408. "Upon request and to the extent practicable, the Administrator shall provide technical advice. . . ."

This provision is self-explanatory. However, see the "FOR FURTHER INFORMATION CONTACT" unit of this Notice for names and addresses of EPA contacts.

Section 5-502. "This Order is not intended, and should not be construed, to create any right or benefit. . . ."

Executive Order 12969 does not create additional rights or benefits for private parties and does not allow for private rights of action to ensure agency compliance. While E.O. 12969 provides other mechanisms for compliance, the right to sue a Federal agency for failure to appropriately include the certifications required by E.O. 12969 in contract solicitations is not one of them. However, E.O. 12969 in no manner undermines any opportunity provided by EPCRA or PPA to bring an action against a Federal contractor or its facilities and subcontractors otherwise required to report for failure to comply with the reporting requirements of EPCRA section 313 or PPA section 6607. Section 5-503. "This order shall be effective immediately. . . .

Although E.O. 12969 is effective immediately (i.e., August 8, 1995), Federal agencies are not required by the E.O. to include a certification statement implementing the E.O. in affected solicitations until October 30, 1995.

III. Model Solicitation Certification and Contract Clause

Models of the solicitation certification and the contract clause required by E.O. 12969 are presented below. The FAR Secretariat has assigned the effort to amend the FAR pursuant to E.O. 12969 as FAR Case 95-305. Until the FAR Case is published as an interim rule in the Federal Register, EPA encourages Federal agencies to include, pursuant to E.O. 12969, the model solicitation and contract clause discussed herein in all competitive solicitations (and resultant contracts) expected to result in a contract exceeding \$100,000 that are issued on or after 30 days following publication of this guidance in the Federal Register.

Instructions for Use of the Model Certification and Contract Clause:

For competitive solicitations for the acquisition of noncommerical items issued on or after October 30, 1995 that are expected to result in the award of a contract exceeding \$100,000, including all options, EPA encourages Federal agencies to include in the solicitation the certification (or the substantial equivalent) as shown below. In addition, each Federal agency is encouraged to include in the resultant contract the contract clause shown below or the substantial equivalent. Model Certification of Filing Toxic Chemical Release Inventory Reporting Form (Form R).

Prescription for the Provision: The Contracting Officer should insert the following provision in all competitive solicitations for noncommercial items (including competitive 8(a) solicitations) where the resultant contract is expected to exceed \$100,000, including all options.

Certification of Filing Toxic Chemical Release Inventory Reporting Form (Form R)

The following certification shall be completed by the offeror, who certifies for all of its covered facilities that will be used in the performance of this proposed contract. Under EPCRA section 313 and PPA section 6607, each facility within Standard Industrial Classification Code designation of major groups 20-39 as in effect on July 1, 1985 (and currently codified at 48 CFR 19.102) meeting the reporting requirements files a Form R. If none of the offeror's facilities that will be used in the performance of this proposed contract currently are subject to the Form R reporting requirements because they are not with Standard Industrial Classification (SIC) code designations of major groups 20-39 (as in effect on July 1, 1985), the offeror should check box (e). This would complete the offeror's certification requirements. Further, if all of the offeror's facilities that will be used in the performance of this proposed contract meet at least one of the criteria in paragraph (b) below, the offeror should check the appropriate box under (b) to certify to that effect. This also would complete the offeror's certification requirements. For offerors with more than one facility, however, there may be situations where some of its facilities are subject to the Form R filing and reporting requirements and others are exempt. In these cases, the offeror cannot certify that it is exempt under paragraph (b) below unless all of its covered facilities meet at least one of the criteria in paragraph (b) of the certification.

(a) The Offeror, by signing this offer, expressly certifies and agrees that:

If awarded a Contract resulting from this solicitation, its covered facilities that will be used in the performance of this proposed contract will file (and continue to file for the life of the contract), unless otherwise exempt as stated below in paragraph (b)(1)-(3), a **Toxic Chemical Release Inventory Form** (Form R) as described in sections 313(a) and (g) of EPCRA, 42 U.S.C. 11023(a) and (g) and section 6607 of PPA, 42 U.S.C. 13106, for each toxic chemical manufactured, processed, or otherwise used by the offeror 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. The offeror further agrees and certifies that during the period of performance of this proposed contract, its covered facilities that will be used in the performance of this proposed contract will file a Form R annually on or before July 1 (for the prior calendar year) with the United States Environmental Protection Agency and each appropriate State pursuant to section 313(a) and (g) of EPCRA; or

(b) To the best of its knowledge and belief, none of its covered facilities that will be used in the performance of this proposed contract are currently subject to the filing and reporting requirements set forth in paragraph (a) above because such facilities (the offeror must check all of the appropriate boxes):

[] (1) Do not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023 (c); or

[] (2) Do not have 10 or more fulltime employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C.11023(b)(1)(A); or

[] (3) Do not exceed the reporting thresholds, including the alternative threshold established in 40 CFR 372.27, of toxic chemicals established under EPCRA, 42 U.S.C. 11023(f).

(c) If awarded a Contract resulting from this solicitation, and circumstances change during the life of the Contract such that, for example, any of its facilities that will be used in the performance of this proposed contract become subject to E.O. 12969 because none of the exemptions in paragraph (b) above any longer apply (or it no longer is subject to E.O. 12969 reporting and filing requirements) it will provide written notice to the Contracting Officer, and if required, its facility(ies) to be used in the performance of this proposed contract will file and continue to file for the life of the contract a Form R as described in paragraph (a).

(d) If awarded a Contract resulting from this solicitation, it shall include a