certification substantially the same as this certification in every competitive solicitation for a first tier subcontract expected to be greater than \$100,000 where the subcontract is not for "commercial items" as that term is defined in Part 2 of the FAR.

- (e) It does not own or operate any facilities that will be used in the performance of this proposed contract having Standard Industrial Classification Code designations of major groups 20 through 39 as identified on July 1, 1985, (and currently contained in FAR section 19.102) consistent with EPCRA section 313(b)(1). If, however, the offeror is awarded the contract, and the status of any of its facilities used in the performance of this contract changes during the life of the contract, it will provide written notice to the Contracting Officer, and if required, complete this certification. Further, the offeror will include a certification substantially the same as this certification in all competitive solicitations for first-tier subcontracts for noncommercial items expected to exceed \$100,000.
- (f) This certification concerns a matter within the jurisdiction of an agency of the United States and that making a false, fictitious, or fraudulent certification may result in criminal prosecution under Title 18, United States Code, Section 1001, and/or administrative action under the Program Fraud Civil Remedies Act, Title 31, United States Code, Sections 3801-3812. Accordingly, the offeror expressly certifies the truthfulness and accuracy of the contents of this certification.

(End of Provision)

The information provided on the Toxic Chemical Release Form filed with EPA shall be subject to the trade secret protection 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.

MODEL TOXIC CHEMICAL RELEASE
REPORTING REQUIREMENTS CLAUSE
Prescription for clause: The Contracting
Officer shall include this clause in all
competitively awarded contracts for
noncommercial items (including

competitive 8(a) awards) in excess of \$100,000 (including all options). Toxic Chemical Release Invnetory

Reporting

(a) As used in this clause, "Toxic Chemical Release Inventory 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. Under these Acts, certain businesses are required to submit reports each year on the amounts of toxic chemicals their facilities release into the environment.

(b) The contractor shall comply, during the life of the contract, with the certification in the solicitation entitled, "Certification of Filing Toxic Chemical Release Inventory Reporting Form (Form R)," which is expressly incorporated into the contract by reference.

(c) First tier subcontractors.--The Contractor shall include a certification substantially the same as the certification identified in paragraph (b) above in competitive solicitations for first tier subcontracts where the resulting subcontract award is expected to be greater than \$100,000 and is not for "commercial items" as that term is defined in Part 2 of the Federal Acquisition Regulation. Also, the Contractor shall insert in all such first tier subcontracts a clause substantially the same as this clause without this paragraph (c).

(d) Remedies.--If the Contractor inaccurately, incompletely or falsely certified as to a facility's compliance with the reporting requirements of EPCRA section 313 and PPA section 6607, or if any of the Contractor's facilities has deliberately not filed a Toxic Chemical Release Form, or

deliberately not submitted complete information, the Contracting Officer may terminate the Contract for convenience or take other appropriate action.

(End of Clause)

IV. Relationship Between E.O. 12969 and EPCRA/PPA Reporting Requirements

Nothing in E.O. 12969 or this guidance replaces or obviates the obligation of a facility owner or operator to comply with the reporting and recordkeeping requirements of EPCRA section 313, PPA section 6607, and EPA's implementing regulations at 40 CFR part 372. Although E.O. 12969 establishes a \$100,000 applicability threshold, it is important for the regulated community to recognize that no such threshold exists with respect to the reporting or recordkeeping requirements of EPCRA section 313 or PPA section 6607.

V. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action," because this Guidance may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This Guidance was submitted to OMB for review under the Executive Order. In addition, EPA distributed a draft guidance to other agencies for their review and comment. Any changes made during OMB review have been documented in the public record.

List of Subjects

Environmental protection and Community right-to-know.

Dated: September 25, 1995. Carol M. Browner, *Administrator.*

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