EPCRA Section 313 Questions and Answers
Addendum to the Revised 1998 Version as of December 2004

Section 313 of the Emergency Planning and Community Right-to-Know Act
Toxic Chemical Release Inventory

Addendum
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INTRODUCTION AND DISCLAIMER

In December, 1998, the Environmental Protection Agency (EPA) published a revised Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 Questions and Answers Document (1998 Q & A Document)(EPA 745-B-98-004). The EPCRA Section 313 program is also referred to as the Toxics Release Inventory or TRI. Under Section 313, certain facilities are required to report releases and other waste management quantities of specific chemicals listed in 40 CFR part 372. Facilities that meet all three of the following criteria are subject to EPCRA Section 313 release and other waste management reporting:

- the facility has 10 or more full-time employee equivalents (i.e., a total of 20,000 hours or greater; see 40 CFR 372.3);
- the facility is included in Standard Industrial Classification (SIC) Codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20–39, 4911 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4953 (limited to facilities regulated under RCRA Subtitle C, 42 U.S.C. section 6921 et seq.), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis), or, under Executive Order 13148, federal facilities regardless of their SIC code; and
- the facility manufactured (defined to include imported), processed, or otherwise used, in the course of a calendar year, any toxic chemical in quantities greater than the set threshold.

Under Section 313 the Form R or Form A Certification Statement must be submitted annually to EPA and to designated State (or Tribal) agencies. Reports are due by July 1 of each year and cover activities at the facility during the previous calendar year.

Copies of EPA’s Form R and Form A and the instructions for completing the Forms, and related guidance documents are available from the TRI Homepage (http://www.epa.gov/tri), or you may call (202) 564-9554 or send an e-mail to TRIDOCS@epa.gov. Additional information may be obtained by accessing EPA’s TRI Homepage on the Internet at http://www.epa.gov/tri or calling the EPCRA Call Center (see the TRI Homepage for contact information).

Since the 1998 Q & A Document was published, the Agency has promulgated two regulations that affect the TRI program. On October
29, 1999, EPA finalized proposed amendments to 40 C.F.R. part 372 (see 64 Fed. Reg. 58666) that, among other things, lowered reporting thresholds for certain persistent bioaccumulative toxic (PBT) chemicals and added new PBT chemicals to the Section 313 toxic chemical list. (PBT Rule). On January 17, 2001, EPA finalized proposed amendments to 40 C.F.R. part 372 (see 66 Fed. Reg. 4500) that, among other things, lowered the reporting thresholds for lead and lead compounds which are subject to Section 313 reporting requirements. (Lead Rule).

In addition, on April 26, 2000, Executive Order 13148 (E.O. 13148) was published in the Federal Register (65 FR 24595). E.O. 13148 supersedes Executive Order 12856, which was published in the Federal Register on August 3, 1993 (58 FR 41981).

There has also been a legal decision since 1998 that pertains to the criteria that multi-establishment facilities must use to determine whether the facility is in a SIC Code that is subject to TRI reporting requirements. The decision was issued in In Re: Coast Wood Preserving, Inc., EPCRA Appeal No. 02-01 (May 6, 2003). Further, in Barrick Goldstrike, Inc. v. Browner, 260 F.Supp.2d 28 (D.D.C. 2003), the court issued a ruling that affects de minimis exemption eligibility. Qs & As concerning the mining industry were not addressed in this document in light of the decisions in Barrick and National Mining Association v. U.S. Environmental Protection Agency (Civil No. 97-N-2665; D. Colo.). EPA's analysis of those decisions can be found at http://www.epa.gov/tri under “Featured Topics.”

As a result of E.O. 13148, and the regulatory actions and the legal decisions noted above, some of the Qs & As and Directives contained in the 1998 Q & A Document now are inaccurate or may be misleading. EPA has identified such Qs & As and Directives in this Addendum to the 1998 EPCRA Section 313 Questions and Answers Document (Addendum) and has revised them as appropriate so that the guidance reflected therein is accurate and consistent with current legal interpretations and the Executive Order. The Qs & As and Directives contained in this Addendum supersede the corresponding Qs & As and Directives contained in the 1998 Q & A Document. EPA is including a crosswalk document in the Addendum to assist the regulated community and other interested parties in identifying the Qs & As and Directives in the 1998 Q & A Document that have been superseded by this Addendum and to explain the changes made to them.

In most cases, only minor revisions were necessary to ensure that the 1998 Qs & As and Directives are accurate and consistent with current legal interpretations and the Executive Order. For example, many questions and/or answers were revised to clarify that the 10,000 pound otherwise use threshold and the 25,000 pound manufacturing and processing thresholds apply only to non-PBT chemicals. In one case, the 1998 version of Q & A
427 regarding vanadium compounds simply could not be squared with the regulations and therefore, there is no corresponding Q & A in this Addendum and the crosswalk in the Addendum states that this Q & A has been deleted and is no longer valid guidance.

In Coast Wood Preserving, the Environmental Appeals Board (EAB) concluded that EPA did not provide fair notice of its interpretation of 40 C.F.R. § 372.22(b)(3) that, in determining the appropriate SIC code for a multi-establishment facility, the value added by each establishment is the appropriate basis for comparing the relative economic contributions of each establishment at the facility. The revisions that were made to the 1998 Qs & As that are affected by the EAB’s decision in Coast Wood Preserving clarify that, under 40 C.F.R. § 372.22(b)(3), facilities should use value-added as the basis for comparing the relative economic contributions of each establishment in a multi-establishment facility. In Barrick, the court concluded that a toxic chemical does not need to be involved in a threshold activity (i.e., manufacture, process, or otherwise use) to be eligible for the de minimis exemption. Qs & As and Directives in the 1998 Q & A that indicate that involvement in a threshold activity is a prerequisite to de minimis exemption eligibility have been revised accordingly.

The Agency developed this document to facilitate facility reporting and to provide additional explanation of the reporting requirements. This document supplements the instructions for completing the Form R and the Alternate Threshold Certification Statement (Form A). This document is intended solely for guidance and does not alter any statutory or regulatory requirements. The document should be used in conjunction with the statute and regulations but does not supersede them. The guidance provided in this document addresses the very specific circumstances stated in each question. Accordingly, the reader should consult other applicable documents (e.g., the statute, the Code of Federal Regulations (CFR), relevant preamble language, and the current Toxic Chemical Release Inventory Reporting Forms and Instructions) when determining whether a facility is subject to EPCRA Section 313 reporting requirements, and how the facility should report releases and other waste management quantities of toxic chemicals. If a conflict exists between guidance provided in this document and the statutory or regulatory requirements, the conflict must be resolved in favor of the statute or regulation.

EPA recognizes that activities involving toxic chemicals may vary significantly from one facility to another. Because it is not possible to address in a guidance document the specific circumstances that exist at each facility that may be subject to Section 313 reporting requirements, EPA intends to apply this guidance in a flexible manner. Similarly, individual facilities may find that the guidance provided in this document is inapplicable to their processes or circumstances, and that alternative
approaches or information are more accurate and/or more appropriate for meeting the statutory and regulatory requirements of EPCRA Section 313. Facilities should therefore use facility-specific information and process knowledge, where available, to meet the requirements of EPCRA Section 313.

There may be instances where the 1998 Q & A Document and this Addendum do not sufficiently address a facility's concerns (e.g., an issue with a facility's specific manufacturing process) with the reporting requirements of EPCRA section 313. In those instances, the facility should contact EPA or consult with professional counsel for compliance assistance. Facilities are also encouraged to contact the Agency with any additional or clarifying questions about the guidance provided in this document, or if the facility believes that EPA has incorrectly characterized a particular process or recommendation.
### CROSSWALK TABLE BETWEEN 1998 EPCRA SECTION 313 QUESTIONS AND ANSWERS AND THE ADDENDUM

<table>
<thead>
<tr>
<th>1998 Q&amp;A</th>
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<th>Description of Update to 1998 Q&amp;A</th>
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<tr>
<td>2</td>
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<td>This Q&amp;A has been modified to reflect that the Form A Certification Statement may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.27, the Form A Certification Statement may not be considered for the PBT chemicals listed at 40 CFR section 372.28. (See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</td>
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<td>These Qs &amp; As clarify EPA’s interpretation of 40 CFR section 372.22(b)(3) that multi-establishment facilities should use “value added” as the basis for comparing the relative values of different establishments when determining the primary SIC code for the entire facility. The concept of “value added” has been applied to these Qs &amp; As. (See Toxic Chemical Release Reporting final rule (53 FR 4500, 4501, February 16, 1988) and In Re: Coast Wood Preserving, Inc., EPCRA Appeal No. 02-01 (May 6, 2003)).</td>
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<td>This Q&amp;A has been modified to reflect that EO 12856 has been superseded by EO 13148 (65 FR 24595, April 26, 2000).</td>
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<td>The activity thresholds are lower for PBT chemicals listed at 40 CFR section 372.28 and therefore, Qs &amp; As throughout the 1998 Q&amp;A Document have been modified to account for the lower thresholds for PBT chemicals. (See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</td>
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In addition, reference to the threshold activities as a prerequisite to *de minimis* exemption eligibility has been removed from this Q&A.

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In addition, the answer of 200,000 lbs in 1998 Q&A 328 represented a mathematical error and has been changed to 2,000,000 lbs in the Addendum.

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<td>These Qs &amp; As have been modified to reflect that pursuant to the PBT chemical rulemaking the qualifier for vanadium has changed from “fume or dust” to “except when contained in an alloy.” In addition, pursuant to the PBT chemical rulemaking the category of vanadium compounds has been added to the list of toxic chemicals at 40 CFR section 372.65, but not as a PBT chemical category. (See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999)).</td>
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<td>1998 Q&amp;A 427 is no longer valid guidance in light of the regulatory changes.</td>
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<tr>
<td>453</td>
<td>67</td>
<td>This Q&amp;A has been modified to reflect the change from two to three delimited categories based on the addition of dioxin and dioxin-like compounds to the list of toxic chemicals pursuant to the PBT chemical rulemaking. This Q&amp;A has also been modified to reflect the addition of two members to the PACs category pursuant to the PBT chemical rulemaking. (See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999)).</td>
</tr>
<tr>
<td>465</td>
<td>68</td>
<td>This Q&amp;A has been modified to reflect that the de minimis exemption may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.38(a), the de minimis exemption may not be considered for the PBT chemicals listed at 40 CFR section 372.28. (See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</td>
</tr>
<tr>
<td>522</td>
<td>69</td>
<td>Activity thresholds are lower for PBT chemicals listed at 40 CFR section 372.28 and therefore, Qs &amp; As throughout the 1998 Q&amp;A Document have been modified to account for the lower thresholds for PBT chemicals. (See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</td>
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<tr>
<td>1998 Q&amp;A</td>
<td>Addendum Q&amp;A</td>
<td>Description of Update to 1998 Q&amp;A</td>
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</table>
| 531      | 70           | This Q&A has been modified to reflect that the *de minimis* exemption may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.38(a), the *de minimis* exemption may not be considered for the PBT chemicals listed at 40 CFR section 372.28. *(See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).*

In addition, reference to the threshold activities as a prerequisite to *de minimis* exemption eligibility have been removed from this Q&A. |
<p>| 545      | 71           | This Q&amp;A has been modified to reflect that the Form A Certification Statement may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.27, the Form A Certification Statement may not be considered for the PBT chemicals listed at 40 CFR section 372.28. <em>(See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</em> |
| 597      | 72           | Pursuant to the PBT chemical rulemakings, this Q&amp;A has been modified to reflect that PBT chemicals should be reported at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based. <em>(See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</em> |
| 599      | 73           | These Qs &amp; As have been modified to reflect that the Form A Certification Statement may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.27, the Form A Certification Statement may not be considered for the PBT chemicals listed at 40 CFR section 372.28. <em>(See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</em> Additional text was added to Q &amp; A # 75 in the Addendum to clarify that more than one toxic chemical can be reported on a single Form A. |
| 600      | 74           |  |
| 604      | 75           |  |</p>
<table>
<thead>
<tr>
<th>1998 Q&amp;A</th>
<th>Addendum Q&amp;A</th>
<th>Description of Update to 1998 Q&amp;A</th>
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<tbody>
<tr>
<td>634</td>
<td>76</td>
<td>This Q&amp;A has been modified to reflect that the qualifier for vanadium has changed from “fume or dust” to “except when contained in an alloy” pursuant to the PBT chemical rulemaking. <em>(See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999)).</em></td>
</tr>
<tr>
<td>641</td>
<td>77</td>
<td>Pursuant to the PBT chemical rulemakings, these Qs &amp; As have been modified to reflect that PBT chemicals should be reported at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based. <em>(See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</em></td>
</tr>
<tr>
<td>642</td>
<td>78</td>
<td>This Directive has been modified to reflect that the <em>de minimis</em> exemption may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.38(a), the <em>de minimis</em> exemption may not be considered for the PBT chemicals listed at 40 CFR section 372.28. <em>(See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</em> In addition, reference to the threshold activities as a prerequisite to <em>de minimis</em> exemption eligibility has been removed from this Directive.</td>
</tr>
<tr>
<td>Directive 2</td>
<td>Directive 2</td>
<td>This Directive has been modified to reflect that the <em>de minimis</em> exemption may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.38(a), the <em>de minimis</em> exemption may not be considered for the PBT chemicals listed at 40 CFR section 372.28. <em>(See Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</em> In addition, reference to the threshold activities as a prerequisite to <em>de minimis</em> exemption eligibility has been removed from this Directive.</td>
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<tr>
<td>Directive 5</td>
<td>Directive 5</td>
<td>This Directive has been modified to reflect that the <em>de minimis</em> exemption may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.38(a), the <em>de minimis</em> exemption may not be considered for the PBT chemicals listed at 40 CFR section 372.28. (<em>See</em> Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)). Additional text was added to section 2 of this Directive to clarify that individually listed glycol ether compounds such as 2-methoxyethanol are not included in the glycol ether compound category for purposes of section 313 reporting.</td>
</tr>
<tr>
<td>Directive 6</td>
<td>Directive 6</td>
<td>This Directive has been modified to reflect that the <em>de minimis</em> exemption may only be considered for non-PBT chemicals listed at 40 CFR section 372.65. Pursuant to 40 CFR section 372.38(a), the <em>de minimis</em> exemption may not be considered for the PBT chemicals listed at 40 CFR section 372.28. (<em>See</em> Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</td>
</tr>
<tr>
<td>Directive 7</td>
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<td>This Directive has been modified to reflect that the activity thresholds are lower for PBT chemicals listed at 40 CFR section 372.28. (<em>See</em> Persistent Bioaccumulative Toxic (PBT) Chemicals final rule (64 FR 58666, October 29, 1999) and Lead and Lead Compounds final rule (66 FR 4500, January 17, 2001)).</td>
</tr>
</tbody>
</table>
1. Is a facility which meets the employee and toxic chemical activity thresholds and is in a covered SIC code required to report if it had no releases of the toxic chemical during the reporting year?

Yes, even if it releases no toxic chemicals into the environment and does not conduct any other waste management activities involving the listed toxic chemical, the facility must submit either the Form R or Form A (Alternate Threshold Certification Statement). If the facility meets the employee and chemical activity thresholds and is in a covered SIC code, but its annual reportable amount of a non-PBT chemical does not exceed 500 pounds and the facility has not manufactured, processed, or otherwise used more than one million pounds of the toxic chemical, the facility may submit the Form A (a two-page certification statement) instead of the Form R. However, if the facility exceeds either the 500 or one million pound limits, it must report on the Form R. (See Section 5A of this document on Alternate Threshold Reporting.)

2. What is the definition of primary SIC code? How can there be more than one SIC code for a facility?

A primary SIC code generally represents those goods produced or services performed by an establishment that have the highest value added. Form R and the Alternate Certification Statement (Form A) provide space for more than one SIC code because a facility may be made up of several establishments each of which may have a different primary SIC code.

3. Clarify the application of SIC codes for facility versus establishment?

The SIC code system classifies businesses on the basis of an establishment, which is generally a single business unit at one location. Many Section 313 covered facilities will be equivalent to an establishment. If the facility’s SIC code is a covered SIC code, the facility has met the SIC code criterion for reporting under EPCRA Section 313. However, a reporting facility can encompass several establishments located on a single site or on contiguous or adjacent sites owned or operated by the same entity. Therefore, a Section 313 facility can be a multi-establishment complex. To determine if a multi-establishment complex is a covered facility, the owner/operator must determine the complex’s primary SIC code based on the relative value added of products and services provided by the various establishments. If the primary SIC code for the facility is a covered SIC code, the facility has met the SIC code criterion.
4. Suppose a facility consists of several establishments, some of which have primary SIC codes within the covered SIC codes and some of which have primary SIC codes outside that range. How would this facility determine if it is covered by EPCRA Section 313?

To determine if a facility is covered by EPCRA Section 313, the facility must determine if it meets the SIC code criterion. To make this determination, the facility must report if those establishments that are in the covered SIC codes have a combined value added of more than 50 percent of the total value added of services provided or products shipped or produced by the whole facility, or if one of those covered SIC code establishments has a value added of services or products shipped or produced that is greater than the value added of any other establishment in the facility (40 CFR Section 372.22(b)(3)). If the facility determines that the establishments meet this test, the entire facility has met the SIC code criterion. If the entire facility also meets the employee and chemical activity thresholds (based on all establishments at the facility), then the entire facility would be subject to EPCRA Section 313 reporting.

5. SIC Code 7389 (business services, not elsewhere classified) contains many diverse activities. How does a facility that conducts more than one activity in SIC 7389 determine if it is primarily engaged in solvent recovery, and therefore, covered under EPCRA Section 313?

A facility that conducts several uniquely different activities that are within SIC code 7389 should identify the value added of the goods or services that each activity contributes. A facility is considered to be “primarily engaged” in solvent recovery if the goods or services produced by the solvent recovery activity have a value added of more than 50 percent of the total value added of all goods and services produced at the facility, or if the value added of the goods and services produced by the solvent recovery activity of the facility are greater than the value added of the goods and services produced by any other activity at the facility.

6. A multi-establishment facility grows wheat and mills it into flour. At the agriculture portion of the facility, all of the wheat grain is grown, harvested and placed into a silo. After leaving the silo, 20 percent of the wheat grain is sold, while the remaining 80 percent of the wheat grain is milled into flour and packaged. If the facility farms and sells more than it mills into flour and sells, is it a covered facility? What is the primary SIC code of this facility?

In order to make the facility coverage determination, the facility must compare the value added of products shipped and/or produced at the two different establishments (i.e., agriculture versus the flour processing).
value added of the product produced at the agricultural establishment (SIC code 0111, not in a covered SIC code) is the market value of all the wheat grain harvested during the reporting year. The value added of the product from the milling/packaging establishment (in SIC code 2041, a covered SIC code) is the value added of the products shipped and/or produced minus the market value of the wheat grain used to produce the flour. In other words, you do not double count the value of the wheat grain as part of the value added of the products from the flour processing operation. If the value-added of milled flour products is greater than the market value of harvested grain, then the facility’s primary SIC code would be within a covered SIC code and the facility would be subject to reporting under EPCRA Section 313.

7. **A facility has two establishments, one in SIC code 35 (a covered SIC code), and one in SIC code 70 (not a covered SIC code).** In determining the facility’s primary SIC code, the facility must determine the value added of the services provided and/or products shipped from or produced by each establishment. Some of the employees who support the establishment in SIC code 70 work entirely off-site, either at home or at clients’ sites. Should the facility consider this off-site work when determining the value added of the services provided by SIC code 70?

Yes. In determining the primary SIC code, the facility should consider the value added of services provided by each establishment, including services provided by employees who work for that establishment at home or who service that establishment’s products at clients’ sites.

8. **The definition of facility under EPCRA Section 329(4) includes “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).” Two Government-Owned, Contractor-Operated (GOCO) sites are separated by a street. The GOCOs are owned by the same federal agency, but operated by different contractors. When, as required by Executive Order (EO) 13148, the federal agency is making threshold determinations under EPCRA Section 313, must it consider the two GOCOs as part of the same federal facility?

Yes. The two GOCOs are considered to be a single federal facility for the purposes of EPCRA Section 313 threshold determinations and release and other waste management reporting as required by EO 13148. EPA has interpreted “contiguous or adjacent sites” to include sites separated only by a public right-of-way. Therefore, the two GOCOs are considered to occupy sites that are contiguous or adjacent. Each GOCO should provide any
information required by the federal facility in making threshold determinations and reporting releases and other waste management under EPCRA Section 313.

EO 13148 does not alter any separate obligation(s) a GOCO may have under EPCRA and the Pollution Prevention Act (PPA). Private contractors operating at federal facilities must continue to meet any legal reporting requirements they have under EPCRA and PPA. Thus, a GOCO that operates a covered facility under 40 CFR Section 372.22 must file a Form R or an Alternate Certification Statement (Form A) for each toxic chemical for which the facility exceeds an activity threshold as specified in 40 CFR Section 372.25.

EO 13148 (65 FR 24595, April 26, 2000) supersedes EO 12856 (August 1993).

<table>
<thead>
<tr>
<th>Activity Threshold, Storage</th>
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<tbody>
<tr>
<td>9. A coal mine receives a flotation agent containing a Section 313 chemical in December of 1998, but does not use it until January of 1999. Is the amount of toxic chemical in the flotation agent considered for threshold determinations in the 1998 reporting year?</td>
</tr>
<tr>
<td>No. Storage in itself of a toxic chemical is not considered a manufacturing, processing, or otherwise use activity and, therefore, is not subject to threshold determinations. However, the facility is required to include any amounts released or otherwise managed as waste that occur during storage of the listed toxic chemical, provided a threshold for the same chemical has been exceeded elsewhere at the facility. When the toxic chemical is used in 1999, the facility will include the amount of toxic chemical used towards the applicable otherwise use or processing threshold, whichever is appropriate.</td>
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<tr>
<th>Manufacture, Import, Threshold Determination</th>
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<tbody>
<tr>
<td>10. If a covered facility manufactures 19,000 pounds, processes 18,000 pounds, and imports 7,000 pounds of toxic chemical X (a non-PBT chemical) during the reporting year, is it required to report for toxic chemical X?</td>
</tr>
<tr>
<td>Yes. For the reporting year, the facility would have to report for toxic chemical X because it would have exceeded the manufacture threshold of 25,000 pounds (19,000 (manufactured) + 7,000 (imported) = 26,000). Note that importing constitutes manufacturing, and therefore, the amounts must be added together for threshold determinations.</td>
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<th>Threshold Determination</th>
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<tr>
<td>11. Are the thresholds for manufacture and process considered separately? That is, if a covered facility manufactures 24,000 pounds of toxic chemical A (a non-PBT chemical) and processes 24,000 pounds of toxic chemical A, does the facility need to report for toxic chemical A?</td>
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</table>

No. The facility does not have to report because it has not independently exceeded either threshold. Thresholds are considered separately for manufacture, process, and otherwise use of the same toxic chemical. Assuming that no individual threshold is met for chemical A (i.e., manufacturing, processing, or otherwise use), the facility does not trigger reporting for chemical A.

12. How does a facility determine the threshold for reporting of a listed toxic chemical (such as chromium) in a solid piece of steel which it processes?

Since steel is a mixture (and not a compound), the processing threshold determination is made based on the total amount of each toxic chemical present in the steel. If the toxic chemical is present in a known concentration, the amount present can be calculated by multiplying the weight of the steel by the weight percent of the listed toxic chemical. The threshold for processing chromium is 25,000 pounds.

13. Regarding non-PBT metals in mixtures, such as chromium in an alloy (stainless steel), how are thresholds and releases and other waste management activities accounted for in a foundry type operation where all of the metals are melted down? Could the de minimis and article exemptions be applied?

For threshold purposes, if the listed non-PBT chemicals in the metals are processed, otherwise used, manufactured as an impurity (that remains with the product), or imported below the de minimis levels, then the de minimis exemption may be taken for that metal in the alloy. However, the article exemption cannot be taken for this type of foundry operation since in foundring, a metal is melted down and poured into a mold. Consequently, the resulting metal is not recognizable as its original form.

14. If I manufacture 74,000 pounds of a non-PBT toxic chemical and otherwise use 9,000 pounds, am I covered?

Yes. The facility has exceeded the manufacturing threshold of 25,000 pounds for the toxic chemical. Releases and other waste management from all activities including the 9,000 lbs otherwise used of the toxic chemical at the facility are reportable.

15. Is the reclamation of elemental mercury from mercury retorting (e.g., recycled fluorescent lamps, contaminated phosphor powder, mercury batteries, and other sources) and the subsequent sale of the recovered mercury (e.g., for use in thermometers and other equipment) subject to the 10 pound processing threshold?
Yes. Mercury retorted from wastes and subsequently distributed into commerce should be counted towards the 10 pound processing threshold.

16. A covered facility receives a waste containing 13,000 pounds of a listed, non-PBT chemical. The facility disposes of 5,000 pounds of the toxic chemical and stabilizes the other 8,000 pounds of the chemical. Does the facility meet a Section 313 chemical activity?

Until January 1, 1998, this facility would not be manufacturing, processing or otherwise using the listed toxic chemical. However, beginning January 1, 1998, the facility would be otherwise using the toxic chemical. Because the facility received the 13,000 pounds of the toxic chemical in wastes received from off-site for the purposes of further waste management, the amount of the toxic chemical that is subsequently stabilized or disposed on-site is considered otherwise used at the facility for the purpose of threshold determinations. The facility would need to add the amount of the toxic chemical that is involved in all otherwise use activities to determine whether the otherwise use threshold of 10,000 pounds for non-PBT chemicals has been exceeded. In this case, 13,000 pounds of the chemical would be considered otherwise used.

17. A covered facility, in treating for destruction listed toxic chemical A (a non-PBT chemical), which it receives from off-site, manufactures 11,000 pounds of chemical B, another listed non-PBT chemical. The facility subsequently disposes of chemical B on-site. Would the facility meet the manufacture or otherwise use threshold for chemical B?

This manufacture of chemical B is below the manufacturing activity threshold of 25,000 pounds. However, after January 1, 1998, the facility would also be otherwise using toxic chemicals A and B. Included in activities covered by EPA’s revised interpretation of otherwise use is the disposal of a toxic chemical that is produced from the management of a waste that is received by the facility. In this example, because the facility received from off-site a waste containing a chemical that is treated for destruction (i.e., chemical A) and during that treatment produced and subsequently disposed of chemical B, the disposal of chemical B under EPA’s revised interpretation would be considered otherwise used as well as the treatment for destruction of chemical A. Because the facility disposed of, or otherwise used, 11,000 pounds of chemical B, the 10,000 pound statutory threshold for the otherwise use of non-PBT chemicals has been met. Thus, the facility would need to report all releases of, and waste management activities involving chemical B. If the facility treats for destruction more than 10,000 lbs of chemical A, it would also report for this toxic chemical.
18. A covered facility manufactures 11,000 pounds of chemical A, a listed non-PBT chemical from the treatment of another toxic chemical which was received from off-site. The facility disposes of 6,000 pounds of chemical A and uses 5,000 pounds of chemical A in a non-incorporative, manufacturing activity at the facility. Does this facility meet an activity threshold?

Prior to January 1, 1998, this facility would not meet the manufacturing threshold of 25,000 pounds for chemical A nor would it have met the otherwise use threshold of 10,000 pounds because it only otherwise used 5,000 pounds. However, after January 1, 1998, the facility would meet the otherwise use threshold for chemical A. Both the on-site disposal and the non-incorporative activities are considered to be otherwise use activities. The on-site disposal of chemical A is included among the various activities covered by EPA’s revised interpretation of otherwise use. The facility would add the amounts of chemical A involved in both otherwise use activities at the facility to determine whether they exceed the 10,000 pound otherwise use threshold for non-PBT chemicals. Since the total amount of chemical A that is otherwise used is 11,000 pounds, the facility would need to report on all releases and other waste management activities involving chemical A.

19. A covered facility adds a listed acid to wastewater to neutralize the wastewater prior to discharge. Is this activity manufacturing, processing, or otherwise using the toxic chemical?

Because the listed acid is not incorporated into the final product and distributed in commerce, nor is it created at the facility, the toxic chemical is otherwise used.

20. If a toxic chemical is derived from the phase separation of wastes received from off site and that chemical is subsequently incorporated into a product at the facility and then distributed into commerce, has the toxic chemical been processed or otherwise used?

If a facility receives materials containing toxic chemicals from off-site for further waste management and the toxic chemicals are treated for destruction, stabilized, or disposed on-site, the facility would be otherwise using the toxic chemicals. However, during phase separation the toxic chemical in the waste is not actually destroyed. Furthermore, the toxic chemical is incorporated into a product at the facility and is further distributed in commerce (e.g., retorted mercury sold for reuse in thermometers and mercury switches). Thus, as long as the toxic chemical coming from the waste is not stabilized, treated for destruction, or disposed, it would not be otherwise used because it is neither treated for destruction nor disposed on site. Because it is distributed in commerce, it would be processed. Once a facility exceeds a threshold for a particular toxic chemical, amounts of that chemical that are released or otherwise managed as a waste must be calculated for all on-site activities.
21. Must releases of listed toxic chemicals used as fumigants be reported if the other criteria and thresholds are met?

Yes. Fumigant use would be subject to the otherwise use threshold.

22. A facility covered under EPCRA Section 313 manufactures shoes. During production the facility uses adhesives that contain solvents such as toluene. Due to the inefficiency of the process, 20 percent of the solvent remains behind in the shoes when they are sold in commerce. Would the facility count the amount of solvent remaining in the shoes toward the processing threshold?

No. The amount of solvent used in the adhesive would count toward the otherwise use threshold. Since the toxic chemical does not function as a component of the shoe, it would not be considered processed. Thus, the facility would file if it meets an otherwise use threshold for the toxic chemical in the adhesive.

23. If a solvent that is a listed toxic chemical is used to clean an apparatus but does not become part of the final product, is the chemical covered for reporting purposes under EPCRA Section 313?

If a solvent is not incorporated into a product distributed in commerce, then for the purposes of Section 313, it would be considered otherwise used. It would be subject to reporting if used in quantities exceeding the otherwise use threshold.

24. A covered facility uses paint thinners in its operations. The thinners are evaporated or baked out of the finished painted products. Are those chemicals subject to Section 313 regulations?

If the chemical evaporates or is baked out of a finished coating, it has been otherwise used.

25. Does the placing of a bulk liquid containing a small percentage of a Section 313 toxic chemical into small bottles for consumer sale constitute a reportable/threshold activity of the mixture?

Yes, repackaging for distribution in commerce is a type of processing (40 CFR Section 372.3). If the bulk liquid contains a Section 313 listed non-PBT chemical in excess of the de minimis level or a listed PBT chemical at any concentration, the toxic chemical in the liquid would have to be factored into
calculated in determining whether the *processing* threshold is exceeded for that toxic chemical.

26. A *covered facility* receives a chemical in bulk and repackages it into smaller containers that are sent to consumers. Are amounts repackaged considered toward an activity threshold?

Amounts of the toxic chemical that a *covered facility* repackages for distribution in commerce must be considered toward the *processing* threshold.

27. Paint containing listed toxic chemicals is applied to a product and becomes part of an article. Does the *processing* threshold apply? What about the volatile toxic chemicals from the painting operation - are they otherwise used?

Yes. This is a case in which different listed toxic chemicals in the same mixture may have different uses and therefore, different thresholds. The listed toxic chemicals that are incorporated as part of the coating are processed, whereas the volatile solvents in the paint are otherwise used because their function is such that they do not become incorporated into the article.

28. A listed toxic chemical is manufactured as part of a mixture which is a byproduct. The *facility* does not know the specific concentration of the listed toxic chemical in this byproduct. For determining the threshold for Section 313, does the *facility* include this byproduct without knowing the specific concentration of the listed toxic chemical?

Because the reporting facility is manufacturing the toxic chemical mixture on-site, the facility is required to calculate the amount of the toxic chemical coincidentally manufactured during the reporting year based upon a reasonable estimate of the percentage of the toxic chemical in the mixture. This quantity is aggregated to determine if the facility exceeds the threshold for manufacturing.

29. A *covered facility* manufactures and repairs airplanes. Prior to beginning any repair work, any fuel remaining in the airplane’s fuel tanks is emptied by service personnel at the facility. After the repairs are completed, the airplane is refueled with fuel removed from the airplane’s fuel tanks and/or new fuel. Should the owner/operator of the manufacturing and repair facility consider the toxic chemicals present in the fuel when making Section 313 threshold and release and other waste management calculations?
Yes. For purposes of EPCRA Section 313 threshold determinations and release and other waste management calculations, the listed toxic chemicals present in the fuel are considered to be processed because they are being repackaged and further distributed in commerce. Thus, the listed toxic chemicals present in the fuel are subject to the processing threshold.

30. Refractory brick containing lead is installed in a reaction vessel. Is the lead in the brick considered otherwise used for purposes of EPCRA Section 313? Also, are releases of lead from the brick during the previous reporting year subject to release reporting on the Form R if no new bricks are added during the reporting year?

The lead contained in the bricks is considered otherwise used since it is not incorporated into the final product. The facility would count the amount of lead in the bricks that are added to the reaction vessel only for the year in which the bricks are installed. In answer to the second question, if the 100 pound threshold is exceeded, then all releases and other waste management of lead would be reported from both the newly added bricks and those installed in previous years. Neither the lead contained in the refractory bricks in the inventory (i.e., not yet installed), nor the lead in place, contained in bricks (i.e., installed in a previous year) are to be included in threshold determinations for the reporting year in question. If no bricks are installed during the reporting year, and lead is not used elsewhere at the facility, then a report would not be required.

31. A reclamation facility receives waste solvents containing an EPCRA Section 313 toxic chemical from a separate facility that generated the wastes (the generating facility). The reclamation facility reclaims the listed toxic chemical and returns it, as a product, to the generating facility. For the purpose of EPCRA Section 313 threshold determinations, is the reclamation facility processing the listed toxic chemical?

Yes. By reclaiming the listed toxic chemical and returning it to the generator, the reclamation facility has prepared the chemical for distribution in commerce by incorporating the chemical into a product (i.e., the reclaimed toxic chemical). Therefore, the reclamation facility is processing the toxic chemical in the waste solvent it receives. Assuming the reclamation facility is a covered facility, it is required to report under EPCRA Section 313 for the toxic chemical if it exceeds an activity threshold (e.g., processing) during the course of a reporting year.
32. A facility covered under EPCRA Section 313 uses formaldehyde as an ingredient in feedstock. The feedstock is sent for use to another facility under common ownership. The preparing facility does not receive direct compensation for the product, nor is the product distributed to the general public. Does such a transfer of a listed toxic chemical, after its preparation, to another facility under common ownership constitute distribution in commerce and thus need to be considered in threshold determinations for reporting under EPCRA Section 313?

Yes. Under EPCRA, process means the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce (40 CFR Section 372.3). Distribution in commerce includes any distributive activity in which benefit is gained by the transfer, even if there is no direct monetary gain. Listed toxic chemicals that are shipped from one facility to another facility under common ownership are considered to be distributed in commerce. Although the chemical in the product is not distributed to the general public, the preparing facility does derive economic benefit by transferring the listed toxic chemical, as both facilities are under common ownership. The amount of listed toxic chemical prepared at the facility must be counted towards the processing threshold.

33. Company A stores oil at their Storage Facility 1. Company A transfers oil from Storage Facility 1 to their Storage Facility 2 (a separate facility for EPCRA Section 313 purposes). From Storage Facility 2, the oil is distributed to customers. Does the transfer from Storage Facility 1 to Storage Facility 2 constitute processing on the part of Storage Facility 1?

Yes. Under EPCRA Section 313, processing means the preparation of a listed toxic chemical after its manufacture, for distribution in commerce (40 CFR Section 372.3). Distribution in commerce includes any distributive activity in which benefit is gained by the transfer, even if there is no direct monetary gain. Listed toxic chemicals that are shipped from one facility to another facility under common ownership are considered to be distributed in commerce. Although the chemical in the product is not distributed to the general public, the preparing facility does derive economic benefit by transferring the listed toxic chemical, as both facilities are under common ownership. The amount of listed toxic chemical prepared at the facility must be counted towards the processing threshold.

34. The corporate office for a chemical distribution company directly purchases products which will be shipped to several of its chemical distribution facilities. The corporate purchasing department purchases one of these products, which contains a section 313 chemical, from a foreign source. The product is shipped directly to one of its chemical distribution facilities. Did the individual facility cause the importation of
the section 313 chemical thereby requiring it to apply the manufacturing threshold to the quantities of this material received by the facility in the reporting year?

If the chemical distribution facility that actually received the product did not have any input regarding the quantity or identity of the toxic chemical, the facility did not cause the importation of the toxic chemical in the product and does not have to apply the listed chemical in the product to its manufacturing threshold. To be considered an importer the facility receiving the material from a foreign source must have imported or “caused the material to be imported.” If the ordering facility receives the shipment, then the ordering facility has imported the listed toxic chemicals and must consider these amounts toward their manufacturing thresholds. However, if the ordering facility, on its own initiative, directs another facility to receive the shipment, and that other facility has no input in deciding whether it will receive the toxic chemical, then the receiving facility has not imported the shipment and the ordering facility has also not imported the shipment for purposes of EPCRA Section 313 because the listed toxic chemicals were not brought on site of the ordering facility.

35. A facility did not specify a source for a material broker to obtain a listed toxic chemical, but the facility learns that the only U.S. manufacturer of the chemical has gone out of business. Therefore, is the facility importing the chemical, making the facility subject to the manufacturing threshold?

Yes. The facility knows that it has caused the listed toxic chemical to be imported to the U.S. because there are no U.S. sources. Therefore, the amount of the chemical that is caused to be imported by the facility through a broker must be included within the manufacturing threshold determination for that listed toxic chemical.

36. An auxiliary wastewater treatment plant, which is not a RCRA Subtitle C facility, has taken on the SIC code of a covered facility because it primarily services a covered facility. Does the facility where the treatment plant is located have to report even if the rest of the establishments at that facility are not in the covered SIC codes?

A facility must report only if it meets the employee, SIC code and activity criteria. As long as the SIC code for the wastewater treatment plant is not the primary SIC code for the facility, the SIC code criterion is not met. Therefore, the facility as a whole need not report. The covered facility producing the listed toxic chemical in the waste must report the off-site transfer to the facility containing the wastewater treatment plant.
37. **Is my facility covered by EPCRA Section 313 if the value added of laboratory research at my facility is greater than 50 percent of the total value added of goods and services produced at my facility?**

If the research laboratory is a separate establishment from the other activities at the facility and its SIC code is not in a covered SIC code, then the 50 percent test is used to determine if the whole facility is in the covered SIC codes (40 CFR Section 372.22). In this case, the facility would not be subject to reporting because the primary SIC code is not within the covered SIC codes. However, if the laboratory is within the covered SIC codes because it is an auxiliary establishment providing research to support operations in the covered SIC codes, then the facility would be covered by Section 313.

38. **An EPCRA Section 313 covered facility uses a fuel-powered paint sprayer for the sole purpose of painting the facility’s structure. The listed toxic chemicals within the paint used to maintain the facility’s appearance are exempt from EPCRA Section 313 threshold determination and release and other waste management reporting requirements under the structural component exemption (40 CFR Section 372.38(c)(1)). The fuel used to power the paint sprayer also contains listed toxic chemicals reportable under EPCRA Section 313. Must the listed toxic chemicals in the fuel be applied toward the otherwise use threshold?**

No. The listed toxic chemicals are exempt from EPCRA Section 313 threshold determinations and release and other waste management reporting requirements. Although the structural component exemption most commonly applies to toxic chemicals incorporated into a facility’s physical structure, the exemption also extends to toxic chemicals whose sole use derives from or is associated with an exempt use. Examples of toxic chemicals exempt in this manner include solvents used to clean paint brushes that were used to paint a facility’s structure and fumes generated from the welding of non-process related pipes during installation at a facility. Be aware that the combustion of fuels may coincidentally manufacture Section 313 toxic chemicals. Such coincidental manufacture is not eligible for de minimis limitations (see the directive on de minimis) or the structural component exemption and amounts produced must be compared against the manufacturing threshold. The EPA publication, Toxic Air Pollutant Emission Factor - A Compilation of Selected Air Toxic Compounds and Sources (EPA 45/2-88-006a) contains emission factors for many specific compounds emitted during fuel combustion.

39. **After otherwise using an EPCRA Section 313 toxic chemical in a laboratory setting under the supervision of a technically qualified individual, a covered facility sends the toxic chemical in waste off-site to be recycled. The facility also processes the same chemical elsewhere but below the processing threshold. The facility is eligible for the laboratory activity exemption for the amount of the listed toxic chemical otherwise**
used, processed, and manufactured in the laboratory and amounts of the listed toxic chemical released from the laboratory. (40 CFR Section 372.38(d)) Is the facility required to count the amount of the listed toxic chemical sent off-site for recycling from the laboratory toward the processing threshold?

Covered facilities manufacturing, processing or otherwise using a toxic chemical in a laboratory setting under the supervision of a technically qualified individual, need not consider those quantities of the toxic chemical when determining EPCRA Section 313 chemical activity thresholds and calculating releases and other waste management amounts. The facility is eligible for the laboratory activity exemption for the amount of listed toxic chemical otherwise used, processed, and manufactured in the laboratory and amounts of the listed toxic chemical released or otherwise managed as waste from the laboratory. The covered facility is not required to count the amount of listed toxic chemical laboratory waste sent off-site for recycling toward the processing threshold. Any other non-exempt quantities of the toxic chemical manufactured, processed or otherwise used on-site, however, should be considered towards the appropriate threshold to see if the facility triggers reporting for that toxic chemical.

40. Please explain the de minimis concentration limitation under Section 313, and its application to mixtures and trade name products (40 CFR Section 372.38(a))? If a listed non-PBT chemical in a mixture or trade name product meets the de minimis exemption, all releases and other waste management calculations.

The de minimis exemption allows covered facilities to disregard certain minimal concentrations of listed non-PBT chemicals in mixtures or trade name products when making threshold determinations and release and other waste management determinations. The de minimis exemption does not apply to the manufacture of a listed toxic chemical except if that listed toxic chemical is manufactured as an impurity and remains in the product distributed in commerce below the appropriate de minimis level or is imported below de minimis concentrations. The de minimis exemption does not apply to a byproduct manufactured coincidentally as a result of manufacturing, processing, otherwise use, or any waste management activity. The de minimis exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

When determining whether the de minimis exemption applies to a listed non-PBT chemical, the owner/operator should consider only the concentration of the listed toxic chemical in mixtures and trade name products. If the listed non-PBT chemical in a mixture or trade name product is manufactured as an impurity or imported, processed, or otherwise used and is below the appropriate de minimis concentration level, then the quantity of the listed toxic chemical in that mixture or trade name product does not have to be applied to threshold determinations nor included in release or other waste management calculations. If a listed non-PBT chemical in a mixture or trade name product meets the de minimis exemption, all releases and other waste...
management activities associated with the listed toxic chemical in that mixture or trade name product are exempt from EPCRA Section 313 reporting. It is possible to meet an activity (e.g., processing) threshold for a toxic chemical on a facility-wide basis, but not be required to calculate releases or other waste management quantities associated with a particular mixture or trade name product because that mixture or trade name product contains the non-PBT chemical below the de minimis level.

Once a listed toxic chemical concentration is above the appropriate de minimis concentration, threshold determinations and release and other waste management calculations must be made, even if the chemical later falls below the de minimis level in the same process stream. Thus, all releases and other quantities managed as waste that occur after the de minimis level has been exceeded are subject to reporting. If a listed toxic chemical in a mixture or trade name product above the de minimis level is brought on-site, the de minimis exemption never applies.

The de minimis concentration level is consistent with the OSHA Hazard Communication Standard requirements for development of Material Safety Data Sheets (MSDSs). The de minimis level is 1.0 percent except if the listed toxic chemical is an OSHA-defined carcinogen. The de minimis level for OSHA-defined carcinogens is 0.1 percent. For mixtures or other trade name products that contain one or more members of a listed Section 313 toxic chemical category, the de minimis level applies to the aggregate concentration of all such members and not to each individually. The list of toxic chemicals in the publication Toxic Chemical Release Inventory Reporting Forms and Instructions for the current reporting year contains the de minimis values for each of the non-PBT chemicals and chemical categories.

This de minimis exemption applies solely to mixtures and other trade name products. EPA’s long-standing interpretation has been that mixture does not include waste. Therefore, the de minimis exemption cannot be applied to toxic chemicals in a waste.

41. A metal mining facility receives ash that it directly incorporates in concrete which it then uses on-site to form cement blocks. Is this direct use of ash eligible for the de minimis exemption?

The use of ash as a component of a mixture (concrete) that is otherwise used on-site to construct cement blocks constitutes an otherwise use of a material containing listed toxic chemicals and such amounts must be counted toward the facility’s otherwise use of those chemicals. In this case, the ash is not considered a waste because it is not managed as a waste. Thus, the listed non-PBT chemicals contained in the ash are eligible for the de minimis exemption if they do not exceed the de minimis concentrations.
42. A covered facility receives a spent solvent, recovers the solvent and sells the recovered solvent in commerce. Is the recovered solvent considered a waste, and if not, is the reusable solvent considered a product? At what point might the solvent be eligible for the de minimis exemption?

The recovery facility must consider the amount of the material that it feeds into the recycling operation toward the facility’s processing threshold. The solvent is part of a waste (not usable in the form received) and therefore the amount processed is not eligible for the de minimis exemption until the recovery is complete and the solvent is no longer subject to further waste management activities. Once the recovery is complete, the solvent is no longer a waste and thus the recovery facility may take the de minimis exemption for amounts of non-PBT chemicals subsequently prepared for distribution in commerce. The purchasing facility considers the recovered solvent as a new product and its subsequent use of the solvent may be eligible for the de minimis exemption. However, if the amount of solvent processed prior to the point of which it was eligible for the de minimis exemption was enough to exceed a reporting threshold, the fact that the solvent subsequently became eligible for the de minimis exemption does not remove the reporting requirement.

43. Does the de minimis exemption apply regardless of whether a listed non-PBT chemical is present in a mixture as an impurity or separated out as a byproduct? Does it apply to toxic chemicals in waste?

The de minimis exemption may be considered for non-PBT chemicals that are manufactured as impurities that remain in the product for distribution. The de minimis exemption does not apply to listed toxic chemicals that are manufactured as a byproduct regardless of whether the byproduct is a waste.

44. Does the de minimis exemption apply to the parent metal component of a compound in a mixture for Section 313 reporting?

No. For threshold determinations, the weight percent of the whole compound in the mixture is used. In general, the de minimis value for compounds is one percent, unless the particular compound is itself an OSHA carcinogen and then the de minimis level is 0.1 percent. The de minimis exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

45. We are taking part in an experimental shale oil extraction process. When the shale is extracted, concentrations of a non-PBT chemical are present in trace amounts in the shale far below the de minimis concentration. Does the de minimis exemption apply?
Yes, the de minimis exemption applies to the listed non-PBT chemical present in the shale.

46. What is the basis for determining that a toxic chemical is subject to the 0.1 percent de minimis level rather than the 1.0 percent de minimis level, and when do changes in toxic chemical de minimis levels take effect?

In the final rule (53 FR 4500, Feb. 16, 1988) that implements the reporting requirements of EPCRA Section 313, EPA adopts a de minimis exemption which permits facilities to disregard de minimis levels of listed non-PBT chemicals for threshold determinations and release and other waste management calculations. The regulations adopt a 0.1 percent de minimis level for chemicals that are carcinogens, as defined in 29 CFR Section 1910.1200(d)(4), as follows:

“(4) Chemical manufacturers, importers and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

(I) National Toxicology Program (NTP), Annual Report on Carcinogens (latest edition);

(ii) International Agency for Research on Cancer (IARC) Monographs (latest editions); or

(iii) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.”

Therefore, once a chemical’s status under NTP, IARC, or 29 CFR Part 1910, Subpart Z, indicates that the chemical is a carcinogen or potential carcinogen, the reporting facility may disregard levels of the chemical below the 0.1 percent de minimis concentration, provided that the other criteria for the de minimis exemption are met. For convenience purposes, EPA refers to these chemicals as the “OSHA carcinogens.”

If in reporting year “A,” IARC or NTP classifies a chemical as a probable or known carcinogen (thus lowering the EPCRA Section 313 de minimis concentration from 1.0 to 0.1 percent), the lower de minimis concentration for the purposes of reporting would be applicable starting with reporting year “A+1.” For example, vinyl acetate was classified as a group 2B chemical by IARC in 1995, so the lower de minimis level of 0.1 percent applied starting with the 1996 reporting year (i.e., it was effective as of January 1, 1996, for reports due July 1, 1997).

Suppliers would need to notify their customers of such changes with the first shipment in the year in which the change is applicable to reporting. If, as in the vinyl acetate example, the classification changes in 1995, then the
47. If a covered facility has process streams with less than 1 percent (or 0.1 percent for carcinogens) of a listed non-PBT chemical, do fugitive releases from these streams have to be included in release calculations?

The de minimis exemption applies to process streams when a starting material for the process is a mixture containing less than 1 percent (or 0.1 percent) of a listed non-PBT chemical. If the process stream is exempt under de minimis, releases from the stream are not reported on the Form R.

48. A covered facility uses a chemical mixture that contains a listed Section 313 non-PBT chemical. The concentration of the listed toxic chemical is given as a range on the Material Safety Data Sheet (MSDS). If the maximum and minimum concentrations are above and below the de minimis concentration level, how can the facility determine quantities for Section 313 compliance?

The amount of the listed toxic chemical in the mixture that is at or above the de minimis level, and therefore counts towards the threshold, can be assumed to be proportional to the ratio of the amount at or above de minimis concentration to the amount of the total concentration range. The concentration of the chemical in the mixture that is not exempt is the average of the de minimis level and the maximum concentrations.

For example, assume that a facility manufactures 10 million pounds of a mixture containing 0.25–1.20 percent of a toxic chemical that is subject to a 1 percent de minimis level. The quantity of the mixture subject to reporting is:

\[
10,000,000 \text{ lbs} \times \frac{(1.20 - 0.99)}{(1.20 - 0.25)} = 2,210,526 \text{ lbs}
\]

This 2,210,526 pounds of non-exempt mixture is multiplied by the average concentration above the de minimis, which is 1.1 percent, or

\[
\frac{1.20 + 0.99}{2} = 0.011
\]

\[
2,210,526 \times 0.011 = 24,316 \text{ pounds}
\]

In this example, the amount of chemical that counts toward a threshold is 24,316 pounds.

49. A covered facility processes a mixture of chemicals which includes a non-carcinogenic listed non-PBT chemical present between concentrations of 0.5–1.0 percent, as stated on the MSDS provided with the mixture. Is the listed toxic chemical in the mixture eligible for the
**de minimis exemption?** If not, how would a **facility** make a threshold determination for a **toxic chemical** whose concentration ranges from below the **de minimis** level to the **de minimis** level?

A listed **toxic chemical** with a concentration range that has an upper bound equal to the **de minimis** level is not exempt from reporting under EPCRA Section 313. The exception applies only if the chemical concentration is below the **de minimis** level. The amount of the listed **toxic chemical** in the **mixture** that is at or above the **de minimis** level, and therefore counts towards the threshold, is proportional to the ratio of the amount at or above the **de minimis** concentration to the amount of the total concentration range. The concentration of the chemical in the **mixture** that is not exempt is the average of the **de minimis** level and the maximum concentration, which in this case is the same. The fraction of the listed **toxic chemical** that is not exempt is the fraction that is at the **de minimis** level, i.e., 1 percent. The fraction that is exempt is that below the **de minimis** level, which is 0.5 percent – 0.9 percent (one significant figure).

For example, assume that a **facility manufactures** 10 million pounds of a **mixture** containing 0.5-1.0 percent of a **toxic chemical** that is subject to a 1 percent **de minimis** exemption. The quantity of the **mixture** subject to reporting is:

\[
\frac{10,000,000 \text{ lbs} \times (1.0 - 0.9)}{1.0 - 0.5} = 2,000,000 \text{ lbs} \\
\text{Non-exempt mixture}
\]

50. A raw material contains less than the **de minimis** level of a listed non-PBT chemical. During **processing** of the listed **toxic chemical**, its concentration remains below **de minimis**. However, the concentration of the listed **toxic chemical** in the wastestream that results from that **processing** activity is above the **de minimis** concentration level for that **toxic chemical**. The wastestream containing that listed **toxic chemical** is **disposed** in an on-site landfill. **Should** the **toxic chemical** handled in the process line be included in the **facility’s** threshold determination? Do the quantities of the listed **toxic chemical** in wastestreams that are generated from this process require reporting? What about the listed **toxic chemical** present in the wastestream that is above the **de minimis** level?

No. The **de minimis** exemption can be applied to the listed non-PBT chemical in the raw material that is **processed**. Because the **de minimis** exemption can be taken, the quantities **processed** do not have to be applied to the **processing** threshold for that **toxic chemical** at the **facility** and quantities of the listed **toxic chemical** that are **released** or otherwise managed as waste as a result of this specific **processing** activity are exempt from **release** and other **waste management** calculations. The exemption applies even if the listed **toxic chemical** is concentrated above the **de minimis** level in the wastestream resulting from that **processing** activity.
51. A covered facility combusts coal in a combustion unit. The coal contains a non-PBT chemical below de minimis amounts. During combustion, chemicals are manufactured. The ash containing the toxic chemicals is generated from the combustion of the coal. The ash is then sold to another facility for direct reuse in the manufacture of concrete blocks. If the toxic chemicals in the ash are below the appropriate de minimis concentration, are they eligible for the de minimis exemption?

The toxic chemical in the coal being combusted should be considered towards the facility’s otherwise use threshold and this activity is eligible for the de minimis exemption. The toxic chemicals that are manufactured as a result of the combustion process are byproducts and therefore not eligible for the de minimis exemption. The chemicals in the ash that is sold for direct reuse off-site are considered processed. After combustion, when the facility is preparing the toxic chemicals in ash for distribution in commerce, the non-PBT chemicals are eligible for the de minimis exemption.

52. A small quantity of a listed toxic chemical is manufactured in a wastestream. Are facility owners/operators required to include the amount of the listed toxic chemical present in the wastestream as part of the threshold determination if the concentration of the listed toxic chemical in the wastestream is below the de minimis level?

Yes. This de minimis exemption applies solely to non-PBT chemicals in mixtures. EPA’s long-standing interpretation has been that mixture does not include waste. Also, generally, de minimis does not apply to listed toxic chemicals that a facility manufactures. The de minimis exemption cannot be applied to listed toxic chemicals manufactured as a byproduct.

53. A covered facility otherwise uses a toxic chemical that is above the de minimis concentration in a mixture. How does the de minimis exemption apply to listed toxic chemical residues from this use contained within used or spent containers that the facility sends off-site for disposal?

The de minimis exemption cannot be applied to quantities of the listed toxic chemical in used or spent containers that are sent off-site for disposal because these quantities are being managed as a waste and the de minimis exemption does not apply to wastes. The de minimis exemption can be applied to a listed non-PBT chemical in a mixture or trade name products that is processed, otherwise used, manufactured as an impurity (that remains with the product), or imported, provided that the listed toxic chemical is present in the mixture or trade name product below the de minimis concentration level.
54. In petroleum refining processes, mixtures such as crude oils, petroleum products, and refinery process streams may contain trace amounts of listed toxic chemicals. During the refining process, these mixtures may undergo beneficiation activities which would result in the listed toxic chemicals being concentrated to levels that exceed the de minimis levels. Would the de minimis exemption apply to these processes?

The de minimis exemption would apply to the non-PBT chemicals until they are concentrated above the applicable de minimis level. For purposes of threshold determinations and release and other waste management calculations, the facility would account for a listed toxic chemical from the first point in the process in which the concentration of the toxic chemical meets or exceeds the applicable de minimis level for that toxic chemical, in the process mixture.

55. As a petroleum refiner, do we have to estimate air releases of chemicals from storage tanks containing crude oil if the concentration of the chemical is below de minimis level? We understand that the amounts of these chemicals would be counted towards threshold since, after storage, we are extracting and purifying them to concentrations above de minimis.

Facilities that receive chemicals into the plant at concentrations below de minimis have to report releases and other waste management activities from that point in the process when the chemical’s concentration exceeds de minimis level. This facility would not have to report air emissions from their crude oil tanks for the chemicals present in oil below de minimis. For those above de minimis, they must report releases and other waste management activities. The de minimis exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

56. A covered facility places ammonium chloride in water, and manufactures aqueous ammonia for use on-site. Does the de minimis exemption apply to this activity?

No. The facility cannot take the de minimis exemption for this activity because the facility manufactured aqueous ammonia. The de minimis exemption does not apply to the manufacture of a non-PBT chemical, unless the toxic chemical is manufactured as an impurity and remains in the product distributed in commerce. Since the facility used the aqueous ammonia on-site and the ammonia is not an impurity that remains in a product distributed in commerce, the de minimis exemption does not apply.
57. When determining the \textit{de minimis} level for members of an EPCRA Section 313 category, the total weight of all the members of the category in the \textit{mixture} must be counted and compared to the applicable \textit{de minimis} level. How would a \textit{facility} determine the \textit{de minimis} level for a \textit{mixture} containing members of a category, such as the arsenic compounds category, where there are different \textit{de minimis} levels within the category?

For categories in which there are different \textit{de minimis} levels within the category, two calculations are done. First, the weight of all members of the category in the \textit{mixture} that have a 0.1 percent \textit{de minimis} is determined and compared to the 0.1 percent \textit{de minimis} level. Second, the weight of all members of the category in the \textit{mixture} (both those with 0.1 percent and 1.0 percent \textit{de minimis}) is determined and compared to the 1.0 percent \textit{de minimis}. If only the first \textit{de minimis} calculation is exceeded then only those chemicals with the 0.1 percent \textit{de minimis} must be included in threshold and \textit{release} and other \textit{waste management} determinations. Therefore, category members with the 1.0 percent \textit{de minimis} would be excluded from threshold and \textit{release} and other \textit{waste management} determinations if only the first \textit{de minimis} calculation is exceeded. If the second \textit{de minimis} calculation is exceeded then all of the category members in the \textit{mixture} must be included in threshold determinations and \textit{release} and other \textit{waste management} calculations. The \textit{de minimis} exemption does not apply to the PBT chemicals listed at 40 CFR section 372.28.

58. If an automobile manufacturer receives finished car batteries and places these batteries into the cars they sell, must the automobile manufacturer report the lead which is incorporated in the battery?

If the car battery is completely sealed while present at the \textit{facility}, it would be considered an \textit{article}, and thus would be exempt from EPCRA Section 313 reporting. If lead is released from the batteries under normal \textit{processing} at the \textit{facility}, as might occur during maintenance of the battery, the release would negate the \textit{article} exemption. If the exemption is negated, the amount of lead and any other \textit{toxic chemical} in these non-\textit{article} batteries would be applied toward the \textit{processing} threshold to determine if the \textit{facility} must report.

59. Does the \textit{article} exemption apply to flat rolled sheet metals, if they are used in operations which typically produce scrap but no \textit{release}?

Assuming the scrap metal pieces are recognizable as the original piece, the \textit{article} exemption does apply to these metals if the forming process caused 0.5 pounds or less of \textit{releases} of a listed \textit{toxic chemical} from all like items or the items retain the thickness of sheet metal in whole or in part. Once an operation is performed on a metal that causes a \textit{release} which is not recycled and which exceeds 0.5 pounds for the reporting year (for example, from
operations such as heating, grinding, or welding), the article exemption no longer applies and releases must be reported when listed chemicals in a sheet metal are processed in quantities greater than the processing threshold.

60. A facility manufactures lead came (i.e., slender, grooved, lead rods). A lead billet is placed into a press and pushed through a die to produce a unique form. The facility processes 100,000 pounds of lead came. Is this process exempt from reporting under the article exemption?

The article exemption does not apply. The lead billet does not qualify as an article because it does not have an end use function other than to be of a size and shape convenient to further processing, and the end product is significantly different in shape and dimension from the starting material. Since the facility processes more than 100 pounds of lead, the facility must report for this toxic chemical.

61. A covered manufacturing facility produces neon signs by bending leaded glass tubing. The facility uses enough tubing annually to process in excess of 100 pounds of lead, an EPCRA Section 313 toxic chemical. When signs are formed from glass tubing, the diameter of the tubes remains unchanged and lead is not released during the heating or bending process, qualifying the tubes for the article exemption. If a discrete number of glass tubes are broken and discarded during the year, under what circumstances would disposal of the broken tubes constitute a release that negates the article exemption, and how would the facility calculate the amount of lead used in their operation?

Disposal of the glass does not necessarily constitute a release which automatically negates the article exemption. For the tubing to meet the definition of an article when discarded, the diameter of the tubing must remain intact and unchanged. As a result, shards of glass no longer qualify as articles. If more than 0.5 pounds of lead is released and not recycled, then the article exemption would not apply to this glass tubing.

62. A covered facility has a PCB transformer on-site which it uses for energy. The PCBs were removed from the transformer and disposed. Is the amount of PCB removed for disposal counted towards the otherwise use threshold? How is this activity covered under EPCRA Section 313?

If the facility removes the entire transformer including the PCB-laced oil as an article, the amount of PCB in the article would not be included in Section 313 threshold determinations and release and other waste management calculations. If a toxic chemical is present in an article at a covered facility, the owner/operator is not required to consider the quantity of the toxic chemical present in such article when determining whether an applicable threshold has been met or when determining the amount to be reported as a release or other waste management.
If the facility removes the PCB-laced oil from the article, this removal would negate the article exemption. To determine if the facility exceeds a threshold, the operator of the facility must count the amount of the chemical added to the recycle/reuse operation during the reporting year (40 CFR Section 372.25(e)).

If a facility has a transformer that leaks PCB-laced oil, this leaking would also negate the article exemption. To determine if the facility exceeds a threshold, again, the owner/operator of the facility must count the amount of the chemical added to the recycle/reuse operation during the reporting year.

The facility would be otherwise using the PCB added to the transformer (ancillary use). Only the amount of PCB added to the transformer needs to be aggregated for threshold determination, and the facility will most likely not be adding PCB-laced oil to the transformer. Therefore, it is unlikely that the facility will exceed the otherwise use threshold. The facility, therefore, would not be required to report releases and other waste management of the PCBs for Section 313.

If, however, the facility exceeds the 10 pound threshold and needs to report PCBs, the PCBs removed from the transformer and sent off-site for final disposal would be a reportable release.

63. A covered facility has a coal-fired boiler. The combustion of the coal generates aerosol forms of hydrochloric acid as a byproduct. Should the aerosol forms of the HCl emissions be reported under EPCRA Section 313?

Yes. In the combustion of coal, the facility will be coincidentally manufacturing aerosol forms of hydrochloric acid, as well as hydrofluoric acid and sulfuric acid. The combustion of coal will also result in the coincidental manufacture of new metal compounds. The facility must submit a Form R if it manufactures more than a threshold amount of any of these listed toxic chemicals.

64. A covered facility processes both elemental lead and lead compounds. The facility exceeds the 100 pounds per year processing threshold for lead compounds, but not for elemental lead, and must submit a report for lead compounds only. When calculating releases and other waste management activities from the lead compounds, the owner/operator is only required to account for the weight of the parent metal released (40 CFR Section 372.25(h)). Should the facility account for both releases of lead from activities involving lead compounds and releases of lead from activities involving elemental lead?

No. In the case when an activity threshold is exceeded only for lead compounds, the report is only required to be based on the releases and other
waste management estimates of lead, the parent metal, from lead compounds only. Releases and other waste management estimates of lead resulting from activities involving elemental lead need not be included in the release and other waste management calculations. Conversely, if the facility were to exceed an activity threshold for only elemental lead, the report would only have to be based on releases and other waste management estimates from activities involving elemental lead only.

65. **There are two chemicals on the list with the qualifier “fume or dust” (zinc and aluminum). What exactly is a “fume” or a “dust?”**

EPA does not have a regulatory definition of a fume or a dust, but considers dusts, for purposes of reporting, to consist of solid particles generated by any mechanical processing of materials including crushing, grinding, rapid impact, handling, detonation, and decrepitation of organic and inorganic materials such as rock, ore, and metal. Dusts do not tend to flocculate except under electrostatic forces. A fume is an airborne dispersion consisting of small solid particles created by condensation from the gaseous state, in distinction to a gas or vapor. Fumes arise from the heating of solids such as lead. The condensation is often accompanied by a chemical reaction, such as oxidation. Fumes flocculate and sometimes coalesce.

66. **A covered facility processes aluminum and zinc. These two toxic chemicals are listed under Section 313 with the qualifier “fume or dust.” Is this processing operation subject to reporting?**

If the processing of these substances generates (i.e., manufacturers) any fume or dust or if the two substances were processed or otherwise used, at any time, as a fume or dust, the activities would be reportable under EPCRA Section 313. The manufacturing, processing, or otherwise use of these substances in fume or dust form would be subject to threshold determinations.

67. **The EPCRA Section 313 toxic chemical list contains three delimited chemical categories. A delimited category includes a finite number of chemicals specifically designated by EPA to be included as part of that category. Are threshold determinations and release and other waste management calculations for these three delimited chemical categories different than threshold determinations and release and other waste management calculations for other EPCRA Section 313 listed chemical categories?**

Threshold determinations are made in the same manner for both delimited and nondelimited categories. If a covered facility manufactures, processes, or otherwise uses more than one member of a listed chemical category, the total volume of all the members of the category must be counted towards the applicable activity threshold (40 CFR Section 372.27(d)). If an activity
threshold is exceeded, the owner or operator of the facility is required to report under EPCRA Section 313. The report must cover all non-exempt activities at the facility involving members of the category.

The three delimited categories are diisocyanates, dioxin and dioxin-like compounds, and polycyclic aromatic compounds (PACs). The diisocyanates category consists of 20 specific members, the dioxin and dioxin-like compounds category consists of 17 specific members, and the PACs category consists of 21 specific members. For reporting on delimited categories, only the members that are specifically listed as part of the category are subject to EPCRA Section 313 reporting. When reporting other nondelimited chemical categories, any unique chemical substance that contains the named category compound as part of that chemical’s structure, or any compound meeting the specified molecular formula, is subject to threshold determinations.

In 1999, (64 FR 58666, October 29, 1999), EPA classified the PACs category as a PBT chemical category and lowered the reporting threshold to 100 pounds. In addition, EPA added two members to this category: benzo(j,k)fluorine (fluoranthen) and 3-methylethylbenzine. EPA has developed guidance to facilitate accurate reporting for PACs entitled Guidance for Reporting Toxic Chemicals: Polycyclic Aromatic Compounds Category, accessible from the TRI web site (www.epa.gov/tri) under the heading “Guidance Documents.” The guidance contains a list of Chemical Abstract Service (CAS) numbers for the individual chemicals within the PACs category and a CAS number list of some mixtures that might contain chemicals within the PACs category. The dioxin and dioxin-like compounds category was also classified as a PBT chemical category and a reporting threshold of 0.1 gram was established. EPA has also developed guidance to facilitate accurate reporting for dioxin and dioxin-like compounds; Guidance for Reporting Toxic Chemicals with the Dioxin and Dioxin-like Compounds Category is available from the TRI web site (www.epa.gov/tri) under “Guidance Documents.”

**68. A covered facility brings in natural and synthetic rubber in slab form. It then adds chemicals to the rubber to change it to what they are making (i.e., tennis balls). Does the facility need to consider the toxic chemicals in the rubber it receives?**

Yes. Rubber is a mixture for reporting purposes. Further, note that the weights of the non-PBT chemicals must be added to the threshold determination if their concentrations are above the de minimis concentration limit (1 percent, or 0.1 percent for OSHA carcinogens) while the weight of any PBT chemical must be added irrespective of concentration. The weight added would be the weight percent of the toxic chemical multiplied by the weight of the rubber slab.
69. **How would a facility report under Section 313 on a wastestream which is neutralized to a pH above 6 before discharged to a POTW?**

Covered facilities that use Section 313 chemicals for pH adjustments and neutralization must report if they meet the *otherwise use* threshold, even if these chemicals are consumed and no releases result. The listed toxic chemical is reported as zero pounds discharged to the POTW in Section 6.1 (Discharges to Publicly Owned Treatment Works) and the entire amount neutralized is reported in Section 8.6 (Treated On-Site). The neutralization process is reported under Section 7A of the Form R (On-Site Waste Treatment Methods and Efficiency).

70. **A manufacturing facility that produces electricity by burning coal stores the coal in an on-site stockpile that is exposed to the outside atmosphere. The facility meets the threshold criteria (40 CFR Section 372.22) for filing a Form R for the toxic chemical benzene. Since the stockpiled coal contains benzene and is exposed to the outside atmosphere, would all the benzene in the coal need to be reported on the Form R as a release to land on-site?**

No. A facility does not have to report toxic chemicals contained in an on-site stockpile of material that is intended for *otherwise use* on-site as a release to land on-site. However, any toxic chemical that escaped to air or remains in the soil from the stockpile material (e.g., evaporative losses to air, material leached to the ground, etc.) must be reported as released to the environment on-site. Once a covered facility meets the criteria for filing a Form R under EPCRA Section 313 for a toxic chemical (such as benzene), all releases of that chemical at the facility are to be reported. Releases of non-PBT chemicals from the stock pile will be eligible for the de minimis exemption.

71. **A covered facility sends a 55-gallon drum containing less than one inch of a listed toxic chemical off site for disposal. For purposes of the RCRA hazardous waste regulations, the container is considered an empty container as defined in 40 CFR Section 261.7 (i.e., RCRA-empty). Must the facility report the listed toxic chemical contained in the RCRA-empty container as an off-site transfer for purposes of disposal on the Form R even though it is not considered to contain hazardous waste under RCRA?**

Yes. The definition of an empty container pursuant to 40 CFR Section 261.7 does not apply to EPCRA Section 313. Even though the residue remaining in a container rendered RCRA-empty is no longer considered a hazardous waste under federal RCRA regulations, it is still considered a toxic chemical under EPCRA Section 313. The status of a listed toxic chemical as a nonhazardous waste under RCRA has no impact on the applicability of EPCRA regulations on that chemical.
Under EPCRA Section 329, the term *release* is defined as “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any toxic chemical.” In Part II, Section 8.1 of the Form R, EPA requires facilities to report all releases of listed toxic chemicals, except those quantities released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes. *Disposal* of a RCRA-empty container which contains any amount of a listed toxic chemical is generally reportable in Section 8.1 when transferred from or disposed at an EPCRA Section 313 covered facility. If, however, the facility has total reportable amounts of a non-PBT chemical not exceeding 500 pounds, it may be eligible for the higher alternate reporting threshold in 40 CFR Section 327.27.

**Waste Management Activities, NA vs. 0, Part II Section 8.8, Catastrophic One-Time Event**

72. On the Form R, a covered facility owner/operator must provide information about routine and non-routine releases for each reported toxic chemical. Specifically, in Part II, Section 8.8, an owner/operator must report the quantity of any *release* of a toxic chemical into the environment or transferred off-site as a result of a remedial action, catastrophic event, or one-time event not associated with production processes. If the facility did not experience any such *release* or transfer, must the owner/operator report zero, or may the owner/operator report “NA” in Section 8.8?

While either notation, NA or zero, may be entered in Part II, Section 8.8 of the Form R, they are not synonymous. If a remedial action, catastrophic event, or one-time event not associated with production processes results in a *release* into the environment or an off-site transfer of the listed non-PBT chemical and the annual aggregate release was less than 0.5 pound, then a facility owner/operator should enter zero in Section 8.8. For PBT chemicals, facilities should report releases and other waste management amounts greater than 0.1 pound (and for dioxin and dioxin-like compounds 0.0001 gram), at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based. (*see* 64 FR 58734, October 29, 1999) and Guidance for Reporting Toxic Chemicals with the Dioxin and Dioxin-like Compounds Category (EPA-745-B-00-021, December 2000)). An owner/operator should only report NA for Section 8.8 on the Form R if no *release* or transfer occurred as a result of these activities.

**Form A Criteria**

73. EPA published a final rule in the Federal Register on November 30, 1994 (59 FR 61488), which created an alternate threshold of one million pounds for certain facilities. How can a facility that exceeds one of the original thresholds qualify for the alternate threshold?

Facilities which have a total annual reportable amount of no greater than
500 pounds for a listed non-PBT chemical may qualify for the 1 million pound alternate threshold for that chemical, beginning with the 1995 reporting year. For purposes of the alternate threshold, the total annual reportable amount includes non-PBT chemicals listed at 40 CFR Section 372.65 which are released (including disposed), treated, recycled, and burned for energy recovery at the facility and amounts transferred from the facility to off-site locations for the purposes of recycling, energy recovery, treatment, and/or disposal. These amounts correspond to column B, Sections 8.1 through 8.7 of the reporting Form R. If a facility’s combined total annual reportable amount does not exceed 500 pounds for a specific non-PBT chemical, the facility can qualify for reduced reporting requirements unless the amount of that non-PBT chemical manufactured, processed, or otherwise used within the reporting year exceeds one million pounds. Covered facilities that qualify for the alternate threshold are not exempt from reporting, but must fulfill certain requirements. In lieu of submitting a Form R, the owner/operator of a facility must submit an annual certification statement (Form A) indicating that the facility met the requirements for use of the alternate threshold for a specific chemical. The facility must also maintain, and make available upon request, records substantiating the claim. The Form A includes basic information regarding the facility’s identification, the chemical in question, and a statement of accuracy to be signed by a senior management official of the facility.

Form A

74. What is the Form A and who may submit this form?

The Form A provides certain covered facilities the option of submitting a substantially shorter form with a reduced reporting burden. Facilities which meet the SIC code, employee, and chemical activity thresholds but who do not exceed one million pounds manufactured, processed, or otherwise used and the facility’s total annual reportable amount does not exceed 500 pounds for the non-PBT chemical, may submit an annual certification statement (Form A) instead of a Form R for the toxic chemical.

Form A Criteria

75. If I meet the criteria for filing a Form A for one non-PBT chemical, may I use it for all of the non-PBT chemicals covered at my facility?

No. Eligibility for use of Form A is toxic chemical specific. However, more than one toxic chemical can be reported on a single Form A. To be eligible for reporting a toxic chemical using Form A, a facility must not manufacture, process, or otherwise use more than one million pounds of the specific non-PBT chemical and the total annual reportable amount for the non-PBT chemical must be less than 500 pounds. In some instances, a facility may submit the Form A for some chemicals and the Form R for other chemicals. Although all non-PBT toxic chemicals that meet the eligibility criteria for use of Form A may now be reported together on a single Form A, each eligible toxic chemical must be individually listed on the Form.
76. The list of toxic chemicals under EPCRA Section 313 contains two substances with a “fume or dust” qualifier (aluminum and zinc). For purposes of reporting the maximum amount on-site (Part II, Section 4 of the Form R), should covered facilities only report the maximum amount of fume or dust on-site or the maximum amount of all forms of the chemical on-site at any one time?

When determining the maximum amount on-site for Part II, Section 4 of the Form R, only the reportable form of a chemical (e.g., fume or dust) is to be considered.

77. Please explain the “two significant figures” reporting guideline.

For non-PBT chemicals, estimates are not required to be reported to a greater accuracy than two significant figures (e.g., 4224 may be entered as 4200). The number of significant figures is the number of non-zero digits. One significant digit may be reported if the estimation techniques used do not support two digit accuracy. For PBT chemicals, if a facility’s release or other management calculations support reporting an amount that is more precise than two significant digits, then the facility should report that more precise amount. (64 FR 58734, October 29, 1999)

78. When reporting release estimates for non-PBT chemicals on the Form R, EPA recommends release estimates be rounded to no more than two significant figures. Should release estimates always be reported in whole numbers, or should decimal places be reported in certain instances?

When reporting release and other waste management estimates on the Form R for non-PBT chemicals, always report using whole numbers (i.e., round to the nearest pound). For PBT chemicals, facilities should report releases and other waste management amounts greater than 0.1 pound (and for dioxin and dioxin-like compounds 0.0001 gram), at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based. (see 64 FR 58734, October 29, 1999) and Guidance for Reporting Toxic Chemicals with the Dioxin and Dioxin-like Compounds Category (EPA-745-B-00-021, December 2000)).
DIRECTIVE #2 – DE MINIMIS EXEMPTION

The de minimis exemption allows covered facilities to disregard certain minimal concentrations of non-PBT chemicals in mixtures or trade name products. The de minimis exemption does not apply to the manufacture of a non-PBT chemical except if that toxic chemical is manufactured as an impurity and remains in the product distributed in commerce, or if the toxic chemical is imported below the appropriate de minimis level. The de minimis exemption does not apply to a byproduct manufactured coincidentally as a result of manufacturing, processing, otherwise use, or any waste management activities.

When determining whether the de minimis exemption applies to a listed non-PBT chemical, the owner/operator should consider only the concentration of the non-PBT chemical in mixtures and trade name products. If the non-PBT chemical is manufactured as an impurity, imported, processed, or otherwise used and is below the appropriate de minimis concentration level, then the quantity of the toxic chemical does not have to be applied to threshold determinations nor included in release or other waste management calculations. If a non-PBT chemical in a mixture or trade name product is below the appropriate de minimis level, all releases and other waste management activities associated with the toxic chemical in the mixture or trade name product are exempt from EPCRA Section 313 reporting. It is possible to meet an activity (e.g., processing) threshold for a toxic chemical on a facility-wide basis, but not be required to calculate releases or other waste management quantities associated with a particular process because that process involves only mixtures or trade name products containing the toxic chemical below the de minimis level.

Once a non-PBT chemical concentration is above the appropriate de minimis level in the mixture or trade name product, threshold determinations and release and other waste management calculations must be made, even if the chemical later falls below the de minimis level in the same mixture or trade name product. Thus, all releases and other quantities managed as waste that occur after the de minimis level has been exceeded are subject to reporting. If a non-PBT chemical in a mixture or trade name product above de minimis is brought on-site, the de minimis exemption never applies.

The 0.1 percent de minimis levels are dictated by determinations made by the National Toxicology Program (NTP), Annual Report on Carcinogens, the International Agency for Research and Cancer (IARC)
Monographs, or 29 CFR part 1910, subpart Z. Therefore, once a chemical’s status under NTP, IARC, or 29 CFR part 1910, subpart Z indicates that the chemical is a carcinogen or potential carcinogen, the reporting facility may disregard levels of the chemical below the 0.1 percent de minimis concentration provided that the other criteria for the de minimis exemption is met. **De minimis** levels for chemical categories apply to the total concentration of all chemicals in the category within a mixture, not the concentration of each individual category member within the mixture. All other listed toxic chemicals have a one percent (1.0 percent) de minimis level.

1. **De Minimis Application to the Processing or Otherwise Use of a Mixture**

The de minimis exemption applies to the processing or otherwise using, of a listed non-PBT chemical in a mixture. Threshold determinations and release and other waste management calculations begin at the point where the chemical exceeds de minimis. If a listed non-PBT chemical is present in a mixture at a concentration below the de minimis level, this quantity of the substance does not have to be included for threshold determination, release and other waste management reporting. The exemption will apply as long as the mixture containing de minimis amounts of a non-PBT chemical never goes above the de minimis limit. Also, see the two examples below in which a manufacturing activity would qualify for the de minimis exemption.

**Examples of Process and Otherwise Use Scenarios**

There are many cases in which the de minimis limit is crossed or recrossed within a process or otherwise use scenario. The following examples are meant to illuminate these complex reporting scenarios. These applications are further described in the general section of the Toxic Chemical Release Inventory Reporting Forms and Instructions.

**A. Example of Increasing Process Concentration to Above De Minimis Levels**

A manufacturing facility receives toluene which contains less than the de minimis concentration of chlorobenzene. Through distillation, the chlorobenzene content in process streams is increased over the de minimis concentration of 1 percent. From the point at which the chlorobenzene concentration exceeds 1 percent in process streams, the amount present must be factored into threshold determinations and release and other waste management calculations. The facility does not need to consider the amount of chlorobenzene in the raw material, i.e., when below de minimis levels, when making threshold determinations. The facility does not have to report emissions of chlorobenzene from storage tanks or any other equipment where the chlorobenzene content is less than 1 percent.
B. Example of Fluctuating Process Concentration

A manufacturer produces an ink product which contains toluene, a listed toxic chemical below the de minimis level. The process used causes the percentage of toluene in the mixture to fluctuate: it rises above the de minimis level for a time but drops below the level as the process winds down. The facility must consider the chemical toward threshold determinations from the point at which it first exceeds the de minimis limit. Once the de minimis limit has been crossed the exemption cannot be taken.

C. Example of Concentration Levels that Straddle the De minimis Level

A facility processes 9,500,000 lbs. of mixtures containing 0.25–1.25 percent manganese. Manganese is subject to 1 percent de minimis concentration exemption. The amount of mixture subject to reporting is:

\[
9,500,000 \times \frac{1.2 - 0.99}{1.2 - 0.25} = 2,000,000 \text{ lbs. non-exempt mixture}
\]

The average concentration above de minimis is 1.1 percent.

\[
2,900,000 \times 0.011 \text{ manganese} = 22,000 \text{ lbs manganese (below threshold)}
\]

In this example, because the facility’s information pertaining to the toxic chemical is available to two digits past the decimal point, the facility used 0.99 to determine the amount of the toxic chemical below the de minimis level. If the facility has information pertaining to the chemical that is available only to one digit past the decimal point, the facility should use 0.9.

2. De Minimis Application in the Manufacture of the Listed Chemical in a Mixture

The de minimis exemption generally does not apply to the manufacture of a non-PBT chemical. The de minimis exemption may apply to mixtures and trade name products containing non-PBT chemicals that are imported into the United States. Another exception applies to non-PBT chemicals that are coincidentally manufactured as impurities that remain in the product distributed in commerce at below the de minimis levels. In that case, the amount remaining in the product is exempt from threshold determinations. If the non-PBT chemical is separated from the final product, thereby classifying the chemical as a byproduct, it cannot qualify for the exemption. Any amount that is separated, or is separate from the product, is considered a byproduct and is subject to threshold determinations and release and other waste management calculations. Any amount of a toxic chemical that is manufactured in a wastestream must be accounted for on the Form R.
A. Example of Coincidental Manufacture as a Product Impurity

Toluene 2,4-diisocyanate reacts with water to form trace quantities of 2,4-diaminotoluene. The resulting product contains 99 percent toluene 2,4-diisocyanate and 0.05 percent 2,4-diaminotoluene. The 2,4-diaminotoluene would not be subject to Section 313 reporting nor would supplier notification be required because the concentration of 2,4-diaminotoluene is below its de minimis concentration of 0.1 percent in the product. Coincidental manufacture/production refers only to production of a chemical via a chemical reaction. It would not include separation of a byproduct from a purchased mixture during a processing operation.

B. Example of Coincidental Manufacture as a Commercial Byproduct and Impurity

Chloroform is a reaction byproduct in the production of carbon tetrachloride. It is removed by distillation to a concentration of less than 150 ppm (0.0150 percent) remaining in the carbon tetrachloride. The separated chloroform at 90 percent concentration is sold as a byproduct. Chloroform is subject to a 0.1 percent (1,000 ppm) de minimis level. Any amount of chloroform manufactured and separated as byproduct must be included in threshold determinations because the de minimis exemption does not apply to manufacture of a chemical byproduct. Releases of chloroform prior to and during purification of the carbon tetrachloride should be reported. The de minimis level can, however, be applied to the chloroform remaining in the carbon tetrachloride as an impurity. Because the concentration of chloroform remaining in the carbon tetrachloride is below the de minimis level, this quantity of chloroform is exempt from threshold determinations, release and other waste management reporting, and supplier notification.

C. Example of Coincidental Manufacture as a Waste Byproduct

A small amount of formaldehyde is manufactured as a reaction byproduct during the production of phthalic anhydride. The formaldehyde is separated from the phthalic anhydride as a waste gas and burned, leaving no formaldehyde in the phthalic anhydride. The amount of formaldehyde produced and removed as waste must be included in threshold determinations and release and other waste management calculations even if the formaldehyde is present below the de minimis level in the process stream where it was manufactured or in the wastestream which it was separated.

The de minimis exemption also does not apply to situations where the manufactured chemical is released or transferred to wastestreams and thereby diluted to below the de minimis level.
3. De Minimis Levels Impact Supplier Notification Requirements

If the toxic chemical in a mixture or trade name product is present below the de minimis level for that toxic chemical, supplier notification is not required for that chemical regardless of whether or not it is a PBT chemical.
DIRECTIVE #4 – COMPOUNDS AND MIXTURES

1. Definition of Compounds

A “compound” is a distinct chemical that results from the reaction of two or more other chemicals. In the formation of a compound, the reactant chemicals lose their individual chemical identities. Polymers formed as nonreversible reaction products are an example of compounds.

2. Definition of Mixtures

A mixture is any combination of two or more distinct chemicals if the combination is not the result of a chemical reaction. In a mixture, the individual components retain their identities. Mixtures include any combination of a chemical and associated impurities. Alloys are mixtures because the individual metals in the alloy retain their chemical identities. Wastes are not mixtures.

3. Mixtures Must be Considered for Section 313 Reporting

Threshold determinations and release and other waste management calculations for Section 313 reporting must include the amount of the listed non-PBT chemical present above the de minimis level in all mixtures. If a listed non-PBT chemical is present in a mixture at or above the de minimis level, or a PBT chemical is present at any concentration, only the amount of the toxic chemical, and not the mixture itself, is used for threshold determinations and release and other waste management calculations.

4. Supplier Notification and Concentration Ranges Provide Information for Reporting

The supplier notification requirements under 40 CFR Section 372.45 are designed to provide chemical users with information on the identity and concentrations of listed toxic chemicals present in the mixtures that they use. There can still be situations, however, when a facility may not have this information for a mixture. If the facility knows that a mixture contains a toxic chemical but no concentration information is provided by the supplier, then the facility does not have to consider the amount of the toxic chemical present in that mixture for purposes of threshold determinations and release and other waste management calculations. If only a range of concentrations is available for a toxic chemical present in a mixture, the owner/operator should use the midpoint of the “minimum” and “maximum” percentages in order to determine the amount to apply toward thresholds. If a facility owner/operator only knows the lower bound concentration of a toxic chemical present in a mixture, the owner/operator should assume the upper bound concentration is 100 percent, and compute an average based on these lower and upper bound concentration estimates to determine whether thresholds have been exceeded.
If there are other known components present in the mixture, the facility owner/operator should subtract out the percentage of these components to determine what a reasonable “maximum” percentage of the toxic chemical could be.
DIRECTIVE #5 – TOXIC CHEMICAL CATEGORIES

1. All Compounds in a Listed Chemical Category are Aggregated for Threshold Determinations

Toxic chemical categories listed under EPCRA Section 313 require a different approach when making threshold determinations and release and other waste management calculations. For a chemical that is included in a listed metal compound category, the total weight of that chemical compound, not just the parent metal, is used in making threshold determinations. A facility will need to calculate the total weight of all compounds that are in the category, sum the amounts involved throughout the facility in each threshold activity, and compare the totals to the applicable thresholds. A non-PBT compound in a listed chemical category that is present in a mixture below the de minimis concentration, based on the total weight of the compound, is exempt from threshold calculations under Section 1. Again, all individual members of a compound category must be totaled to determine if that compound category has exceeded the de minimis concentration in a mixture.

2. Make Threshold Determinations for Listed Toxic Chemicals Separately from the Listed Chemical Category

The Section 313 list contains some listed substances that are also members of a listed chemical category. Threshold determinations for a specifically listed toxic chemical are calculated separately from the threshold determinations for the chemical category. For example, 2-Methoxyethanol, which is specifically listed on the Section 313 list, is also a glycol ether compound but is not included in the glycol ether compound category for purposes of section 313 reporting. Because the chemical is specifically listed, a facility must make a threshold determination for 2-Methoxyethanol and a separate threshold determination for all other glycol ethers meeting the criteria for that chemical category that are not specifically listed under Section 313.

3. Calculate Releases and Other Waste Management Based on Parent Metal for Metal Compound Categories

Once a reporting threshold is met for a metal compound, releases and other waste management of compounds are calculated based on the pounds of the parent metal released or otherwise managed as waste rather than the total weight of the compound. EPA adopted this approach because of the difficulty in calculating releases of potentially numerous compounds within a metal compound category, recognizing that methods and data for monitoring the parent metal often exist while those for the compound(s) rarely will.
4. Optional Form R Submission for Parent Metal and Associated Metal Compound Category

If both the parent metal and associated metal compound category exceed their respective thresholds, one Form R, covering all releases and other waste management of the parent metal from activities involving both the chemical and the chemical category, may be filed. For example, if a facility processes 30,000 pounds of lead and otherwise uses 13,000 pounds of lead oxide, the facility could submit one Form R for lead and lead compounds. On this Form R, the facility would report all activities involving lead and lead compounds and all releases and other waste management of the parent metal lead. This option, preferred by EPA, is available to facilities, although separate reports may be filed if desired.

5. Calculate Releases and Other Waste Management Based on Nitrate Ion for Nitrate Compounds

Once a reporting threshold is met for the water dissociable nitrate compound category, releases and other waste management estimates are calculated based on the pounds of the nitrate ion in aqueous solution rather than the total weight of the compound. EPA adopted this approach because most monitoring data available only measure the dissociated nitrate ion released and not the amount of the total nitrate compounds from which the nitrate ion dissociated. Reporting the amount of total water dissociable nitrate compound in wastes would be complicated when more than one substance contributes to the nitrate ion content of the waste and when the nitrate compound is converted to a different substance due to waste treatment or other processes.
DIRECTIVE #6 – PCBs THRESHOLD DETERMINATION AND RELEASE AND OTHER WASTE MANAGEMENT REPORTING

Polychlorinated biphenyls (PCBs) are a listed chemical under Section 313.

1. PCBs in Articles are Exempt

EPA has stated that transformers are articles (and thus exempt from threshold determinations), but that the release or removal of fluid from the transformer negates the article status. The article status of only those transformers that have fluids removed (e.g., servicing or retrofilling), or have fluids escape are affected. However, the PCBs are still not considered if no new PCB-containing fluid is added, since the threshold determination is based on fluid added, not lost.

EPA has stated that disposal or removal of articles does not constitute a release. Therefore, disposal on-site, or off-site transfer of the whole transformer with fluid content undisturbed, does not negate the article status. The transformer is not included in threshold determinations and does not have to be reported as a release or an off-site transfer of PCBs for purposes of Section 313 reporting.

When calculating the threshold for otherwise use, a facility must consider only the amount of PCBs added to transformers during the reporting year (e.g., “topping off” a transformer), not the amount of working fluid contained in the transformer.

2. Coincidental Manufacture of PCBs is Subject to EPCRA Section 313

Facilities involved in coincidental manufacture of PCBs and further processing of mixtures containing PCBs must count the amount manufactured or processed toward these thresholds.

3. Treatment or Disposal of PCBs May Require EPCRA Section 313 Reporting

Facilities in the SIC codes 20 through 39, as well as the newly covered SIC codes, may be subject to Section 313 reporting if they treat or dispose of PCBs. Effective January 1, 1998, the interpretation of activities considered otherwise used includes treatment for destruction, disposal, and waste stabilization when the covered facility engaged in these activities receives materials containing any chemical (not limited to EPCRA Section 313 listed toxic chemicals) from off-site (regardless of whether the generating and receiving facilities have common ownership) for purposes of further waste management.

Processing represents a potentially covered activity. However, facilities are not likely to be incorporating PCBs into items distributed in commerce or to be using PCBs as starting or intermediate material for the production of other chemical substances that are distributed in commerce, or used on site.
DIRECTIVE #7 – DEFINITION OF OTHERWISE USE (Effective Reporting Year 1998)

On May 1, 1997, EPA published a final rule to expand the universe of industry groups subject to EPCRA Section 313 and PPA Section 6607 (62 FR 23834; May 1, 1997). In this rule, which became effective January 1, 1998 (for the 1998 reporting year, Form R reports due by July 1, 1999), EPA finalized a revised interpretation of the term otherwise use.

1. Current Interpretation of Otherwise Use

Until January 1, 1998, the definition of otherwise use means “any use of a toxic chemical that is not covered by the terms manufacture or process and includes use of a toxic chemical contained in a mixture or trade name product. Relabeling or redistributing a container of a toxic chemical where no repackaging occurs does not constitute otherwise use or processing of the toxic chemical.” EPA has generally interpreted this term to include toxic chemicals that are not intentionally incorporated into a product distributed in commerce. This would include any activity involving a listed toxic chemical at a facility that does not fall under the definitions of manufacture or process. Some examples of toxic chemicals otherwise used include solvents, catalysts, coolants, lubricants and fuels. Historically, EPA has instructed facilities that the disposal of a toxic chemical, in and of itself, does not constitute manufacture, process, or otherwise use.

2. Revised Interpretation of Otherwise Use

In the May 1, 1997 final rule, EPA modified its definition of activities considered otherwise used as it applies to EPCRA Section 313 activity thresholds to include on-site treatment for destruction, disposal, and stabilization when the covered facility engaged in these activities receives materials containing any chemical (not limited to EPCRA Section 313 listed toxic chemicals) from off-site (regardless of whether the generating and receiving facilities have common ownership) for the purposes of further waste management activities. Specifically, EPA has defined the term otherwise use to include “any use of a toxic chemical” contained in a mixture or other trade name product or waste, that is not covered by the terms manufacture or process. Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction, unless:

(1) The toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or
(2) The toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging occurs does not constitute otherwise use or processing of the toxic chemical.

3. Examples of the Revised Interpretation of Otherwise Use

The following are examples of the revised interpretation of otherwise use as finalized in the May 1, 1997, final rule. These examples assume that the facility meets the EPCRA Section 313 employee and SIC code criteria.

Example 1: A facility receives a material containing 22,000 pounds of chemical A. Chemical A is an EPCRA Section 313 listed non-PBT chemical. The facility treats chemical A for destruction. Included among the various activities covered by EPA’s revised interpretation of otherwise use is the treatment for destruction of a toxic chemical received by the facility from off-site. Because the facility received and treated chemical A for destruction, the treated amount of chemical A would be included in the calculation of the amount of chemical A otherwise used at the facility. In this case, 22,000 pounds of chemical A would be considered otherwise used. Thus, because the facility otherwise used chemical A above the 10,000 pound statutory threshold for otherwise use, the facility would be required to report all releases and other waste management activities involving chemical A.

Example 1A: A facility receives a material containing 22,000 pounds of chemical A, and chemical A is an EPCRA Section 313 listed non-PBT chemical. The facility stabilizes chemical A. Stabilization is included among the various activities covered by EPA’s revised interpretation of otherwise use of a toxic chemical received by the facility from off-site. Because the facility received and stabilized chemical A, the amount of stabilized chemical A would be included in the calculation of the amount of chemical otherwise used at the facility. In this case, 22,000 pounds of chemical A would be considered otherwise used. Thus, because the facility otherwise used chemical A above the 10,000 pound statutory threshold for otherwise use, the facility would be required to report all releases and other waste management activities involving chemical A.

Example 1B: A facility receives a material containing 18,000 pounds of chemical A, and chemical A is an EPCRA Section 313 listed non-PBT chemical. The facility stabilizes 9,000 pounds of chemical A and disposes of the other 9,000 pounds of chemical A. Included among the various activities covered by EPA’s revised interpretation of otherwise use are stabilization and disposal of a toxic chemical received by a facility from off-site. Because the
facility received the 18,000 pounds of chemical A from off-site, the amount of chemical A that is subsequently stabilized or disposed is considered otherwise used, and would be included in the calculation of the amount of chemical A otherwise used at the facility for the purpose of threshold determination. The facility would need to add the amount of chemical A that is involved in all otherwise use activities to determine whether the otherwise use threshold of 10,000 has been exceeded. In this case, 18,000 pounds of chemical A would be considered otherwise used. Thus, because the facility otherwise used chemical A above the 10,000 pound statutory threshold for otherwise use, the facility would be required to report all releases and other waste management activities involving chemical A.

Example 2: Assume now that the same facility, in treating chemical A for destruction, manufactures 11,000 pounds of chemical B. Chemical B is also an EPCRA Section 313 listed non-PBT chemical. This manufacture of chemical B is below the manufacture reporting threshold. However, the facility disposes of chemical B on-site. Included among the various activities covered by EPA’s revised interpretation of otherwise use is the disposal of a toxic chemical that is produced from the management of a waste that is received by the facility from off-site. In this example, because the facility received an off-site material containing a chemical that is treated for destruction (i.e., chemical A), and during that treatment produced and subsequently disposed of chemical B, the disposal of chemical B under EPA’s revised interpretation would be considered otherwise used. Because the facility disposed of, or otherwise used, 11,000 pounds of chemical B, the 10,000 pound statutory threshold for otherwise use is met. Thus, the facility would need to report all releases and other waste management activities involving chemical B.

Example 2A: Now assume that the situation in Example 2 is the same (and the facility is still below the manufacturing threshold for chemical B,) except the facility does not dispose of chemical B on-site, but incorporates the entire 11,000 pounds of chemical B into a product that is sold to another facility. The facility neither treats for destruction, stabilizes, nor disposes of chemical B and, therefore, does not otherwise use chemical B. However, in this example, chemical B is also considered processed. Therefore, the 11,000 pounds of chemical B are counted towards the 25,000 pound process threshold for that chemical at the facility.

Example 2B: As in the above two examples, 11,000 pounds of chemical B are manufactured from the treatment of chemical A (and chemical A was received from an off-site facility). The facility is still below the manufacturing threshold for chemical B. However, the facility disposes of 6,000 pounds of chemical B and uses 5,000 pounds of chemical B in a nonincorporative manufacturing activity at the facility. Both of these
activities are considered to be otherwise use activities. The disposal of chemical B is included among the various activities covered by EPA’s revised interpretation of otherwise use described in the proposal to expand the types of facilities covered under EPCRA Section 313. Any non-incorporative use of a toxic chemical at a covered facility that is not otherwise exempt is an otherwise use activity under the current interpretation. The facility would add the amounts of chemical B involved in both otherwise use activities at the facility to determine whether it exceeds the 10,000 otherwise use threshold. Since the total amount of chemical B that is otherwise used is 11,000 pounds, the facility would need to report all releases and waste management activity involving chemical B.

Example 3: A facility produces on-site a material containing 22,000 pounds of chemical C. Chemical C is not an EPCRA Section 313 listed chemical. Also, chemical C was not manufactured as a result of managing a waste received from off-site. The facility treats chemical C for destruction and during treatment, manufactures 11,000 pounds of chemical D. Chemical D is an EPCRA Section 313 listed non-PBT chemical. The facility subsequently disposes of chemical D. In this example, although the facility disposes of chemical D, the 11,000 pounds of chemical D is not considered otherwise used under EPA’s revised definition because the material from which chemical D was produced (i.e., the material containing the 22,000 pounds of chemical C) was not received by the facility from off-site. Thus, in disposing of chemical D, the facility does not exceed the 10,000 pound statutory threshold for otherwise use. The facility, however, must count the amount of chemical D manufactured toward the manufacturing threshold.

Example 3A: Assume instead that chemical C (which is not an EPCRA Section 313 listed toxic chemical) was received from off-site or was created in waste management activities conducted on materials received from off-site. In this situation, the disposal of chemical D would be considered an otherwise use activity involving chemical D. Therefore, the disposal of the 11,000 pounds of chemical D would exceed the 10,000 pound statutory threshold for otherwise use, and the facility would need to report all releases and waste management activities involving chemical D.

Example 3B: Chemical D is an EPCRA Section 313 chemical that is manufactured from chemical C during a waste management activity at the facility. (Chemical C is produced on-site and is not an EPCRA Section 313 listed toxic chemical.) In this example, the facility uses the entire 11,000 pounds of chemical D to neutralize a wastestream at the facility. Under the current definition of otherwise use, chemical D is considered otherwise used. Therefore, the facility exceeds the otherwise use threshold and the facility would report all releases and waste management activity involving chemical D.
Example 4: A facility receives 24,000 pounds of chemical E, which is not an EPCRA Section 313 toxic chemical. Chemical E undergoes a processing activity at the facility. This activity is not a waste management activity. During the processing of chemical E, 11,000 pounds of chemical F is manufactured as a byproduct. Chemical F is an EPCRA Section 313 listed non-PBT chemical. The 11,000 pounds of chemical F is then disposed. According to the current and the revised interpretation of the otherwise use definition, the facility has not otherwise used chemical F. Since chemical E was not received by the facility for the purpose of waste management, the subsequent disposal of chemical F is not an otherwise use activity under the revised interpretation of otherwise use. Under the current interpretation of otherwise use, the activity of disposal under these circumstances does not constitute a reportable activity for the purposes of threshold determinations. The facility, however, would have to count the amount of chemical F manufactured toward the manufacturing threshold.

Example 5: A facility processes 24,000 pounds of chemical E, an EPCRA Section 313 non-PBT chemical. This activity is not a waste management activity. During the processing of chemical E, 11,000 pounds of chemical E exits the process in the facility’s waste. Because chemical E has a high BTU/lb value, the facility combests the wastestream containing chemical E in an energy recovery unit on-site. Under EPA’s current and revised guidance on otherwise use, an EPCRA Section 313 toxic chemical that is a constituent of waste-derived fuel combusted in an energy recovery device is otherwise used by the facility, regardless of the origin of the waste-derived fuel. Therefore, when combusted for energy recovery on-site, chemical E, a constituent of the waste derived fuel, is considered otherwise used under the current definition of otherwise use. Because the facility combests 11,000 pounds of the toxic chemical, the facility has exceeded the otherwise use activity threshold.
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