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

February 6, 2001

**OFFICE OF**
**ENVIRONMENTAL INFORMATION**

Elizabeth M. Morss
Young, Sommer, Ward, Ritzenberg,
Wooley, Baker & Moore. LLC
Executive Woods
Five Palisades Drive
Albany, NY 12205

Dear Ms. Morss:

This letter responds to your December 1, 2000 letter, and several follow-up telephone conversations, requesting guidance regarding the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Your letter asks EPA for guidance about the laboratory activities exemption provided for at 40 CFR section 372.38(d). Specifically, you want to know if the laboratory exemption applies to the test firing of small arms for research and development (R&D) and quality control purposes.

According to your letter, the facility at issue, which manufactures small arms, maintains two indoor test firing galleries specifically designed and equipped for testing purposes. You state that the first gallery is used to test fire products that are under development and the tests in this gallery are conducted by trained technicians under the supervision of product engineers. The second, larger gallery, is used to test fire guns produced at the facility -for quality control purposes prior to sale. According to your letter and a follow-up telephone conversation, three types of tests are conducted at this gallery. First, each gun manufactured at the facility is "proof tested" within a fully enclosed shooting device using special ammunition that generates higher gas pressures to test the structural integrity of the gun. Each gun is then moved to another special device within the gallery and fired multiple times with commercial ammunition into a tank of water to ensure that it functions properly. Finally, a statistical sampling of guns is fired to test their accuracy. Like the other gallery, your letter provides that at this gallery, the activities are supervised by qualified technical personnel. In fact, your letter states that because of the sensitive nature of these tests, access to both galleries is strictly controlled and only authorized personnel are allowed to enter. According to your letter, the activities taking place inside these galleries result in the use and release of several EPCRA section 313 chemicals, including lead and antimony (from the bullets) and nitroglycerin and dibutyl phthalate (contained in propellant gunpowder). Based on this information, you are asking, for guidance as to whether the laboratory activities exemption applies to the R&D, product testing, and quality control activities described above.

40 CFR section 372.38(d) provides:

*Activities in laboratories*. If a toxic chemical is manufactured, processed, or used

> in a laboratory at a covered facility under the supervision of a technically qualified individual as defined in Section 720.3(ee) of this title, a person is not required to consider the quantity so manufactured, processed, or used when determining whether an applicable threshold has been met under section 372.25 or determining the amount of release to be reported under section 372.30. This exemption does not apply in the following cases:
>
> (1) Specialty chemical production.
> (2) Manufacture, processing, or use of toxic chemicals in pilot plant scale operations.
> (3) Activities conducted outside the laboratory.

As you are aware, the Questions & Answers document (EPA 745-B-98-004, December 1998) states that quality control activities, research and development, and even some product testing may be eligible for the laboratory activities exemption (*See* 1998 Q&A 292 - 314). The Q&A also states that the laboratory activities exemption is primarily for laboratories that perform auxiliary functions for the manufacturing or processing activities at the facility. (*See* 1998 Q&A 308 and 314) Accordingly, a gun manufacturer should not apply the laboratory exemption to activities such as the "structural integrity" and "proper functioning" tests described above that are applied to every gun manufactured at the facility because these tests are not auxiliary to the manufacturing or processing activities at the facility. However, with regard to the research and development activities performed at the first gallery and the accuracy tests performed on a statistical sampling of the guns at the second gallery, the laboratory exemption may be considered.

Further, Section 372.38(d) expressly states that the laboratory activities exemption applies to toxic chemicals manufactured, processed, or used "in a laboratory." This section further states that the laboratory exemption does not apply to activities conducted "outside the laboratory." Accordingly, if these indoor galleries may be considered laboratories for the above described research and development and accuracy test activities and if these activities are being supervised by a "technically qualified individual," as defined in 40 CFR section 720.3(ee), (as you believe to be the case), then the R&D and accuracy test activities taking place in these two galleries appear to qualify for the laboratory activities exemption and the toxic chemicals associated with these specific activities would not have to be considered toward threshold determinations and release and other waste management calculations. Of course, the toxic chemicals in the guns themselves are not eligible for the laboratory exemption. The laboratory exemption may only be considered for those toxic chemicals used to perform eligible activities on the guns.

I hope this information is helpful to you in understanding the reporting requirements of section 313 of EPCRA. If you have any other questions, or desire further information. please call Larry Reisman, of my staff, at 202.260.2301.

Sincerely,

Maria J. Doa, Ph.D., Director

Toxics Release Inventory Program Division