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Department of Health and Human Services

Revision of HHS National Environmental Policy Act Compliance Procedures and Procedures for Environmental Protection; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Revision of HHS National Environmental Policy Act Compliance Procedures and Procedures for Environmental Protection

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Final Notice of Revision of HHS NEPA Procedures.

EFFECTIVE DATE: February 25, 2000.

SUMMARY: In accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended, and other related environmental laws, executive orders, and regulations, the Department of Health and Human Services published procedures in 1980 for conducting environmental reviews, preparing necessary documentation and making program decisions to ensure that environmental protection is an integral part of HHS operations. These procedures have been revised and updated. The revised procedures were published in the January 11, 1999, **Federal Register** for comment. Changes recommended by EPA and the Council on Environmental Quality have been included in the final document.

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Dated: January 31, 2000.

John J. Callahan,

Assistant Secretary for Management and Budget.

Revised General Administration Manual, HHS Part 30, Environmental Protection

PART 30—ENVIRONMENTAL PROTECTION

Contents

Chapter and Title

Subject: Environmental Protection

30–00–00 Purpose

This Part summarizes and provides guidance on many current statutory, regulatory and Executive Order environmental authorities. It does not create or confer any rights on any person and it is not intended to be used as the sole source of information for any of the reference environmental compliance requirements. The Department recognizes that any of the authorities described herein may be revised after the issuance of this Part. The current specific environmental statute, regulation or Executive Order should be reviewed when questions or conflicts arise. To the extent that any statement in this Part should contradict or conflict with a current applicable statutory, regulatory or Executive Order requirement, that statutory, regulatory or Executive Order requirement shall supersede any inconsistent provision of this GAM Part. Additional questions should be referred to the OPDIV environmental officer, the Departmental environmental program manger, and/or the Office of the General Counsel.

Part 30 of the General Administration Manual establishes Departmental policy and procedures with respect to protection of the environment and the preservation of natural resources. Under Federal statutes, regulations, and Executive Orders, all Federal Departments and agencies are required to comply with all applicable Federal, State and local environmental statutes, laws and regulations and must take into account the environmental consequences of their activities. In many cases, the activities of non-Federal organizations which operate under the authority or with the support of Federal Departments or agencies are also included.

Consistent with the 1994 Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, and Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments, consultation and cooperation with Tribal Governemtns must be done where appropriate. Additionally, in certain programs. ''Eligible Tribes'' can be treated in the same manner as States. Some of these programs include certain Clean Air Act programs, Emergency Planning and Community Right-To-Know Act, Safe Drinking Water Act, Clean Water Act, Toxic Substances Control Act, and certain roles and responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act.

This part supersedes HHS Part 30, Environmental Protection, 1980, with the exception that Part 30, Chapter 30–40, Cultural Asset Review (Historical Preservation) remains in effect until a separate revised Chapter dealing with this subject is published.

30–00–10 Chapter Organization and Content

The chapters of Part 30 are organized as follows:

- Chapter 30–00 provides a list and summary descriptions of certain environmental laws and Executive Orders, and a list of definitions.
- Chapters 30–10 and 30–20 provide overall Departmental policy with respect to environmental protection and a summary of internal administrative procedures with Departmental organizations must implement.
- Chapter 30–30 provides a general summary of the environmental review process for Departmental activities under the National Environmental Policy Act, and statutes and Executive Orders that require protection and preservation of natural and cultural assets.
- Chapters 30–40 through 30–90 provide detailed requirements for certain environmental statutes and Executive Orders covered by Part 30.

30–00–20 Environmental Statutes and Executive Order

Federal agencies are potentially subject to more than 150 Federal statutes and Executive Orders governing the environment. Many of these laws are noted in Table 1.

Environmental laws and implementing regulations that significantly impact the Department are summarized in the following subsections. Detailed guidance is contained in other chapters of Part 30 for certain environmental statutes and Executive Orders. Table 1, as follows, indicates the location of statutes or Executive Orders that are discussed in Part 30.

TABLE 1.—STATUTES AND EXECUTIVE ORDERS

Environmental statute or executive order	Citation	Part 30 location
Acid Precipitation Act of 1980	42 U.S.C. §§ 8901 to 8912.	
Act to Prevent Pollution From Ships	33 U.S.C. §§ 1901 to 1912.	
Agricultural Act of 1970	16 U.S.C. §§ 1501 to 1510.	
American Indian Religious Freedom Act	42 U.S.C. § 1996.	
Antarctic Protection Act of 1990	16 U.S.C. §§ 2461 to 2466.	
Antiquities Act of 1906	16 U.S.C. §§ 431 to 433	30–00–20K
Archeological and Historic Preservation Act of 1974	16 U.S.C. §§ 469 to 469c–1	30–00–20K
Archeological Resources Protection Act of 1979	16 U.S.C. §§ 470aa to 470mm.	
Asbestos Hazard Emergency Response Act of 1986	15 U.S.C. §§ 2641 to 2656.	
Atomic Energy Act of 1954	42 U.S.C. §§ 2011 to 2297g–4.	
Aviation Safety and Noise Abatement Act of 1979	49 U.S.C. app. §§ 2101 to 2125.	
Clean Air Act	42 U.S.C. §§ 7401 to 7671q	30–00–20A
Clean Vessel Act of 1992	33 U.S.C. § 1322 note.	
Clean Water Act [Federal Water, Pollution Control Act]	33 U.S.C. §§ 1251 to 1387	30–00–20B
Coastal Barrier Resources Act	16 U.S.C. §§ 3501 to 3510.	
Coastal Wetlands Planning, Protection, and Restoration Act	16 U.S.C. §§ 3951 to 3956.	
Coastal Zone Management Act of 1972	16 U.S.C. §§ 1451 to 1464	30–00–20C; Ch. 30–40
Community Environmental Response Facilitation Act	42 U.S.C. § 9620 note.	
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [''Superfund''].	42 U.S.C. §§ 9601 to 9675	30–00–20D
Emergency Planning and Community Right-to-Know Act of 1986	42 U.S.C. §§ 11001 to 11050	300–20E; Ch. 30–60
Emergency Wetlands Resources Act of 1986	16 U.S.C. §§ 3901 to 3932.	
Endangered Species Act of 1973	16 U.S.C. §§ 1531 to 1544	30–00–20F; Ch. 30–40
Energy Policy Act of 1992	42 U.S.C. §§ 13201 to 13556	30–00–20G
Energy Policy and Conservation Act	42 U.S.C. §§ 6201 to 6422	
Energy Reorganization Act of 1974	42 U.S.C. §§ 5801 to 5891	
Energy Supply and Environmental Coordination Act of 1974	15 U.S.C. §§ 791 to 798	
Environmental Programs Assistance Act of 1984	42 U.S.C. § 4368a	
Environmental Quality Improvement Act of 1970	42 U.S.C. §§ 4371 to 4375	
Farmland Protection Policy Act	7 U.S.C. §§ 4201 to 4209	
Federal Facility Compliance Act of 1992	42 U.S.C. §§ 6903, 6908, 6924, 6927, 6939c, 6939d, 6961, 6965.	
Federal Food, Drug, and Cosmetic Act	21 U.S.C. §§ 301 to 397	
Federal Insecticide, Fungicide, and Rodenticide Act	7 U.S.C. §§ 136 to 136y	30–00–20H
Federal Land Policy and Management Act of 1976	43 U.S.C. §§ 1701 to 1784	
Federal Oil and Gas Royalty Management Act of 1982	30 U.S.C. §§ 1701 to 1757	
Fish and Wildlife Act of 1956	16 U.S.C. §§ 742a to 742d, 742e to 742j–2	
Fish and Wildlife Coordination Act	16 U.S.C. §§ 661 to 666c	30–00–201; Ch. 30–40
Flood Disaster Protection Act of 1973	42 U.S.C. §§ 2414 to 4001 to 4129	
Forest and Rangeland Renewable Resources Planning Act of 1974	16 U.S.C. §§ 1600 to 1614	
Forest and Rangeland Renewable Resources Research Act of 1978.	16 U.S.C. §§ 1641 to 1649	
Forest Ecosystems and Atmospheric Pollution Research Act of 1988.	16 U.S.C. §§ 1642, 1642 note	
Geothermal Energy Research, Development and Demonstration Act of 1974.	30 U.S.C. §§ 1101 to 1164	
Global Change Research Act of 1990	15 U.S.C. §§ 2921 to 2961	
Global Climate Protection Act of 1987	15 U.S.C. § 2901 note	
Hazardous Substance Response Revenue Act of 1980	26 U.S.C. §§ 4611–4612, 4661–4662.	
Historic Sites Act of 1935 [Historic Sites, Buildings, and Antiquities Act].	16 U.S.C. §§ 461 to 267	30–00–20J
Indian Environmental General Assistance Program Act of 1992	42 U.S.C. § 4368b.	
Lead-Based Paint Exposure Reduction Act	15 U.S.C. §§ 2681 to 2692.	
Lead-Based Paint Poisoning Prevention Act	42 U.S.C. §§ 4821 to 4846.	
Lead Contamination Control Act of 1988	42 U.S.C. §§ 300j–21 to 300j–26.	
Low-Level Radioactive Waste Policy Act	42 U.S.C. §§ 2021b to 2021j.	
Marine Mammal Protection Act of 1972	16 U.S.C. §§ 1361 to 1421h.	
Marine Protection, Research, and Sanctuaries Act of 1972	16 U.S.C. §§ 1431 to 1445a; 33 U.S.C. §§ 1401 to 1445.	30–00–20K; Ch. 30–40
Medical Waste Tracking Act of 1988	42 U.S,.C. §§ 6992 to 6992K.	
Migratory Bird Treaty Act	16 U.S.C. §§ 703 to 712.	
Mining and Mineral Resources Research Institute Act of 1984	30 U.S.C. §§ 1221 to 1230a.	
Multiple-Use Sustained-Yield Act of 1960	16 U.S.C. §§ 528 to 531.	
National Climate Program Act	15 U.S.C. §§ 2901 to 2908.	
National Contaminated Sediment Assessment and Management Act	33 U.S.C. § 1271 note.	
National Environmental Policy Act of 1969	42 U.S.C. § § 4321 to 4370d	30–00–20L; Ch. 30–50
National Forest Management Act of 1976	16 U.S.C. § § 472a, 521b, 1600, 1611 to 1614.	
National Environmental Education Act	20 U.S.C. §§ 5501 to 5510.	
National Historic Preservation Act	16 U.S.C. §§ 470 to 470X-6	30–00–20J
Native American Graves Protection & Repatriation Act	25 U.S.C. §§ 3001 to 3013.	
Noise Control Act of 1972	42 U.S.C. §§ 4901 to 4918.	

TABLE 1.—STATUTES AND EXECUTIVE ORDERS—Continued

Environmental statute or executive order	Citation	Part 30 location
Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.	16 U.S.C. § § 4701 to 4751.	
Nuclear Waste Policy Act of 1982	42 U.S.C. §§ 10101 to 10270.	
Occupational Safety and Health Act of 1970	29 U.S.C. §§ 651 to 678	30–00-20M
Ocean Dumping Ban Act of 1988	33 U.S.C. §§ 1412a, 1414a to 1414c.	
Oil Pollution Act of 1990	33 U.S.C. §§ 2701 to 2761.	
Organotin Antifouling Paint Control Act of 1988	33 U.S.C. §§ 2401 to 2410.	
Outer Continental Shelf Lands Act	43 U.S.C. §§ 1331 to 1356.	
Outer Continental Shelf Lands Act Amendments of 1978	43U.S.C. §§ 1344 to 1356, 1801 to 1866; 30 U.S.C. § 237.	
Pollution Prevention Act of 1990	42 U.S.C. §§ 13101 to 13109	30–00–20N; Ch. 30–70
Pollution Prosecution Act of 1990	42 U.S.C. § 4321 note.	
Power Plant and Industrial Fuel Use Act of 1978	42 U.S.C. §§ 8301 to 8483.	
Refuse Act of 1899	33 U.S.C. § 407.	
Renewable Resources Extension Act of 1978	16 U.S.C. §§ 1671 to 1676.	
Residential Lead-Based Paint Hazard Reduction Act of 1992	42 U.S.C. §§ 4851 to 4856.	
Resource Conservation and Recovery Act of 1976 [Solid Waste Disposal Act].	42 U.S.C. §§ 6901 to 6991i	30–00–20O
Rivers and Harbors Appropriation Acts (Selected sections)	33 U.S.C. §§ 401 to 426p and 441 to 454.	
Safe Drinking Water Act	42 U.S.C. §§ 300f and 300j–26	30–00–20P; Ch. 30–40
Shore Protection Act of 1988	33 U.S.C. §§ 2601 to 2609, 2621 to 2623.	
Soil and Water Resources Conservation Act of 1977	16 U.S.C. §§ 2001 to 2009.	
Surface Mining Control and Reclamation Act of 1977	30 U.S.C. §§ 1201 to 1328.	
Toxic Substances Control Act	15 U.S.C. §§ 2601 to 2692	30–00–20Q
United States Public Vessel Medical Waste Antidumping Act of 1988.	33 U.S.C. §§ 2501 to 2504.	
Uranium Mill Tailings Radiation Control Act of 1978	42 U.S.C. §§ 7901 to 7942.	
Water Resources Research Act of 1984	42 U.S.C. §§ 10301 to 10309.	
Wild and Scenic Rivers Act	16 U.S.C. §§ 1271 to 1287	30–00–20R; Ch. 30–40
Wild bird Conservation Act of 1992	15 U.S.C. §§ 4901 to 4916.	
Wild Free-Roaming Horses and Burros Act	16 U.S.C. §§ 1331 to 1340.	
Wilderness Act	16 U.S.C. §§ 1131 to 1136.	
Wood Residue Utilization Act of 1980	16 U.S.C. §§ 1681 to 1687.	
Executive Order 13007, Indian Sacred Sites	61 FR 26771 (1996).	
Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities.	59 FR 11463 (1994).	
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.	59 FR 7629 (1994)	30–00–20S
Executive Order 13101, Greeting the Government Through Waste Prevention, Recycling, and Federal Acquisition.	58 FR 54911 (1993)	30–00–20N; Ch. 30–90
Executive Order 12866, Regulatory Planning and Review	58 FR 51735 (1993).	
Executive Order 12856, Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements.	58 FR 41981 (1993)	30–00–20E; Ch. 30–80
Executive Order 12852, President's Council on Sustainable Development.	58 FR 35841 (1993), as amended by E.O. 12855, 58 FR 39107 (1993); 42 U.S.C. § 4321 note.	
Executive Order 12845, Requiring Agencies to Purchase Energy-Efficient Computer Equipment.	58 FR 21887 (1993).	
Executive Order 12844, Federal Use of Alternative Fueled Vehicles	58 FR 21885 (1993).	
Executive Order 12843, Procurement Requirements and Policies for Agencies for Ozone-Depleting Substances.	58 FR 21881 (1993).	
Executive Order 12778, Civil Justice Reform	56 FR 55195 (1991); 28 U.S.C. § 519 note ..	
Executive Order 12777, Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990.	56 FR 54757 (1991); 33 U.S.C. § 1321 note	
Executive Order 12761, Establishment of President's Environmental and Conservation Challenge Awards.	56 FR 23645 (1991); 42 U.S.C. § 4321 note	
Executive Order 12759, Federal Energy Management	56 FR 16256 (1991); 42 U.S.C. § 6201 note	
Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.	53 FR 8859 (1988); 5 U.S.C. § 601 note.	
Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation.	54 41685 (1987); 5 U.S.C. § 601 note.	
Executive Order 12580, Superfund Implementation	52 FR 2923 (1987), as amended by E.O. 12777, 56 FR 54757 (1991); 42 U.S.C. §§ 9615 note.	
Executive Order 12114, Environmental Affects Abroad of Major Federal Actions.	44 FR 1957 (1979); 42 U.S.C. § 4321 note ..	30–00–20M; Ch. 30–50
Executive Order 12088, Federal Compliance With Pollution Control Standards.	43 FR 47707 (1978), as amended by E.O. 12580, 52 FR 2923 (1987); 42 U.S.C. § 4321 note.	30–00–20T

TABLE 1.—STATUTES AND EXECUTIVE ORDERS—Continued

Environmental statute or executive order	Citation	Part 30 location
Executive Order 11990, Protection of Wetlands	42 FR 26961 (1997), as amended by E.O. 12608, 52 FR 34617 (1987); 42 U.S.C. § 4321 note.	30–00–20L; Ch. 30–40
Executive Order 11988, Floodplain Management	42 FR 26951 (1977), as amended by E.O. 12148, 44 FR 43239 (1979); 42 U.S.C. § 4321 note.	30–00–20L; Ch. 30–40
Executive Order 11987, Exotic Organisms	42 FR 26949 (1977); 42 U.S.C. § 4321 note	30–00–20L
Executive Order 11912, Delegation of Authorities Relating to Energy Policy and Conservation.	41 FR 15825 (1976); as amended by E.O. 12003, 42 FR 37523 (1977), E.O. 12038, 43 FR 4957 (1978), E.O. 12148, 44 FR 43239 (1979), E.O. 12375, 47 FR 34105 (1982); 42 U.S.C. § 6201 note.	
Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants or Loans.	38 FR 25161 (1973); 42 U.S.C. § 7606 note.	
Executive Order 11644, Use of Off-Road Vehicles on Public Lands	37 FR 2877 (1972), as amended by E.O. 11989, 42 FR 26959 (1977), E.O. 12608, 52 FR 34617 (1987); 42 U.S.C. § 4321 note.	
Executive Order 11593, Protection and Enhancement of the Cultural Environment.	36 FR 8921 (1971); 16 U.S.C. § 470 note	30–00–20J
Executive Order 11514, Protection and Enhancement of Environmental Quality.	35 FR 4247 (1970), as amended by E.O. 11991, 42 FR 26967 (1977); 42 U.S.C. § 4321 note.	30–00–20L

A. *Clean Air Act (CAA).* The Clean Air Act of 1970, 42 U.S.C. 7401–7671q, as amended, establishes five major programs that cover (1) the attainment and maintenance of air quality standards; (2) reduction of hazardous air pollutants; (3) development of emission standards for motor vehicles and fuels; (4) protection of the stratospheric ozone; and (5) reduction of acid rain deposition.

1. *National Ambient Air Quality Standards Program (NAAQS).* All new and existing sources of air pollution are subject to ambient air quality regulation. The Clean Air Act directs the Environmental Protection Agency (EPA) Administrator to identify pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. EPA is also required to publish primary and secondary national ambient air quality standards (NAAQS are designed to protect public health with an adequate margin of safety, and secondary NAAQS are designed to protect the public welfare. In 40 CFR part 50, EPA has promulgated NAAQS for six pollutants: sulfur dioxide (SO_2), particulate matter, nitrogen dioxide (NO_2), carbon monoxide, ozone, and lead.

Each State and eligible tribe is given primary responsibility for assuring that air quality within its borders is maintained at a level consistent with the NAAQS. The NAAQS are implemented through source-specific emission limitations established by States in State Implementation Plans (SIPs). SIPs must meet minimum criteria set forth in the Clean Air Act and are reviewed by EPA. A SIP may be enforced by the State or EPA. EPA must promulgate a Federal Implementation Plan (FIP) if a State fails to make a required submission or if a SIPs submission is disapproved and the State does not remedy the deficiency within a specified period.

(a) *Nonattainment Areas.* SIPs must adopt, at a minimum, reasonably available control technology (RACT) for existing sources and provide for annual incremental reductions in emissions of nonattainment pollutants. The CAA also contains additional requirements for SIPs in areas that do not attain the NAAQS, including specific requirements for certain pollutants.

(b) *New Source Performance Standards (NSPS).* New sources of pollution are subject to more stringent control technology and permitting requirements than existing sources. EPA is authorized to establish new source performance standards, which impose Federal technology-based requirements on emissions from new or modified major stationary sources of pollution. The Clean Air Act directs EPA to establish standards for new sources that reflect the degree of emission limitation achievable through the application of the best system of emission reduction which the EPA Administrator determines has been adequately demonstrated to be the best. These standards may be promulgated as design equipment, work practice, or operational standards where numerical emission limitations are not feasible. EPA has developed NSPS standards for a new of industry categories which are published at 40 CFR part 60. Each NSPS identifies the types of facilities to which the standards apply.

(c) *Prevention of Significant Deterioration Program (PSD).* A permit must be obtained under the PSD program before a ''major'' new source may be constructed or ''major modification'' made to an existing major source in an area that attains the NAAQS or is designated unclassifiable. The CAA requires each SIP to ''contain emission limitations and such other measures as may be necessary * * * to prevent significant deterioration of air quality'' in each region of the state in which the air quality exceeds national standards. EPA's PSD regulations are codified at 40 CFR part 51.

(d) *Nonattainment Program.* Regions that have failed to meet the NAAQS for one or more criteria pollutants are designated as ''nonattainment'' areas. New or modified major stationary sources proposed for nonattainment areas are required to comply with stringent permitting requirements, including a showing that the decrease in emissions from existing sources in the area is sufficient to offset the increase in emissions from the new or modified source and achievement of the ''lowest achievable emission rate'' (LAER).

2. *National Emission Standards for Hazardous Air Pollutants (NESHAP).* The 1970 Clean Air Act authorized EPA to establish health-based national emission standards for hazardous air pollutants (NESHAP) to protect the

public from these pollutants. EPA has established standards for seven hazardous substances. EPA's NESHAP regulations are published at 40 CFR part 651. The 1990 CAA amendments direct EPA to establish technology-based standards for 189 hazardous substances based on the use of ''maximum achievable control technology'' (MACT).

3. *Emission Standards for Mobile Sources and Fuel-Related Programs.* EPA is authorized to establish allowable levels of auto emissions and to control fuels and fuel additives. The 1990 CAA amendments establish lower emission standards for automobiles and other vehicles and provide for the use of ''clean'' alternatives fuels and ''clean fuel'' vehicles.

4. *Stratospheric Ozone Protection.* Title VI of the Act, added in 1990, addresses scientific concerns related to stratospheric ozone depletion and global warming by providing for the phase-out of ozone-depleting substances. Title VI calls for the phase-out of most ozone-depleting substances by the year 2000 and the imposition of other controls designed to minimize the emissions of such substances prior to their elimination.

5. *Acidic Deposition.* The 1990 CAA amendments added Title IV of the Act which authorizes EPA to establish an acid rain program to reduce the adverse effects of acidic deposition. The program imposes sulphur dioxide (SO_2) and nitrogen oxide (NO_X) controls on existing and new electric utility plants.

6. *Permits.* The 1990 CAA amendments added Title V which establishes an operating permit program for existing stationary sources. The permit program is modeled on the Clean Water Act permit program (NPDES program—see 30–00–20B) Each State must develop and implement a Clean Air Act operating permit program. EPA is required to issue permit program regulations that are to be followed by the States in establishing their programs; approve each State's permit program; and establish a Federal permit program if a State fails to implement an approved program. EPA is also authorized to review each permit issued by a State. EPA regulations addressing the minimum requirements for State operating permit programs are contained in 40 CFR part 70.

7. *Civil and Criminal Penalties.* EPA is authorized to seek compliance with the Act's provisions through administrative, civil, and criminal enforcement sanctions. The maximum penalties that may be imposed for violation of the CAA are contained in Table 2.

TABLE.—Maximum Penalties for Violation of Clean Air Act 42 U.S.C. § 7413(b)–(d).

Violation	Administrative penalty	Civil penalty	Criminal penalty
Violation of CAA requirement	$25,000 per day (maximum $200,000 may be waived by EPA and DOJ jointly). Alternative: recovery of projected economic value of noncompliance.	$25,000 per violation	Up to $250,000 per day and/or up to 5 yrs. imprisonment. Corporation subject to $500,000 per violation. Penalty doubled after first offense.
''Field citation'' for minor violations	$5,000 per day		
False statement or failure to file or maintain records or reports.			Up to $250,000 and/or up to 2 yrs. imprisonment; $500,000 for corporation. Penalty doubled after first offense.
Knowing failure to pay fee			Up to $250,000 and/or up to 1 yr. imprisonment; $1 million per day for corporations. Penalty doubled after first offense.
Knowing release of HAP or ''extremely hazardous substance'' placing another in ''imminent danger of death or serious bodily injury''.			Up to $25,000 per day and/or up to 15 yrs. imprisonment; $1 million per day for corporations. Penalty doubled after first offense.
Negligent release of air toxic placing another in ''imminent danger or death of serious bodily injury''.			Up to $100,000 and/or up to 1 yr. imprisonment; corporations subject to $200,000. Penalty doubled after first offense.

B. *Clean Water Act (CWA).* The Clean Water Act, 33 U.S.C. 1251–1387, was originally enacted as the Federal Water Pollution Control Act of 1972. The Act was substantially amended in 1977 and became the Clean Water Act. The objective of the CWA is to ''restore and maintain the chemical, physical and biological integrity of the Nation's waters.'' The Act establishes as a national policy ''that the discharge of toxic pollutants in toxic amounts be prohibited.'' Among the goals established by the Act are achievement of a level of water quality which ''provides for the protection and propagation of fish, shellfish and wildlife * * * [and] * * * for recreation in and on the water'' and elimination of the discharge of pollutants into navigable waters.

The CWA prohibits ''the discharge of any pollutant by any person * * *'' from a point source to waters of the United States, except in accordance with the Act's permit requirements, effluent limitations, and other provisions.

1. *Water Quality Standards.* A water quality standard defines the water quality goals of a water body by designating the uses to be made of the water, by setting criteria necessary to protect the uses, and by setting anti-degradation policy. States and eligible tribes are responsible for establishing water quality standards. The standards are designed to protect public health or welfare, enhance the quality of water, and serve the other purposes of the Clean Water Act. States and eligible tribes are required to review their water quality standards at least once every three years. EPA reviews and approves or disapproves State/Tribe-adopted water quality standards in accordance with regulations codified at 40 CFR part 131.

(a) *Water Uses.* Each State and eligible tribe must specify appropriate water uses to be achieved and protected. The

classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

(b) *Water Quality Criteria.* States and eligible tribes must adopt those water quality criteria that protect the designated use. Criteria are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use.

(c) *Toxic Pollutants.* The Water Quality Act of 1987 amended the CWA to require States and eligible tribes to identify those waters that are adversely affected by toxic, conventional, and nonconventional pollutants; to identify where additional controls are needed; and to prepare individual control strategies. States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use, or where the levels of toxic pollutants are at a level to warrant concern, and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use.

2. *Effluent Limitations.* The CWA directs EPA to issue effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial dischargers. The EPA implementing regulations are based principally on the degree of effluent reduction attainable through the application of control technologies.

(a) *Direct Dischargers.* The effluent guidelines promulgated by EPA reflect the several levels of regulatory stringency specified in the Act, and they also focus on different types of pollutants.

(i) *Best Practicable Control Technology (BPT).* The CWA directs the achievement of effluent limitations requiring application of Best Practicable Control Technology (BPT). In general, effluent limitations that are based on Best Practicable Control Technology (BPT) represent the average of the best treatment technology performance for an industrial category.

(ii) *Conventional Pollutants—Best Conventional Pollutant Control Practical Technology (BCT).* For conventional pollutants listed in the Act, the CWA directs the achievement of effluent limitations based on the performance of best conventional pollutant control technology (BCT).

(iii) *Toxic Pollutants—Best Available Technology (BAT).* For the toxic pollutants listed in the CWA and for nonconventional pollutants, the Act directs the achievement of effluent limitations requiring application of Best Available Technology Economically Achievable (BAT). Effluent limitations based on BAT are to represent at a minimum the best control technology performance in the industrial category that is technologically and economically achievable.

(iv) *New Source Performance Standards (NSPS).* In addition to limitations for existing direct dischargers, EPA has established New Source Performance Standards (NSPS) for new direct dischargers. NSPS limitations must be as stringent, or more stringent, than BAT limitations for existing sources within the industry category or subcategory.

(v) *National Pollutant Discharge Elimination (NPDES) Permit.* The limitations and standards for direct dischargers are implemented in permits issued through the National Pollutant Discharge Elimination System (NPDES). Where there are no effluent guidelines or standards, technology-based limitations reflecting BPT/BCT/BAT are developed on a case-by-case basis using the permit writer's best professional judgement. Any NPDES permit issued must contain limitations sufficiently stringent to assure compliance with water quality standards.

(b) *Indirect Dischargers.*

(l) *Conventional Pollutants.* In general, EPA does not develop regulations to control conventional pollutants discharged by indirect dischargers because the publicly-owned treatment works (POTWs) receiving those wastes normally provide adequate treatment of these types of pollutants or they can be adequately controlled through local pretreatment limits.

(ii) *Pretreatment Standards.* Indirect dischargers are regulated by the general pretreatment regulations (40 CFR part 403), local discharge limits developed pursuant to Part 403, and categorical pretreatment standards for new and existing sources covering specific industrial categories. These categorical standards apply to the discharge of pollutants from non-domestic sources which interfere with or pass through POTWs, and are enforced by POTWs or by State or Federal authorities. The categorical pretreatment standards for existing sources covering specific industries are generally analogous to the BAT limitations imposed on direct dischargers. The standards for new sources are generally analogous to NSPS.

3. *National Pollutant Discharge Elimination System (NPDES) Permit.*

(a) *Requirement.* The CWA states that a permit is required for the discharge of pollutants from a point source into waters of the United States. Under the NPDES, permits are required whenever a pollutant is: (1) discharged (2) by a person (3) from a point source (4) into navigable waters of the United States.

(b) *Waters of the United States.* The Clean Water Act applies to ''navigable water'', which are in turn defined as ''waters of the United States, including the territorial seas.'' (33 U.S.C. 1362(7)). Navigable waters are broadly defined and are not limited to ''navigability in fact''. Waters of the United States include interstate waters and wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce; all impoundments of waters; tributaries; the territorial seas; and wetlands adjacent to other waters of the United States. (33 CFR 328.3(a)). Section 401(a)(1) of the CAA requires that prior to the issuance of any Federal license or permit for an activity which may result in a discharge to navigable waters, the applicant must obtain certification (from the State in which the discharge will occur) that the licensee will assure compliance with applicable portions of the CAA.

(c) *Storm Water Discharges.* Section 402(p) of the CWA clarifies that storm water discharges associated with industrial activity, including construction activity, to waters of the United States must be authorized by a NPDES permit. This section also regulates storm water discharges from municipal separate storm sewer systems serving a population greater than 100,000, and those storm water discharges designated for permitting a ''significant contributor of pollution.'' The CWA requires EPA to issue regulations establishing general permit standards for industrial storm water dischargers. Facility operators have to file notices of intent to be covered by the general permit and are required to develop pollution prevention plans to keep contaminants out of storm water. The general permits also establish special requirements for facilities that are subject to the Emergency Planning and Community Right-To-Know Act (EPCRA) section 313 reporting (see Chapters 30–60 and 30–80). The

regulations are codified at 40 CFR 122.26.

(d) *Recordkeeping and Monitoring.* The NPDES permits require holders to keep updated records and to install and maintain monitoring equipment, to take samples of effluents, and to report their findings to the EPA. The results must be in the form of a discharge monitoring report, which is a uniform method devised by the EPA for self-monitoring of permitted facilities.

4. *Spills of Oil and Hazardous Substances.* Under section 311, spills of listed hazardous substances in ''Reportable Quantities'' established by regulation must be reported to the National Response Center and promptly cleaned up. See 40 CFR parts 116–117 for designations of hazardous substances and reportable quantities. Spill Prevention Control and Countermeasure (SPCC) Plans must be adopted so as to prevent discharge of oil from onshore and offshore facilities into the navigable waters or adjoining shores. Requirements are set forth at 40 CFR part 112.

5. *Sole Source Aquifer Designation.* This designation is intended under 42 U.S.C. 300h–3 to protect underground drinking water sources. Proposed Federal financially-assisted projects that have the potential to contaminate the designated sole source aquifer are subject to EPA review.

6. *Civil and Criminal Penalties.* Administrative, civil, or criminal penalties may be imposed by EPA or a federal court for violation of the Act.

C. *Coastal Zone Management Act (CZMA).* The Coastal zone Management Act, 16 U.S.C. 1451 to 1464, requires that Federal activities in coastal areas be consistent with approved State Coastal Zone Management Programs, to the maximum extent possible. Procedures for consistency determinations under the CZMA requirements are codified at 15 CFR part 930 and are described in Chapter 30–40.

D. *Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA).* The Comprehensive Environmental, Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 to 9675, is popularly known as the ''Superfund'' Act. The statute provides for a fund to address the problems of ''cleaning up'' abandoned or leaking hazardous waste sites. The 1980 statute was substantially revised in 1986 by the Superfund Amendments and Reauthorization Act of 1986 (SARA). It is implemented for federal agencies by Executive order 12580.

CERCLA authorizes the Environmental Protection Agency (EPA) to:

•–Utilize the Hazardous Substance Superfund (''Superfund'') to study and clean up sites that are listed on the National Priorities List (NPL);

• To recover costs expended from parties responsible; and,

• To order such parties to perform work.

1. *Hazardous Substance Superfund.* The Hazardous Substance Superfund is established through the imposition of taxes on certain industries and from general tax revenues. The Superfund is used to pay EPA's clean-up and enforcement costs, natural resource damage, and claims of private parties. Federal agencies are not eligible for funds from the Superfund.

2. *National Contingency Plan (NCP).* The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. The NCP is required by CERCLA section 105 and section 311(c)(2) of the CWA. In Executive Order 12580, 52 FR 2923 (1987), the President delegated to EPA the responsibility for the amendment of the NCP.

National Priorities List (NPL). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the Untied States. The National Priorities List (NPL) constitutes this list. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency (EPA) in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgate a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the Untied States. That list, which is Appendix B of 40 CFR part 300, is the National Priorities List (''NPL'').

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites being addressed by other Federal agencies (the ''Federal Facilities Section'').

Federal Facilities. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. The HRS is a screening tool used by the EPA to evaluate risks associated with abandoned or uncontrolled or hazardous waste sites. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

3. *Response and Remediation.* Sections 106 and 107 provide the primary authority for EPA, States, and private parties to recover the costs of cleanup or to abate an endangerment to public heath, welfare, or the environment. Section 106 authorizes EPA to seek judicial relief requiring a responsible party to abate an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility. Section 107 imposes liability for cleanup and other response costs [costs incurred in responding to a release or a threatened release of a hazardous substance] upon (1) a ''responsible party'' for the (2) release or ''threatened release'' of (3) a hazardous substance from (4) a facility or vessel.

(a) *Potentially Responsible Party.* Section 107(a) of CERCLA, 42 U.S.C 9607(a), sets forth four categories of parties that are potentially subject to liability:

(1) *Current owner or operator:* owner or operator of a facility from which there is a release of a hazardous substance, or is the operator or owner when cleanup is performed or litigation initiated;

(2) *Former owner or operator:* A person who operated or owned a facility when the hazardous substance was disposed of at the facility;

(3) *Arranger:* Any person who ''arranged for disposal or treatment'' at a facility; and

(4) *Transporter:* A person who accepted hazardous substances for transport to a disposal or treatment facility or site that was selected by the transporter ''from which there is a release or threatened release.'' (107(a)(4).

Note: A current owner or operator may be liable even if it did not handle, dispose of, or tread hazardous wastes at the facility, and without regard to whether hazardous substances were disposed of at the facility during the period of ownership or operation.

(b) *Release or ''Substantial Threat of Release.''* The term ''release'' is defined broadly in the Act. A ''release'' any spilling, leaking, pumping, pouring emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment * * *'' The release of any quantity of a hazardous substance qualifies as a release under CERCLA. Certain types of releases are excluded from the definition: Engine exhaust, nuclear material and fertilizer application. 42 U.S.C. 9601(22).

(c) *Hazardous Substance.* ''Hazardous substances'' are defined in CERCLA section 101(14). A list of these substances can be found at 40 CFR part 302. The definition of ''hazardous substances'' incorporates lists of hazardous pollutants that have been developed under other Federal environmental statutes and wastes that exhibit characteristics of a hazardous waste under the Resource Conservation and Recovery Act (''RCRA''). Table 3, following, outlines hazardous pollutants considered to be hazardous substances under CERCLA.

TABLE 3.—HAZARDOUS POLLUTANTS CONSIDERED TO BE HAZARDOUS SUBSTANCES UNDER CERCLA

Type of pollutant	Statutory definition
Hazardous Air Pollutants.	CAA, Section 112.
Hazardous Substances.	CWA, Section 311.
Toxic Pollutants	CWA, Section 307.
Substances which ''may present substantial danger to public health or welfare or the environment''.	CERCLA, Section 102.
Listed Hazardous Wastes; Characteristic hazardous wastes.	RCRA, Section 3001.
Imminently Hazardous Chemical Substances or Mixtures.	TSCA, Section 7.

(1) *Petroleum Exclusion.* Petroleum, ''including crude oil or any fraction thereof,'' is excluded from the definition of ''hazardous substance.''

(2) *Pollutants or Contaminants.''* EPA may clean up a site polluted by either a ''hazardous substance'' or a ''pollutant or contaminant,'' but CERCLA does not authorize EPA to recover its cleanup costs from private parties or to issue an order directing the parties to perform a cleanup when the substance involved is only a ''pollutant or contaminant.''

(d) *Response Costs.* CERCLA permits the recovery of ''response costs'', which includes the costs of removal, remedial action, and enforcement activities related thereto. In addition to liability for costs and damages related to response actions stemming from a release of a hazardous substance, liability may also be imposed for costs associated with the loss of a contaminated area's natural resources.

(e) *Application of Liability.* The statute does not set forth liability standards. The courts have consistently applie the following standards:

(1) *Strict liability;*

(2) *Joint and Several Liability;* and

(3) *Retroactive Liability.*

(f) *Defense to Liability.* The statute permits liability to be defended when the release was caused by:

(1) An act of God;

(2) An act of war; or

(3) The act or omission of a third party other than an employee or agent or one in a contractual relationship with the party being sought to be held liable.

4. *Penalties.* A party that refuses or fails to comply with a Section 106 order from EPA may be assessed up to $25,000 per day of the violation of the order. Additional penalties may also be imposed.

5. *Executive Order 12580.* Executive Order 12580, Superfund Implementation, 52 FR 2923 (1987), as amended by Executive Order 12777, 56 FR 54757 (1991), 42 U.S.C. 9615 note, implements CERCLA by delegating functions under the Act vested in the President to Federal agencies.

E. *Emergency Planning and Community Right-To-Know Act (EPCRA)*

1. *EPCRA.* The Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. 11001–11050, establishes a mechanism for providing the public with important information on the hazardous and toxic chemicals in their communities, and it creates emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances. The Act requires owners and operators of certain facilities to annually submit toxic chemical release inventories to EPA, affected States, and Indian tribes. EPCRA requirements are set forth in chapter 30–60. Because it was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), the statute is sometimes referred to as ''SARA, Title III''

2. *Executive Order 12856.* Executive Order 12856, Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements, 58 FR 41981 (1993), applies the requirements of EPCRA to Federal agencies. The requirements of the Order are described in chapter 30–80.

F. *Endangered Species Act (ESA).* The Endangered Species Act, 16 U.S.C. 1531–1543, directs Federal agencies to conserve endangered and threatened species and their critical habitats. Federal agencies must insure, in consultation with the Secretary of the Interior or the Secretary of Commerce, that any action authorized, funded, or carried our by the agency is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of critical habitat unless the agency has been granted an exemption under ESA. Environmental review requirements under ESA are covered in chapter 30–40.

G. *Energy Conservation.*

1. *Energy Policy Act.* The Energy Policy Act of 1992, 42 U.S.C. 13201 to 13556, requires the Secretary of Energy to work with other Federal agencies to significantly reduce the use of energy and reduce the related environmental impacts by promoting use of energy efficient and renewable energy technologies.

2. *Energy Policy and Conservation Act.* The Energy Policy and Conservation Act, 42 U.S.C. 6201–6422, authorizes the Secretary of Energy to promote energy efficiency and encourage energy conservation.

3. *Executive Order 12902.* Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, 59 FR 11463 (1994), requires each federal agency to develop and implement a program with the intent of reducing energy consumption by 30 percent by the year 2005. Each agency must develop and implement a program for its industrial facilities with the intent of increasing energy efficiency by at least 20 percent by the year 2005 and shall implement all cost-effective water conservation projects.

The Order directs each agency responsible for managing Federal facilities to develop and begin implementing a 10-year plan to conduct or obtain comprehensive facility audits, based on prioritization surveys on each of the facilities the agency manages. All agencies are to develop and implement programs to reduce the use of petroleum in their buildings and facilities by switching to a less-polluting and

nonpetroleum-based energy source, such as natural gas or solar and other renewable energy sources. The head of each agency shall report annually to the Secretary of Energy and OMB in achieving the goals of this order. Each agency head shall designate a senior official, at the Assistant Secretary level or above, to be responsible for achieving the requirements of Executive Order 12902. The agency senior official must coordinate implementation of the Order with the Federal Environmental Executive and Agency Environmental Executives established under Executive Order No. 12873 (see Chapter 30–90).

H. *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).* The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 to 136y, requires the registration of a pesticide before it may be sold and authorizes the EPA Administrator to limit the distribution, sale or use of unregistered pesticides. EPA is prohibited from registering a pesticide that will cause ''unreasonable adverse effects on the environment.'' Regulations implementing FIFRA govern the use, storage, and disposal of registered pesticides. Additionally, these regulations govern the requirements for training and certification of applicators, container labeling, and worker protection.

I. *Fish and Wildlife Coordination Act.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, requires Federal agencies to protect fish and wildlife resources which may be affected by an agency plan to control or modify a national stream or body of water for any purpose. The agency also must provide for the development and improvement of wildlife resources that will be affected by its action. Before taking action, the agency must consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the State agency exercising administration over the wildlife resources that will be affected to determine means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources. Consultation requirements under the Fish and Wildlife Coordination Act are described in chapter 30–40.

J. *Historic Preservation.*

1. *Antiquities Act of 1906.* he Antiquities Act of 1906, 16 U.S.C. 431–433, authorizes the President to declare historic landmarks, historic and pre-historic structures, and other objects of historic and scientific interest that are located on Federal lands to be national monuments.

2. *Archaeological and Historic Preservation Act of 1974.* The Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469 to 469c–1, directs Federal agencies to preserve significant scientific, prehistorical, historical and archaeological data.

3. *Historic Sites Act of 1935.* The Historic Sites Act of 1935, 16 U.S.C. 461 to 467, states that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the public. The Act is also popularly called ''The Historic Sites, Buildings, and Antiquities Act.''

4. *National Historic Preservation Act.* The National Historic Preservation Act, 16 U.S.C. 470 to 470x–6, directs heads of Federal agencies to assume responsibility for the preservation of historic properties which are owned or controlled by such agencies.

5. *Executive Order 11593.* Executive Order 11593, Protection and Enhancement of the Cultural Environment, 36 FR 8921 (1971), 16 U.S.C. 470 note, requires Federal agencies to initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration of Federally-owned sites that are listed on the National Register of Historic Places.

K. *Marine Protection, Research and Sanctuaries Act.* The Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431 to 1445a, 33 U.S.C. 1401 to 1445, provides for establishment of marine sanctuaries and directs Federal agencies to ensure that their actions are consistent with the intended use of such areas.

L. *National Environmental Policy Act (NEPA).*

1. *NEPA.* The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4370d, establishes a comprehensive policy for protection and enhancement of the environment by the Federal government; creates the Council on Environmental Quality; and directs Federal agencies to carry out the policies and procedures of the act. NEPA is covered in chapter 30–50.

2. *Executive Order 12114.* Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (1979), enables responsible officials of Federal agencies having ultimate responsibility for authorizing and approving certain Federal activities significantly affecting the environment of the global commons, or a foreign nation, or certain major Federal actions outside the United States which significantly affect natural or ecological resources of global importance, to be informed of pertinent environmental considerations and to take such considerations into account in making decisions regarding such actions. Executive Order 12114 is implemented for HHS in chapter 30–50.

3. *Executive Order 11990.* Executive Order 11990, Protection of Wetlands, 42 FR 26961 (1977), as amended by Executive Order 12608, 52 FR 34617 (1987) 42 U.S.C. 4321 note, directs Federal agencies to avoid, to the extent possible, the long and short term adverse impacts associated with the destruction or modification of wetlands and direct or indirect support of new construction in wetlands wherever there is a practical alternative. Executive Order 11990 is covered in chapter 30–40.

4. *Executive Order 11988.* Executive Order 11988, Floodplain Management, 42 FR 26951 (1977), as amended by Executive Order 12148, 44 FR 43239 (1979), 42 U.S.C. 4321 note, directs Federal agencies to take action to avoid, to the extent possible, the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development whenever there is a practical alternative. Executive Order 11988 is implemented for HHS in chapter 30–40.

5. *Executive Order 11514.* Executive Order 11514, Protection and Enhancement of Environmental Quality, 35 FR 4247 (1970), as amended by Executive Order 11991, 42 FR 26967 (1977), 42 U.S.C. 4321 note, requires Federal agencies to initiate measures needed to direct their policies, plans, and programs to meet national environmental goals. Federal agencies must develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. In carrying out their responsibilities under NEPA and Executive Order 11514, Federal agencies are to comply with regulations issued by the Council on Environmental Quality, except where compliance would be inconsistent with statutory requirements.

M. *Occupational Safety and Health Act (OSHA).* The Occupational Safety and Health Act of 1970, 29 U.S.C 651 to 658, regulates the use, storage, and handling of hazardous materials in the workplace and provides for the Department of Labor to establish standards governing workplace safety and health requirements.

N. *Pollution Prevention and Recycling*

1. *Pollution Prevention Act (PPA).* The Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109, requires the reporting of efforts to reduce toxic chemical releases through source reduction and recycling. The PPA establishes national policy that pollution is to be prevented or reduced at the source, and the Act requires the Environmental Protection Agency (EPA) to submit biennial reports to Congress that analyze the source reduction and recycling data submitted to it and provide other pollution prevention information that has been gathered from private businesses and Federal agencies. The Act also requires the Administrator of EPA to develop a strategy to promote source reduction; to make matching grants to States to promote the use of source reduction techniques by businesses; and to establish a Source Reduction Clearinghouse. The requirements of the PPA are described in more detail in chapter 30–70.

2. *Executive Order 13101.* Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, Sep 1998, requires Federal agencies to strive to increase the procurement of products that are environmentally preferable or that are made with recovered materials and to set annual goals to maximize the number of recycled products purchased, relative to non-recycled alternatives. Each agency is to establish goals for solid waste prevention and for recycling to be achieved by the years 2000, 2005 and 2010 and to annually report progress in attaining the goals. Executive Order 13101 is implemented for HHS in chapter 30–90.

O. *Resource Conservation and Recovery Act (RCRA).* The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 to 6991i, governs the generation, storage, and disposal of hazardous waste, and amends the Solid Waste Disposal Act.

P. *Safe Drinking Waster Act (SDWA).* The Safe Drinking Water Act, 42 U.S.C. 300f to 33j–26, is intended to protect drinking water sources. The statute authorizes EPA to determine if an action which will have an environmental effect on a sole or principal drinking water source would also constitute a significant hazard to a human population and, if so, to prohibit such an action. The SDWA protects the quality of drinking water by establishing regulations (1) governing the quality of water delivered by public water systems and (2) preventing the endangerment of drinking water sources from underground injection. The SDWA also allows EPA to take any action necessary to protect the health of persons where contamination of a drinking water source poses an imminent and substantial endangerment to health.

Q. *Toxic Substances Control Act (TSCA).* The Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. 2601 to 2692, provides controls over the manufacture process, use, distribution and disposal of certain toxic materials. *e.g.,* polychlorinated biphenyls, lead-based paint, asbestos containing materials and radon.

R. *Wild and Scenic Rivers Act.* The Wild and Scenic Rivers Act, 16 U.S.C. 1271 to 1287, directs Federal agencies to consider and preserve the values of wild and scenic areas in the use and development of water and land resources.

S. *Executive Orders*

1. *Executive Order 12898.* Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (1994), requires each Federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Federal agencies which conduct activities that substantially affect human health or the environment should have implemented an agency-wide environmental justice strategy which identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

The environmental justice strategy includes a listing of programs, policies, planning and public participation processes, enforcement, and/or rulemakings, related to human health or the environment and should, at a minimum: (a) Promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (b) ensure greater public participation; (c) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (d) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy includes, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions. To assist in identifying the need for ensuring protection of populations with differential consumption patterns, agencies whenever practicable and appropriate, must collect, maintain, and analyze information on the consumption patterns of populations who rely principally on fish and/or wildlife for subsistence.

2. *Executive Order 12088.* Executive Order 12088, Federal Compliance with Pollution Control Standards, 43 FR 47707 (1978), as amended by Executive Order 12580, 52 FR 2923 (1987), 42 U.S.C. 4321 note, makes the head of each Federal agency responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

3. *Executive Order 11987.* Executive Order 11987, Exotic Organisms, 42 FR 25949, 42 U.S.C. 4321 note, directs Federal agencies, to the extent permitted by law, to restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or administer.

30–00–30 Definitions

The following terms are defined solely for the purpose of implementing the supplemental procedures provided by this chapter and are not necessarily applicable to any statutory or regulatory requirements. To the extent that a definition of one of these terms should conflict with a definition in an applicable statute, regulation or Executive Order, that statute, regulation or Executive Order definition shall supersede the GAM definition.

A. *Action*—a signed decision by a responsible Department official resulting in:

1. Approval, award, modification, cancellation, termination, use or commitment of Federal funds or property by means of a grant, contract, purchase, loan, guarantee, deed, lease, license or by any other means;

2. Approval, amendment or revocation of any official policy, procedures or regulations including the establishment or elimination of a Department program; or

3. Submission to Congress of proposed legislation which, if enacted, the Department would administer.

B. *Asset*—an entity, group of entities or specific environment as defined in the individual related acts and which the individual related acts seek to protect or preserve. Assets include cultural assets (e.g., historic properties) and natural assets (e.g., wild and scenic rivers, and endangered species).

C. *Environmental Acts*—all authorities listed in Section 30–00–20 or authorities that might be designated under other statutes or Executive Orders.

D. *Environmental Assessment*—a concise public document, as defined in the regulations implementing NEPA, that serves to provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

Environmental Effects—effects, as defined under NEPA, include direct effects, which are caused by the action and occur at the same time and place, indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable, and cumulative effects, which are caused by the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.

F. *Environmental Impact Statement*—a detailed written statement, as required under NEPA, on: (1) The environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided if the action is implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

G. *Environmental Review*—the process, including necessary documentation, which a Departmental organization uses to determine whether a proposed action will cause an environmental affect.

H. *Finding of No Significant Impact*—a document by a federal agency, as required under NEPA, briefly presenting the reasons why an action will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.

I. *Major Federal Action*—includes actions, as defined by NEPA, with effects that may be major and which are potentially subject to federal court and responsibility.

J. *HHS Operating Division (OPDIV)* The following is a current listing (which may change at some future date) of OPDIVs: Administration of Aging (AoA), Administration for Children and Families (ACF) Agency for Health Care Research and Quality (AHCRQ), Centers for Disease Control and Prevention (CDC), Agency for Toxic Substances and Disease Registry (ATSDR), Food and Drug Administration (FDA), Health Care Financing Administration (HCFA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), Office of the Secretary (OS), Program Support Center (PSC), and Substance Abuse and Mental Health Services Administration (SAMHSA).

K. *HHS Staff Division (STAFFDIV)* The following is a current listing (which may change at some future date) of STAFFDIVs: Office of the Assistant Secretary for Legislation (ASL), Office of the Assistant Secretary for Management and Budget (ASMB), Office of the Assistant Secretary for Planning and Evaluation (ASPE), Office of the Assistant Secretary for Public Affairs (ASPA), Departmental Appeals Board (DAB), Office for Civil Rights (OCR), Office of General Counsel (OGC), Office of Inspector General (OIG), and Office of Public Health and Sciences (OPHS).

L. *Program Review*—a review by OPDIVs/STAFFDIVs of all their actions to determine:

1. Those categories of actions which normally do not individually or cumulatively cause significant environmental effects and therefore may be categorically excluded from further environmental review; and

2. Those categories of actions which require an environmental review because they may cause significant environmental effects under NEPA; and

3. Those categories of actions which require an environmental review because they normally do cause significant environmental effects under NEPA.

Subject: Department of Health and Human Services Environmental Policy

30–10–00 Policy Statement

The Department of Health and Human Services is committed to complying with all applicable Federal, state and local environmental laws, statutes and regulations, protecting the environment, and conserving our environmental resources by being proactive and cost effective in our environmental stewardship. It is HHS policy that pollution be prevented or reduced at the source. All HHS organizations shall give first priority to avoiding or reducing the generation of hazardous substances, pollutants, and contaminants at the source. Pollution that cannot be prevented or recycled must be treated in an environmentally safe manner to reduce volume, toxicity, and/or mobility.

Only as a last resort should disposal or other release into the environment be employed, and such disposal or release must be conducted in accordance with all applicable authorities and in an environmentally safe manner. Managers and employees are expected to execute their responsibilities in a way that is proactive and cost effective in the protection and conservation of our environmental resources and in a manner that complies with all applicable Federal, state, and local environmental laws, statutes and regulations.

30–10–10 Vision Statement

All HHS managers and employees are guardians of the environment when carrying out their responsibilities. Proactive efforts at all organizational levels must be focused on managing environmental risks to ensure that the environment is always protected and our environmental resources are conserved.

OPDIVs/STAFFDIVs must give weight to preservation of the environment and protection of historic or cultural assets in reaching substantive program decisions. All HHS organizations shall assess environmental costs and benefits as well as program goals and objectives in determining a particular course of action. In conducting this assessment, OPDIVs/STAFFDIVs should devote reasonable time, effort, and resources to consideration of environmental risks associated with a program-related course of action.

30–10–20 Goals and Objectives

The goals of our environmental efforts are to prevent harm to the environment, and enhance the quality of human health by conserving our environmental resources.

This goal are satisfied by meeting the following objectives:

1. Compliance—To comply with all applicable Federal, state, and local environmental laws, statutes and regulations:

2. Conservation—To protect and conserve our environmental resources through pollution prevention, waste reduction and recycling;

3. Pollution Prevention—To protect and conserve our environmental resources through source reduction in facility management and acquisition, where practicable, as the primary means of achieving and maintaining compliance with applicable Federal, state and local environmental laws, statutes and regulations; and

4. Restoration—To restore, when possible, facilities, land, and waters damaged through past practices.

30–10–30 Strategy

HHS has adopted and will adhere to a Code of Environmental Management Principles (CEMP) to help achieve the goals of the HHS environmental protection program. As part of the effort to implement these principles throughout HHS, all OPDIVS/STAFFDIVS will integrate the following principles into their environmental protection programs:

1. *Management Commitment*—Written top management commitment to improved environmental performance by establishing policies which emphasize pollution prevention and the need to ensure compliance with environmental requirements.

2. *Compliance Assurance and Pollution Prevention*—Proactive programs that aggressively identify and address potential compliance problem areas and utilize pollution prevention approaches to correct deficiencies and improve environmental performance.

3. *Enabling Systems*—Necessary systems to enable personnel to perform their functions consistent with regulatory requirements, HHS environmental policies, and the HHS overall mission.

4. *Performance and Accountability*—Measures to address employee environmental performance and ensure full accountability of environmental functions.

5. *Measurement and Improvement*—A program to assess progress toward meeting organization environmental goals, and which uses the results of that assessment to improve environmental performance.

Subject: Administrative Requirements

30–20–00 Background

This chapter establishes an administrative framework in the Department of environmentally-related activities. Specifically, this chapter (1) describes the assignment of relative responsibilities in the Department regarding environmental activities; (2) establishes procedures for program reviews; and (3) establishes other on-going administrative requirements.

30–20–10 Responsibilities

A. *Office of the Secretary.* The Secretary shall designate an official as the Department Environmental Officer, who will be responsible for:

1. Preparing Departmental guidelines and other policy documents for issuance by the Secretary or other appropriate Department official pertaining to environmental protection and preservation of natural or cultural assets;

2. Approving lead agency agreements having Department-wide applicability;

3. Providing training to HHS program officials with respect to carrying out the requirements of environmental statutes and Executive Orders;

4. Maintaining liaison with the Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), and other Federal agencies charged with direct responsibility for administering environmental statutes and Executive Orders;

5. Coordinating the review of environmental statements originating from outside of HHS. This responsibility is delegated to the Centers for Disease Control and Prevention, National Center for Environmental Health (FR, Vol. 43 no. 164, Aug. 23, 1978); and

6. Reviewing and making recommendations to the Assistant Secretary for Management and Budget with respect to determinations by OPDIVs/STAFFDIVs that certain activities are categorically excluded from environmental review.

B. *OPDIVs/STAFFDIVs.* Heads of OPDIVs/STAFFDIVs are responsible for ensuring that organizational units under their authority, including regional, comply with all provisions of all applicable Federal, State, and local environmental laws, statutes, regulations and Executive Orders and with the procedures of part 30. An OPDIV/STAFFDIV head may designate an environmental officer, who may act in either a full-time capacity or in addition to other duties, to assist in fulfilling these responsibilities.

30–20–20 Approval Authority and Delegations of Authority

A. *Delegation of Authority.* The OPDIV/STAFFDIV head may redelegate all of their environmental responsibilities to subordinate program managers except for the authority of an OPDIV/STAFFDIV head to approve the designation of actions as categorically excluded. OPDIV/STAFFDIV heads shall obtain concurrence from the Assistant Secretary for Management and Budget with respect to activities designated to be categorically excluded from environmental reviews.

B. *Excluded Material.* The exclus8ion of material from environmental impact statements on the basis of national security and trade secrets requires approval by the HHS Office of the General Counsel. (See Section 30Θ–30–40.)

C. *Natural Assets.* Proposed actions which will have an effect on certain natural assets may require concurrence or approval from other Federal agencies and/or entities prior to taking the action. (See chapter 30–40.)

D. *Floodplains/Wetlands.* OPDIV/STAFFDIV heads shall sign determinations pursuant to Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, except:

1. The Secretary shall approve proposed actions requiring environmental impact statements on projects affecting floodplains; and

2. The Secretary shall approve proposed actions requiring environmental assessments or environmental impact statements for new construction in wetlands.

30–20–30 Program Reviews

a. *Actions Requiring Environmental Review.* All HHS activities will be evaluated to determine whether such activities are actions that require environmental review. In a program review, an OPDIV/STAFFDIV evaluates actions it will be taking in order to determine the potential of these actions to cause an environmental effect under an applicable environmental statute or Executive Order. OPDIVs/STAFFDIVs should have already completed an initial review.

OPDIVs/STAFFDIVs may undertake additional program reviews subsequently whenever they deem it appropriate.

As a result of program review, an OPDIV/STAFFDIV shall divide each of its actions in one of three groups:

Group 1 (categorically excluded)—Those actions which do not individually or cumulatively have a significant effect on the human environment or affect a natural or cultural asset protected by an environmental statute or Executive Order.

Group 2—Those actions which require an environmental review because they may cause a significant environmental effect under NEPA or may affect a protected cultural or natural asset protected by an environmental statute or Executive order.

Group 3—Those actions which normally do cause a significant environmental effect under NEPA or affect a cultural or natural asset protected by an environmental statute or Executive Order.

In grouping each of its actions OPDIVs/STAFFDIVs shall use the exclusion categories described in Section 30–20–40. If an action falls within one of these exclusion categories, then it may be included in Group 1. Such actions do not require environmental reviews, except in circumstances described in 30–20–40. If an action does not fall within one of these exclusion categories, then an OPDIV/STAFFDIV must perform an environmental review prior to taking the action. Chapters 30–30 and 30–50 describe the procedures for conducting an environmental review.

Each OPDIV/STAFFDIV shall maintain as part of its organizational guidance documents lists of these actions which it has determined fall under Groups 1, 2, and 3 or shall have procedures that address such actions. These lists shall supplement other internal directives or instructions concerning environment-related responsibilities.

B. *Approval.* A determination by an OPDIV/STAFFDIV that an action falls within Group 1 (Categorically Excluded) is effective upon approval by the OPDIV/STAFFDIV head or, as required, after the issuance of specific guidance. However, OPDIVs/STAFFDIVs must report these determinations to the Assistant Secretary for Management and Budget. Determination that an action falls within Group 1 (Categorically Excluded) is effective until rendered inapplicable because of changes in the underlying program authority or regulation.

C. *Publication of Additional Categorical Exclusions by OPDIVs/STAFFDIVs.* An OPDIV/STAFFDIV may establish additional categorical exclusions that pertain to the actions of that OPDIV/STAFFDIV after review by the Assistant Secretary for Management and Budget and publication for public comment in the **Federal Register,** in accordance with the procedures established by that OPDIV/STAFFDIV. All categorical exclusions not covered by the general listing in **Federal Register**.

30–20–40 Categories of Exclusion

A. *Application of Categorical Exclusions*

1. *Required Determinations.* To find that an action is categorically excluded, an OPDIV/STAFFDIV shall determine the following:

(a) *Falls Within Exclusion Category.* The proposed action falls within one of the three exclusion categories described in this section. This determination may take place as the result of a program review of an OPDIV's/STAFFDIV's actions, in which case the action is listed in the OPDIV's/STAFFDIV's administrative issuance system as being categorically excluded from further environmental reviews.

(b) *Absence of Extraordinary Circumstances.* There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Extraordinary circumstances are unique situations presented by specific proposals, such as scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; or unresolved conflicts concerning alternate uses of available resources within the meaning of section 102(2)(E) of NEPA; and where it is reasonable to anticipate a cumulatively significant impact on the environment. See 40 CFR 1508.27 for examples.

2. All categorical exclusions in this Part may be applied by any organizational element of HHS.

3. A class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as associated transportation activities and award of implementing grants and contracts).

B. *Categories of Actions Which May Be Excluded From Environmental Review.* Categories of actions which may be excluded from environmental review include, but are not limited to the following:

1. *Category No. 1—General Exclusions:*

(a) When a law or regulation grants an exception, unless precluded by an OPDIV/STAFFDIV regulation;

(b) When the courts have found that the action does not require environmental review; and

(c) When an action implements actions outside the territorial jurisdiction of the United States and such actions are excluded from review by Executive Order 12114.

2. *Category No. 2—Functional Exclusions:*

(a) Routine administrative and management support, including legal counsel, public affairs, program evaluation, monitoring and individual personnel actions;

(b) Appellate reviews when HHS was the plaintiff in the lower court decision (*e.g.,* a case involving failure by a nursing home to comply with fire and safety regulations);

(c) Information technology management;

(d) Education and training grants and contracts (*e.g.,* grants for remedial training programs or teacher training) except projects involving construction, renovation, or changes in land use;

(e) Grants for administrative overhead support (*e.g.,* regional health or income maintenance program administration);

(f) Grants for social services (*e.g.,* support for Head Start, senior citizen programs or drug treatment programs) except projects involving construction, renovation, or changes in land use;

(g) Liaison functions (*e.g.,* serving on task forces, ad hoc committees or representing HHS interests in specific functional areas in relationship with other governmental and non-governmental entities);

(h) Maintenance (*e.g.,* undertaking repairs necessary to ensure the functioning of an existing facility), except for properties on or eligible for listing on the National Register of Historic Places;

(i) Statistics and information collection and dissemination (*e.g.,* collection of health and demographic data and publication of compilations and summaries);

(j) Technical assistance by HHS program personnel (*e.g.,* providing assistance in methods for reducing error rates in State public assistance programs or in determining the cause of a disease outbreak); and

(k) Adoption of regulations and guidelines pertaining to the above activities (except technical assistance and those resulting in population changes).

(e) *Category 3—Program Exclusions.* These exclusions, when applicable, result from a substantive review and determination by an OPDIV/STAFFDIV that certain programs or certain activities within a program will not normally (a) significantly affect the human environment (as defined by NEPA) or (b) affect an asset (as defined in an applicable environmental statute or Executive Order) regardless of the location or magnitude of the action. For example, and OPDIV/STAFFDIV, following its review, might determine that the following are unlikely to cause an environmental effect: assigning a member of the commissioned Corps to a locality to supplement existing medical personnel or providing funds to support expansion of emergency medical services in existing hospitals.

30–20–50 Environmental Review Procedures

An OPDIV/STAFFDIV must conduct environmental reviews with respect to all proposed actions that are subject to an environmental statute or Executive Order which do not fall under categorical exclusions 1, 2, or 3. Chapters 30–30 and 30–50 discuss the process for conducting an environmental review with respect to a specific proposed action and for fulfilling documentation and other requirements. Each OPDIV/STAFFDIV shall ensure that its programs have appropriate procedures for conducting environmental reviews, for completing required documentation, and for ensuring public involvement and intergovernmental consultation. These procedures must be in writing and be included in the internal organizational guidance documents or regulations. These procedures must, at a minimum, address the following:

A. A list of those actions which the OPDIV/STAFFDIV has categorically excluded from further environmental review requirements. Note that for any particular action, there still must be absence of extraordinary circumstances as noted in 30–20–40, A.1.(b).

B. A list of those actions or circumstances when actions require an environmental review prior to taking the action.

C. Designation of officials responsible for environment-related activities including determinations as to whether to prepare an environmental impact statement or an environmental assessment, if one is required.

D. Procedures for preparing and circulating environmental statements (including data required by the applicable environmental statute or Executive Order for the type of action covered).

E. Procedures for ensuring the coordination of environmental review with program decision-making, including concurrent development and circulation of environmental documents with program documents and the identification of key decision-making points.

F. Procedures for consulting with other Federal agencies responsible for the environmental statutes or Executive Orders, if necessary.

G. Procedures for developing lead agency agreements (as described in 30–30–20B and 30–50).

H. A prohibition against precluding or prejudicing selection of alternatives in an environmental impact statement without regard to environmental risks.

I. Procedures for establishing a reviewable record, including making environmental statements and related decision-making materials part of the record of formal rule-making and adjudicatory proceedings.

J. Provisions for early consultation and assistance to potential applicants and non-Federal entities in planning actions and developing information necessary for later Federal involvement (as described in 30–30–20C and 30–50).

K. Descriptions of circumstances which preclude completion of environmental reviews within reasonable time frames because of public health and safety considerations and procedures for after-the-fact completion.

L. Provision for ensuring that applications and other materials from potential grantees or other recipients of Departmental funds, on a program-by-program basis, include information necessary to conduct an environmental review. Such information shall include the identification of any properties which may be eligible for listing on the National Register of Historic Places.

M. Provision for identifying cultural assets which a program controls through leases or Federal ownership, and for nominating such historic properties to the National Register of Historic Places.

Subject: General Environmental Review Procedures

30–30–00 Overview

Certain environmental statutes and Executive Orders require an environmental review of proposed Federal actions to determine whether such actions will have environmental effects.

The purpose of this chapter is to describe overall the steps which Department officials must take in conducting environmental reviews of specific proposed actions. Within these general steps, the individual environmental acts differ significantly with respect to public involvement, intergovernmental consultation, and documentation required. The chapters at 30–40 and 30–50 following (entitled Natural Asset Review and NEPA Review) discuss these specific requirements in greater detail.

Note: The procedures and requirements in chapters 30–40 and 30–50 take precedence over the general statements in this chapter and must be consulted before determining the steps that must be taken with regard to a specific action. The discussion in this chapter generally does not apply to chapters 30–60 to 30–90.

30–30–10 Summary Description

The following is a summary description of the general types and sequence of activities which Departmental officials should carry out in reviewing specific proposed actions under this Part.

A. Determine that a proposed activity constitutes an action as defined under Section 30–00–30 (Definitions) that is subject to an environmental statute or Executive Order.

B. Determine whether the proposed action is categorically excluded from all environmental review requirements. If it is excluded, no further environmental review is necessary.

C. For proposed actions not categorically excluded, conduct an environmental review in accordance with applicable program environmental review procedures to determine whether the proposed action will cause an environmental effect under one or more of the environmental statutes or Executive Orders.

D. Determine whether it is necessary to prepare an environmental document, *e.g.,* an environmental assessment, and if necessary, an environmental impact statement under NEPA. Circulate the environmental document among the public, Federal, State and local agencies, and other interested parties, as appropriate.

E. Carry out the requirements for public involvement and intergovernmental consultation as required under the applicable environmental statutes or Executive Orders, including any necessary approvals.

F. Prepare the necessary environmental documentation and proceed with the program decision-making process.

30–30–20 Environmental Review

A. *General.* OPDIVs/STAFFDIVs must perform an environmental review for each proposed action not categorically excluded in accordance with the OPDIV's/STAFFDIV's environmental procedures. The purpose of an environmental review is to answer the following general questions: (Individual environmental acts differ with respect to the specific scope and methodology required in conducting an environmental review.)

1. Which environmental statutes or Executive Orders apply to the proposed action?

2. Will a proposed action have an environmental effect under any of the environmental statutes or Executive

Orders, as defined in regulation or by court interpretation?

3. Should this HHS OPDIV/STAFFDIV prepare an environmental assessment or an environmental impact statement, given the environmental statutes and Executive Orders involved and the kinds and degree of environmental effects anticipated?

B. *Agreements with Other Agencies.* When two or more agencies are engaged in the same action, a lead agency agreement provides one agency with the authority to conduct the environmental review. These agreements determine the content and type of statement and specify which Federal agency will prepare it. The agreement includes a schedule for the preparation and circulation of the document, as well as an assignment of important tasks among the agencies involved. Lead agency agreements may be signed with other agencies for individual actions or for a particular type of action.

C. *Non-Federal Agencies.* Whenever an HHS program requests or permits a non-Federal agency to perform an environmental review, the program shall outline the type of information required, perform an independent evaluation, and assume responsibility for the scope and content of the material.

30–30–30 Environmental Documents

A. On the basis of the environmental review, OPDIVs/STAFFDIVs shall determine what type of environmental document to prepare. Under NEPA, either an environmental assessment and finding of no significant impact or an environmental impact statement would generally be required. Environmental impact statements are prepared in two stages: draft and final. A final statement includes a consideration of comments submitted by persons or organizations reviewing the draft statement. Under some laws covered by this Part, an environmental assessment may also have to be prepared in draft for review and comment before being finalized.

The chapters at 30–40 and 30–50 following (Natural Asset Review and NEPA Review) discuss these different requirements in greater detail and must be consulted to ascertain the specific requirements of NEPA and each of the related statutes and Executive Orders.

B. *Description.*

1. *Environmental Impact Statements.* An environmental impact statement is a detailed written statement on, (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity and (v) and irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Draft environmental impact statements shall not exhibit biases in favor of the proposed action. A final statement may include a recommendation with a rationale for a preferred action (see chapter 30–50 for correct NEPA terminology and process).

2. *Environmental Assessments.* An environmental assessment is generally a concise document which provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. It shall include, in detail, the environmental impact of reasonable alternatives. OPDIVs/STAFFDIVs generally can use an environmental assessment in order to satisfy any review, consultation, and public notice requirements of the applicable environmental statutes and Executive Orders and to otherwise inform individuals and organizations who may be interested in or affected by the proposed action (see chapter 30–50 for correct NEPA terminology and process).

C. *Alternatives.* Environmental impact statements must explore and evaluate reasonable alternatives to the proposed action in terms of their environmental consequences, benefits and costs, and contribution to the underlying purpose or goal. Discussion of alternatives must be sufficiently in-depth to permit a meaningful comparison of alternative courses of action.

Environmental impact statements shall consider the following categories of alternatives, as appropriate:

1. *No Action By Any Organization.* This alternative serves as a baseline against which to measure the environmental consequences, costs, and benefits of the proposed action and other alternatives.

2. *Action Alternatives.* One or more alternative courses of action directed at achieving the underlying purpose or goal. The environmental impact statement cannot automatically exclude actions:

- Outside the expertise or jurisdiction of Departmental organizations, *e.g.,* examining the possible use of other real properties other than that proposed for transfer by HHS; or
- Which only partially achieve an underlying goal or objective, *e.g.,* funding a health care facility at a lower capacity for patient care. However, action alternatives considered must be reasonably available, practicable, and be related to the underlying purpose or goal. An environmental impact statement must include all reasonable alternatives.

3. *Alternative Safeguards.* These are alternative actions which could mitigate the adverse environmental consequences of one or more of the action alternatives.

4. *Delayed Action Alternative.* This alternative is to postpone or delay a proposed action in order to conduct more research or for other reasons.

5. *Alternative Uses.* When a proposed action would affect a scarce or valuable resource (e.g., prime agricultural farmland), the potential alternative uses of the resource must be identified so that they may be compared with the value of the proposed action.

30–30–40 Intergovernmental Consultation and Document Review

OPDIVs/STAFFDIVs are responsible for meeting the various requirements under environmental statutes and Executive Orders for intergovernmental consultation and public involvement. These requirements differ significantly. OPDIVs/STAFFDIVs must refer to the more detailed descriptions in 30–40 and 3–50 and should consult an environmental officer for guidance.

As required, OPDIVs/STAFFDIVs shall circulate draft environmental impact statements for review and comment, and otherwise make them available to the public upon request to the extent such statements are not protected from disclosure by existing law applicable to the agency's operation. Statements should be circulated to the Federal agency responsible for administering the applicable environmental act, involved non-Federal agencies at the State or local level, and interested public persons or groups within the geographic area of the environment affected. The review period is generally no less than 30 days for a draft environmental assessment and no less than 60 days for a draft environmental impact statement. Whenever a draft environmental impact statement is significantly revised because of comments received or because the nature or scope of the proposed action changes significantly, OPDIVs/STAFFDIVs shall prepare a new draft environmental impact statement for circulation. Circulation of certain portions of the document is not necessary when it involves the following:

A. *National Security.* Circulation of classified sections of environmental documents is subject to regulations

pertaining to matters of national security.

B. *Trade Secrets.* Circulation of sections of environmental documents that disclose a trade secret is subject to 18 U.S.C. 1905 or 21 U.S.C. 331(j) governing the protection and disclosure of trade secrets.

Subject: Natural Asset Review

30–40–00 Applicability of Consultation Requirements

The environmental statutes and Executive Orders described in this chapter require consideration of the effects of a proposed action on specific types of places or species. Generally, they prohibit further action until the Federal agency proposing to take action has consulted with the Federal or State agency responsible for administering the law. The species requiring consideration are listed by the Department of the Interior. The places requiring consideration are:

A. Coastal Zones (as identified in a State coastal zone management plan);

B. Habitats of Endangered Species (as identified by the Department of the Interior);

C. Streams and other bodies of water;

D. Floodplains (as identified on HUD floodplain maps);

E. Marine Sanctuaries (as identified by the Secretary of Commerce);

F. Sole Source Aquifers (as identified by the Environmental Protection Agency);

G. Wetlands (all); and

H. Wild and Scenic Rivers (as identified by the Departments of the Interior and Agriculture).

Table 1 indicates whether the administering agency has published regulations implementing the consultation requirement. OPDIVs/STAFFDIVs are responsible for consulting with the appropriate Federal or State agency before taking action in accordance with the procedures in this chapter and in the applicable statute, Executive Order, or implementing regulation.

TABLE 1.—AGENCY CONSULTATION PROCEDURES

Natural asset statute or executive order	Citation	Consultation procedures
Coastal Zone Management Act of 1972	16 U.S.C. §§ 1451–1464	15 CFR Part 930.
Endangered Species Act of 1973	16 U.S.C. §§ 1531–1544	50 CFR Part 402.
Fish and Wildlife Coordination Act	16 U.S.C. §§ 661–666c	16 U.S.C. § 662.
Executive Order 11988, Floodplain Management	42 FR 26951 (1977), as amended by E.O. 12148, 44 FR 43239 (1979); 16 U.S.C. § 4321 note.	Floodplain Management Guidelines, U.S. Water Resources Council, 43 FR 6030 (1978).
Marine Protection, Research, and Sanctuaries Act of 1972	16 U.S.C. §§ 1431–1445a; 33 U.S.C. §§ 1401–1445.	
Safe Drinking Water Act	42 U.S.C. §§ 300f–300j–26	42 U.S.C. § 300h–3; 40 CFR Part 149.
Executive Order 11990, Protection of Wetlands	42 FR 26961 (1977), as amended by E.O. 12608, 52 FR 34617 (1987); 42 U.S.C. § 4321 note.	
Wild and Scenic Rivers Act	16 U.S.C. §§ 1271–1287	36 CFR Part 297.

30–40–05 Integration With NEPA Review Process

OPDIVs/STAFFDIVs are responsible for reviewing all proposed actions to determine whether they will affect places and species described in this chapter. OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action in accordance with the procedures for National Environmental Policy Act (NEPA) review in chapter 30–50. If an environmental assessment (EA) or environmental impact statement (EIS) is required to be prepared for the proposed action, the documentation required by the applicable statute or Executive Order and the administering agency regulations are to be included in the EA or EIS. In addition, the consultation procedures required by the environmental statute or Executive Order shall be followed.

30–40–10 Coastal Zone Management Act of 1972

A. *Purpose.* The Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451–1464, declares that it is the national policy ''to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone * * *''. In furtherance of this policy, the Act provides Federal assistance to States for developing and implementing coastal zone management programs. Section 307(c)(1)(A) of the CZMA (16 U.S.C. 1456(c)(1)(A)) provides that ''[each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.''

National Oceanic and Atmospheric Administration (NOAA) regulations codified at 15 CFR part 930, Subpart C—Consistency for Federal Activities, implements section 307 of the CZMA. These ''consistency'' regulations are designed to assure that all Federally conducted or supported activities, including development projects, directly affecting the coastal zone are undertaken in a manner consistent to the maximum extent practicable with approved State coastal management programs.

B. *Definitions.*

1. *Federal activity.* The term ''Federal activity'' means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. The term ''Federal activity'' does not include the issuance of a Federal license or permit to an applicant or person or the granting of Federal assistance to an applicant agency.

2. *Federal development project.* The term ''Federal development project'' means a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or

other structures, and the acquisition, utilization, or disposal of land or water resources.

3. *Coastal Zone.* The CZMA defines the term ''coastal zone'' as ''the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.'' Zone boundaries are described in 16 U.S.C. 1453(1). The CZMA excludes from the definition of coastal zone lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers, or agents (*e.g.,* nonterminated California Indian rancherias).

4. ''*Consistent to the maximum extent practicable.*'' The term ''consistent to the maximum extent practicable'' describes the requirement for Federal activities, including development projects, directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations.

C. *Requirement.* An OPDIV/STAFFDIV undertaking any development project in the coastal zone of a State shall ensure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved State management programs.

OPDIVs/STAFFDIVs shall determine which of their activities directly affect the coastal zone of States with approved management programs. OPDIVs/STAFFDIVs shall consider all development projects within the coastal zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to OPDIV/STAFFDIV review to determine whether they directly affect the coastal zone. Federal activities outside of the coastal zone are subject to OPDIV/STAFFDIV review to determine whether they directly affect the coastal zone.

Integration with NEPA. OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action affecting a coastal zone in accordance with the procedures for National Environmental Policy Act (NEPA) review in Chapter 30–50. If an environmental assessment (EA) or environmental impact statement (EIS) is required to be prepared for the proposed action, a consistency determination, described in 30–40–10E, shall be included in the EA or EIS.

E. *Consistency Determination.* OPDIVs/STAFFDIVs shall provide State agencies with consistency determinations for all Federal activities directly affecting the coastal zone. OPDIVs/STAFFDIVs are encouraged to consult with State agencies during their efforts to assess whether an action will be consistent to the maximum extent practicable with a State management program.

A consistency determination should be prepared following development of sufficient information to determine reasonably the consistency of the activity with the State's management program, but before the OPDIV/STAFFDIV reaches a significant point of decision-making in its review process. An OPDIV/STAFFDIV shall provide a consistency determination to the relevant State agency designated under section 306(d)(6) of the CZMA (16 U.S.C. 1455(d)(6)) at the earliest practicable time in the planning or reassessment of the activity, but in no case later than 90 days before final approval of the Federal activity, unless both the OPDIV/STAFFDIV and the State agency agree to a different schedule.

OPDIVs/STAFFDIVs must ensure that their activities are consistent to the maximum extent practicable with the enforceable, mandatory policies of the management program. However, OPDIVs/STAFFDIVs need only give adequate consideration to management program provisions which are in the nature of recommendations. Finally, OPDIVs/STAFFDIVs do not have to evaluate coastal zone effects for which the management program does not contain mandatory or recommended policies because, in the absence of such provisions, there is no basis for making a consistency determination with respect to such effects.

F. *Negative Determination.* If a OPDIV/STAFFDIV asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the OPDIV's/STAFFDIV's discretion to comply with the provisions of the management program.

If a OPDIV/STAFFDIV decides that a consistency determination is not required for a Federal activity (1) identified by a State agency on its list or through case-by-case monitoring, (2) which is the same as or similar to activities for which consistency determinations have been prepared in the past, or (3) for which the OPDIV/STAFFDIV undertook a thorough consistency assessment and developed initial findings on the effects of the activity on the coastal zone, the OPDIV/STAFFDIV shall provide the State agency with a notification, at the earliest practicable time in the planning of the activity, briefly setting forth the reasons for its negative determination. A negative determination shall be provided to the State agency at least 90 days before final approval of the activity, unless both the OPDIV/STAFFDIV and the State agency agree to an alternative notification schedule.

G. *Content of a consistency determination.* The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, and comprehensive data and information sufficient to support the consistency statement. The amount of detail in the statement evaluation, activity description, and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

If HHS standards are more restrictive than standards or requirements contained in the State's management program, the State should be informed in the consistency determination of the statutory, regulatory, or other basis for the application of the stricter standards.

If an OPDIV/STAFFDIV asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the OPDIV's/STAFFDIV's discretion to comply with the provisions of the management program.

H. *State Review Period.* A State agency is required to inform the OPDIV/STAFFDIV of its agreement or disagreement with the consistency determination at the earliest practicable time. OPDIVs/STAFFDIVs may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the consistency determination. State agency agreements shall not be presumed in cases where the State agency, within the 45 day period, requests an extension of time to review the matter.

OPDIVs/STAFFDIVs shall approve one request for an extension period of

15 days or less. In considering whether a longer or additional extension period is appropriate, consideration should be given by the OPDIV/STAFFDIV to the magnitude and complexity of the information contained in the consistency determination.

I. *Final Action.* An OPDIV/STAFFDIV shall not undertake final action sooner than 90 days from the issuance of the consistency or negative determination to the State agency unless both the OPDIV/STAFFDIV and the State agency agree to an alternative period.

J. *Mediation by Secretary of Commerce.* In the event of a serious disagreement between an OPDIV/STAFFDIV and a State agency regarding a determination related to whether a proposed activity directly affects the coastal zone, either party may seek the Secretarial mediation services provided for in Subpart G of 15 CFR part 930.

K. *Licenses, permits.* OPDIVs/STAFFDIVs shall follow the procedures in 15 CFR part 930 when the action involves an applicant for a Departmental license or permit.

L. *Excluded Actions.* The requirements in this section shall not apply to those types of actions which are specifically excluded by the approved CZM plan.

30–40–20 Endangered Species Act of 1973

A. *Purpose.* The Endangered Species Act of 1973, 16 U.S.C. 1531–1544, directs Federal agencies, in consultation with either the Secretary of the Interior or of Commerce, as appropriate, to carry out conservation programs for endangered or threatened species of fish, wildlife, or plants (''listed species'') and habitat of such species that has been designated as critical (''critical habitat''). Such affirmative conservation programs must comply with applicable permit requirements for listed species and should be coordinated with the appropriate Secretary.

Section 7(a)(2) of the Act (16 U.S.C. 1536(a)(2)) requires every Federal agency, in consultation with the assistance of the appropriate Secretary, to ensure that any action it authorizes, funds, or carries out, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The Act also requires Federal agencies to confer with the Secretary of the Interior or of Commerce on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat. The Act prohibits Federal agencies from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or the destruction or adverse modification of critical habitat. Section 9 of the Act prohibits any unauthorized ''take'' of listed species. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act.

B. *Governing Regulations and Organization Responsible for Consultation.* Interagency consultation procedures under the Endangered Species Act are codified at 50 CFR part 402. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12. The designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, an OPDIV/STAFFDIV shall contact the NMFS. For all other listed species, an OPDIV/STAFFDIV shall contact the FWS.

C. *Definitions.* The regulations governing interagency cooperation and consultation under the ESA in 50 CFR part 402 define many of the terms and phrases that are used in the regulations and this section.

1. *Biological Assessment.* A biological assessment is a document, prepared by or under the direction of a Federal agency, concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation of potential effects of the action on such species and habitat.

2. *Biological Opinion.* A biological opinion is the document that states the opinion or the FWS or the NMFS as to whether or not a proposed Federal agency action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The Service may issue one of two types of opinions:

(a) *Jeopardy Biological Opinion.* An opinion by the Service that the proposed Federal agency action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat is called a ''jeopardy biological opinion''.

(b) *No Jeopardy Biological Opinion.* An opinion by the Service that the proposed Federal agency action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat is called a ''no jeopardy'' biological opinion.

3. *Director.* The term ''Director'' refers to, as appropriate, the:

(a) Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration or an authorized representative; or

(b) Fish and Wildlife Service Regional Director, or authorized representative, for the region where the action would be carried out.

4. *Listed Species.* Listed species means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11–17.12.

5. *Service.* The term ''Service'' means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

D. *Integration with NEPA.* The consultation, conference, and biological assessment procedures required by section 7 of ESA that are summarized in this section may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (Chapter 30–50) or the Fish and Wildlife Coordination Act (FWCA) (Chapter 30–40). Satisfying the requirements of these other statutes, however, does not in itself relieve an OPDIV/STAFFDIV of its obligations to comply with the procedures set forth in 50 CFR part 402 or the substantive requirements of section 7 of ESA. Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA or FWCA, the results should be included in the documents required by those statutes.

E. *Conference Regarding Proposed Species or Critical Habitat.* An OPDIV/STAFFDIV shall confer with the Director of the FWS or the NMFS, as appropriate, on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is an informal process that is designed to assist in identifying and resolving potential conflicts at an early stage in the planning process and can result in advisory recommendations from the Service regarding ways to minimize or avoid adverse effects from the proposed action. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to

completion of an HHS action, the responsible OPDIV/STAFFDIV shall review the action to determine whether formal consultation is required. An OPDIV/STAFFDIV may request that a conference be conducted in accordance with the formal consultation procedures in 50 CFR 402.14.

The conclusions reached during a conference and any recommendations will be documented by the Service and provided to the OPDIV/STAFFDIV. The results of the conference shall be included in the HHS organization's appropriate documentation if the proposed action is being reviewed in accordance with NEPA procedures in Chapter 30–50.

F. *Biological Assessment*

1. *Purpose.* An OPDIV/STAFFDIV shall use the biological assessment in determining whether a conference is required with the Service. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required. The Director may use the results of the biological assessment in (1) determining whether to request the OPDIV/STAFFFDIV to initiate a conference, (2) formulating a biological opinion, or (3) formulating a preliminary biological opinion.

2. *Requirement.* A biological assessment shall be prepared for all major construction activities. The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

3. *Request for information.* The OPDIV/STAFFDIV shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment. Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list. If the Director advises that no listed species or critical habitat may be present, a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, the OPDIV/STAFFDIV must confer with the Service if required under 50 CFR 402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

4. *Contents.* The contents of a biological assessment are at the discretion of the submitter and will depend on the nature of the Federal action. The following may be considered for inclusion:

(a) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally;

(b) The view of recognized experts on the species at issue;

(c) A review of the literature and other information;

(d) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies;

(e) An analysis of alternate actions considered by the Federal agency for the proposed action.

5. *Submission of Biological Assessment.* The OPDIV/STAFFDIV shall submit the completed biological assessment to the Director for review within 180 days after its initiation. The Director will respond in writing within 30 days as to whether or not the Director concurs with the findings of the biological assessment. An OPDIV/STAFFDIV, at its option, may request that formal consultation be initiated concurrently with the submission of the assessment.

G. *Formal Consultation Process for Listed Species and Critical Habitat*

1. *Consultation Requirement.* An OPDIV/STAFFDIV shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in this subsection. An OPDIV/STAFFDIV need not initiate formal consultation if, as a result of the preparation of a biological assessment under 50 CFR 402.12 or as a result of information consultation with the Service under 50 CFR 402.13, the OPDIV/STAFFDIV determines, with the written concurrence of the Director of the Service, that the proposed action is not likely to adversely affect any listed species or critical habitat. Formal consultation shall not be initiated by an OPDIV/STAFFDIV until any required biological assessment has been completed and submitted to the Director in accordance with 50 CFR 402.12.

2. *Contents of Request.* A written request to initiate formal consultation shall be submitted to the Director of the Service and shall include:

(a) A description of the action to be considered;

(b) A description of the specific area that may be affected by the action;

(c) A description of any listed species or critical habitat that may be affected by the action;

(d) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(e) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(f) Any other relevant available information on the action, the affected listed species, or critical habitat.

An OPDIV/STAFFDIV that requests formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat.

H. *Irreversible or Irretrievable Commitment of Resources.* After initiation or reinitiation of consultation required under ESA, and OPDIV/STAFFDIV shall make no irreversible or irretrievable commitment of resources with respect to the proposed action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating ESA. This prohibition remains in force during the consultation process and continues until the requirements of section 7(a)(2) of ESA are satisfied.

Note: The prohibition in this subsection does not apply to the conference requirement for proposed species or proposed critical habitat under section 7(a)(4) of the Act.

I. *Duration and Extension of Formal Consultation.* Formal consultation concludes within 90 days after its initiation unless extended in accordance with 50 CFR 402.14(e). If the Service does not respond within 90 days, the Department may reach its own conclusion with respect to whether the proposed action will jeopardize the continued existence of a species or result in the destruction or adverse modification of a critical habitat.

J. *Issuance of Biological Opinion.* The Service will provide a biological opinion to the OPDIV/STAFFDIV at the end of the consultation process as to whether the proposed action, taken together with cumulative effects, would be likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of a critical habitat. A ''jeopardy'' biological opinion by the Service will include reasonable and prudent alternatives, if any, to the proposed agency action that can be taken by the OPDIV/STAFFDIV to avoid violation of

ESA. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge, there are no reasonable and prudent alternatives. The Service may also formulate discretionary conservation recommendations, if any, which will assist the OPDIV/STAFFDIV in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

The Service's ''no jeopardy'' or ''jeopardy'' biological opinion shall be included in any documentation required under NEPA procedures if the proposed action is being assessed in accordance with NEPA and the procedures in Chapter 30–50.

K. *Termination of Consultation Process.* Formal consultation is terminated with the issuance of the biological opinion or if, during any stage of consultation, an OPDIV/STAFFDIV determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat. If an OPDIV/STAFFDIV determines that its proposed action is not likely to occur, it may terminate the consultation process by written notice to the Service.

L. *Responsibilities After Issuance of Biological Opinion.* Following the issuance of a biological opinion, an OPDIV/STAFFDIV shall determine whether and in what manner to proceed with the action in light of its ESA Section 7 obligations and the Service's biological opinion.

If a jeopardy biological opinion is issued, the OPDIV/STAFFDIV shall notify the Service of its final decision on the action. If the OPDIV/STAFFDIV determines that it cannot comply with the requirements of section 7(a)(2) of ESA after consultation with the Service, it may apply for an exemption. Procedures for exemption applications by Federal agencies and others are found in 50 CFR part 451. No action shall occur unless or until the OPDIV/STAFFDIV has received approval of the exemption.

M. *Emergencies.* The interagency cooperation regulation in 50 CFR part 402 provides that where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedure that the Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies. An OPDIV/STAFFDIV may request expedited consultation by submitting information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. Formal consultation is to be initiated as soon as practicable after the emergency is under control.

N. *Exemptions.* ESA provides procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR part 451, and regulations governing the exemption process are found at 50 CFR parts 450, 452, and 453.

O. *Applicant Procedures.* ESA and the implementing procedures in 50 CFR part 402 provide for participation in the conference and consultation processes by any person (as defined in section 3(13) of the Act) who requires formal approval or authorization from HHS as a prerequisite to conducting the action.

30–40–30 Fish and Wildlife Coordination Act

A. *Purpose.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, provides for equal consideration of wildlife with other features of water resource development programs with a view toward conservation of wildlife resources. The Act requires Federal agencies involved in actions that will result in the control or modification of any natural stream or body of water, for any purpose, to take action to protect the fish and wildlife resources which may be affected by the action and to affirmatively provide development and improvement of the wildlife resources in connection with the proposed action.

B. *Responsibilities and Consultation Requirements*

1. An OPDIV/STAFFDIV shall consult, in accordance with 16 U.S.C. 662, with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the State agency exercising administration over wildlife resources, before taking or approving an action that would control or modify any natural stream or other body of water for any purpose.

2. As part of the consultative process, OPDIVs/STAFFDIVs shall submit to the United States Fish and Wildlife Service and the State wildlife agency the appropriate environmental documentation, if needed for the consultation, that describes the possible effects of the proposed action on a natural stream or body of water.

3. An OPDIV/STAFFDIV shall determine, through the consultative process, the means and measures necessary to conserve wildlife resources by preventing loss of and damage to such resources, as well as providing for the development and improvement of the wildlife resources in connection with the proposed action.

4. OPDIVs/STAFFDIVs shall give full consideration to the report and recommendations of the U.S. Fish and Wildlife Service and to any report of the State agency on the wildlife aspects of a proposed action. Any plans for the proposed action shall include such justifiable means and measures for wildlife purposes as the OPDIV/STAFFDIV finds should be adopted to obtain maximum overall project benefits. All reports and recommendations of the U.S. Fish and Wildlife Service wildlife agencies shall constitute an integral part of any environmental report prepared pursuant to the action.

5. Reports and recommendations of the Secretary of Interior or State wildlife agencies shall be incorporated into any environmental documents that may be associated with the proposed action. 16 U.S.C. 662(b).

6. No further action shall take place pending receipt of a report from the U.S. Fish and Wildlife Service and State wildlife agency.

30–40–40 Floodplain Management

A. *Purpose.* Executive Order 11988, Floodplain Management, 42 FR 26951 (1977), as amended by Executive Order 12148, FR 43239 (1979), 42 U.S.C. 4321 note, directs each Federal agency to avoid the long and short term adverse impacts associated with the occupancy and modification of floodplains, including the direct and indirect support of floodplain development, whenever there is a practicable alternative. Floodplains are those areas identified as such according to a Federal Emergency Management Agency (FEMA) floodplain map. Guidance for implementation of Executive Order 11988 is provided in the U.S. Water Resources Council Floodplain Management Guidelines, 43 FR 6030. See also FEMA's ''Further Advice on Executive Order 11988 Floodplain Management'' (GPO 1987).

B. *Definitions.*

1. *Base Flood.* ''Base Flood'' means that flood which has a one percent of greater chance of occurrence in any given year.

2. *Floodplain.* ''Floodplain'' means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

3. *Critical Action.* ''Critical Action'' means any activity for which even a

slight chance of flooding is too great, *e.g.* elderly housing proposals.

C. *Responsibilities.* Each OPDIV/STAFFDIV has the responsibility under Executive Order 11988 to take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for:

1. Acquiring, managing, and disposing of Federal lands and facilities;

2. Providing Federally undertaken, financed, or assisted construction and improvements; and

3. Conducting Federal activities and programs affected land use, including but not limited to, water and related land resources planning, regulating, and licensing activities.

Each OPDIV/STAFFDIV shall evaluate the potential effects of any actions it may take in a floodplain in accordance with the procedures in this section. It must also ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management.

D. *Floodplain Determination.* Before taking an action, each OPDIV/STAFFDIV shall determine whether the proposed action will occur in a floodplain. OPDIVs/STAFFDIVs shall utilize the Flood Insurance Rate Maps (FIRMs) or the Flood Hazard Boundary Maps (FHBMs) prepared by the Federal Insurance Administration of FEMA to determine if a proposed action is located in a base or critical action floodplain. When a proposed action would be located in an area of predominantly Federal or State land holdings, and FIRM or FHBM maps are not available, OPDIVs/STAFFDIVs shall obtain information from the land administering agency (*e.g.,* Bureau of Land Management or Soil Conservation Service) or from agencies with floodplain analysis expertise.

E. *Integration With NEPA.* OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action in a floodplain in accordance with the procedures for National Environmental Policy Act (NEPA) review in Chapter 30–50. If an environmental assessment (EA) or environmental impact statement (EIS) is required to be prepared for the proposed action, a floodplain assessment, described in 30–40–40D, shall be included in the EA or EIS.

F. *Floodplain Assessment (Executive Order 11988).*

1. *Proposed Action.* The floodplain assessment shall describe the nature and purpose of the proposed action and the reasons for locating the action in the floodplain.

2. *Floodplain Map.* A map of the affected floodplain indicating the location of the proposed action shall be included in the assessment.

3. *High Hazard Areas.* High hazard areas in the floodplain shall be delineated and the nature and extent of the proposed hazard shall be discussed.

4. *Floodplain Effects.* The effects of the proposed action on the floodplain shall be discussed in the assessment. The discussion shall include an evaluation of the long-and short-term effects of the proposed action on people, property, natural and beneficial floodplain values, and any other relevant direct or indirect effects.

5. *Alternatives and Mitigation Measures.* The floodplain assessment shall discuss alternatives to the proposed action that may avoid adverse effects and incompatible development in the floodplain, including the alternatives of no action or location at an alternate site. The assessment shall also discuss measures that mitigate the adverse effects of the proposed action.

6. *Conformity to Applicable State or Local Standards.* The floodplain assessment shall include a statement indicating whether the proposed action conforms to applicable State or local floodplain protection standards.

7. *Flood Insurance Program Standards.* An action taken in a floodplain must incorporate design features consistent with the standards in the Flood Insurance Program of the Federal Insurance Administration to minimize substantial harm to the floodplain.

G. *Public Review.* Circulation of draft environmental impact statements shall include the public and other interested individuals, including concerned Federal, non-Federal and private organizations. Interested parties shall have a period of 60 days for review and comment on draft environmental impact statements.

H. *Secretarial Approval.* No action shall take place without a finding by the HHS Secretary that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 requires siting in a floodplain. The action proposed for Secretarial approval shall be designed to minimize potential harm to or within the floodplain. The Secretary shall approve proposed actions requiring environmental impact statements on projects affecting floodplains.

I. *Notice of Finding.*

1. *Contents.* After Secretarial approval and prior to taking action, an OPDIV/STAFFDIV shall prepare and circulate a notice of finding containing an explanation of why the action is proposed to be located in a floodplain. The notice shall not exceed three pages and shall include a location map. The notice shall include (a) the reasons why the action is proposed to be located in a floodplain; (b) a statement indicating whether the action conforms to applicable State or local floodplain protection standards; and (c) a list of the alternatives considered.

2. *Public Review.* For programs subject to Executive Order 12372, the notice of finding shall be sent to the appropriate state and local reviewing agencies the geographic areas affected. A public review period of 30 days after the issuance of notice of finding shall be allotted before any action is taken.

J. *Licenses, permits, loans, or grants.* Each OPDIV/STAFFDIV shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Adequate provision shall be made for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan, or grant-in-aid programs that an OPDIV/STAFFDIV administers. OPDIVs/STAFFDIVs shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposal in floodplains prior to submitting applications for Federal licenses, permits, loans, or grants.

K. *Authorizaiton or Appropriation Requests.* OPDIVs/STAFFDIVs shall indicate in any requests for new authorizations or appropriations whether the proposed action is in accord with Executive Order 11988 if the proposed action will be located in a floodplain.

30–40–50 Marine Protection, Research, and Sanctuaries Act of 1972

A. *Purpose.* Title III of the Marine Protection, Research and Sanctuaries Act prohibits Federal Departments from taking actions which will affect a Marine Sanctuary unless the Secretary of Commerce certifies that the activity is consistent with the purposes of the Act. Listings of sanctuaries are designated by the Secretary of Commerce and maps of sanctuaries appear in the Federal Register.

B. *Responsibilities and Consultation Requirements.*

1. If the proposed action will create an environmental effect on a marine sanctuary, OPDIVs/STAFFDIVs shall prepare an appropriate environmental document and forward it to the Secretary of Commerce.

2. No further action shall take place unless and until the Secretary certifies that the action is consistent with the purposes of the Act.

30–40–60 Safe Drinking Water Act (Sole Source Aquifers)

A. *Requirement.* Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)), provides for the protection of those aquifers which have been designated by the Administrator of the EPA as the sole or principal source of drinking water for an area. No commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health. A commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

B. *Responsibilities and Consultation Requirements.*

1. OPDIVs/STAFFDIVs shall determine if a proposed action will directly or indirectly affect a sole or principal source aquifer designated by the Administrator of EPA in accordance with section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

2. If the action will affect a designated aquifer, OPDIVs/STAFFDIVs shall send the appropriate environmental document to the EPA Regional Administrator for a determination as to whether the proposed action may potentially contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

3. The action shall not proceed unless and until the Administrator of the Environmental Protection Agency determines that the proposed action will not contaminate the designated aquifer so as to create a significant hazard to public health.

30–40–70 Wetlands Protection

A. *Purpose:* Executive Order 11990, Protection of Wetlands, 42 FR 26961 (1977), as amended by Executive Order 12608, 52 F 34617 (1987), 42 U.S.C. 4321 note, directs each Federal agency to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance such wetlands in carrying out their program responsibilities. Consideration must include a variety of factors, such as water supply, erosion and flood prevention, maintenance of natural systems, and potential scientific benefits.

B. *Definitions.–Wetlands.* The term ''wetlands'' means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas.

C. *Wetlands Determination.* OPDIVs/STAFFDIVs shall utilize information available from the following sources when appropriate to determine the applicability of the wetlands protection requirements of this section:

1. U.S. Department of Agriculture Soil Conservation Service Local Identification Maps;

2. U.S. Fish and Wildlife Service National Wetlands Inventory;

3. U.S. Geological Survey Topographic Maps;

4. State wetlands inventories; and

5. Regional or local government-sponsored wetland or land use inventories.

D. *Responsibilities.* OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action in wetlands in accordance with the procedures for National Environmental Policy Act (NEPA) review in Chapter 30–50. If an environmental assessment (EA) or environmental impact statement (EIS) is required to be prepared for the proposed action, a wetlands assessment, described in 30–40–70E, shall be included in the EA or EIS.

E. *Wetlands Assessment (Executive Order 11990).*

1. *Proposed Action.* The wetlands assessment shall describe the nature and purpose of the proposed action and the reasons for locating the action in the wetlands.

2. *Wetlands Map.* A map of the affected wetlands indicating the location of the proposed action shall be included in the assessment.

3. *Wetlands Effects.* The effects of the proposed action on the wetlands shall be discussed in the assessment. The discussion shall include an evaluation of the long- and short-term effects of the proposed action on the survival, quality, and natural and beneficial values of the wetlands, and any other relevant direct or indirect effects.

4. *Alternatives and Mitigation Measures.* The wetlands assessment shall discuss alternatives to the proposed action that may avoid adverse effects and incompatible development in the wetlands, including the alternatives of no action or location at an alternate site. The assessment shall also discuss measures that mitigate the adverse effects of the proposed action. No further action shall take place until the OPDIV/STAFFDIV makes a decision that the proposed action includes all reasonable measures to minimize harm to the wetlands as a result of the proposed action.

5. *Conformity to Applicable State or Local Standards.* The wetlands assessment shall include a statement indicating whether the proposed action conforms to applicable State or local wetlands protection standards.

F. *Public Review.* Circulation of draft environmental impact statements shall include the public and other interested individuals, including concerned Federal, non-Federal and private organizations. Interested parties shall have a period of 60 days for review and comment on draft environment impact statements.

G. *Secretarial Review.* No further action shall take place until the Secretary of HHS determines that there is no practicable alternative to construction in wetlands and that the proposed action includes all practicable measures to minimize harm to the wetlands. The Secretary shall approve proposed actions requiring environmental impact statements for new construction in wetlands.

H. *Licenses and Permits.* These requirements do not apply to the issuance to individuals of permits and licenses and the allocation of funds made to individuals.

30–40–80 Wild and Scenic Rivers Act

A. *Purpose.* The purpose of the Act is to preserve selected free-flowing rivers, along with their immediate environments, for the benefit of immediate and future generations. These include river components and potential components of the National Wild and Scenic River System and study areas designated by the Secretaries of Agriculture and Interior. (Environmental officers keep a list of these rivers and related study areas). Designations used to describe these components, or parts thereof, include the following: (1) Wild; (2) scenic; and (3) recreational.

B. *Requirement.* Section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1278), provides for the protection of the free-flowing, scenic, and natural values of rivers designated as components or potential components of the National Wild and Scenic Rivers Systems from the effects of construction of any water resources project. The Wild and Scenic Rivers Act provides that no license,

permit, or other authorization can be issued for a Federally assisted water resources project on any portion of a Wild and Scenic River or Study River (nor can appropriations be requested to begin construction of such projects) without prior notice to the Secretary of Agriculture and the Secretary of the Interior, and a determination in accordance with section 7 of the Act. The Secretary of Agriculture and the Secretary of the Interior have issued Federal agency consultation procedures that are codified at 36 CFR part 297.

C. *Definitions.*

1. *Free-flowing.* ''Free-flowing'' is defined by section 16(b) of the Act as ''existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway'' (16 U.S.C. 1286(b)).

2. *Study Period.* ''Study period'' means the time during which a river is being studied as a potential component of the Wild and Scenic Rivers System and such additional time as provided in section 7(b)(ii) of the Act not to exceed 3 additional years during which a report recommending designation is before Congress, or such additional time as may be provided by statute.

3. *Study River.* ''Study river'' means a river and the adjacent area within one quarter mile of the banks of the river which is designated for study as a potential addition to the National Wild and Scenic Rivers System pursuant to section 5(a) of the Act.

4. *Water Resources Project.* ''Water resources project'' means any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063) as amended, or other construction of developments which would affect the free-flowing characteristics of a Wild and Scenic River or Study River.

5. *Wild and Scenic River.* ''Wild and scenic river'' means a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System pursuant to section 3(a) or 2(a)(ii) of the Act.

D. *Responsibilities and Consultation Requirements.* When a proposed action will have an effect upon an environment within or including a portion of a component, potential component, or study area, program personnel shall send a notice to the Secretary of the Interior for review.

E. *Contents of Notice.* The notice shall include the following information:

1. Name and location of affected river;

2. Location of the project;

3. Nature of the permit or other authorization proposed for issuance;

4. A description of the proposed activity; and

5. Any relevant information, such as plans, maps, and environmental studies, assessments, or environmental impact statements.

6. The notice shall also provide any additional factual information that will assist the Secretary in determining whether:

(a) the water resources project will have a direct and adverse effect on the values for which a Wild and Scenic River or Study River was designated, when any portion of the project is within the boundaries of said river; or,

(b) the effects of the water resources project will invade or unreasonably diminish the scenic, recreational, and fish and wildlife values of a Wild and Scenic River, when any portion of the project is located above, below, or outside the Wild and Scenic River; or,

(c) whether the effects of the water resources project will invade or diminish the scenic, recreational, and fish and wildlife values of a Study River when the project is located above, below, or outside the Study River during the study period.

F. *Examples.* The following are examples of circumstances which can affect a river component or study area:

1. Destruction or alteration to all or part of the free-flowing nature of the river;

2. Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting;

3. Deterioration of water quality; or

4. Transfer or sale of property adjacent to an inventoried river without adequate conditions or restrictions for protecting the river and its surrounding environment.

G. *Response.* If the Department of the Interior does not respond within 30 calendar days or states that the proposed action will not directly or adversely affect the area, the Department is in compliance with the review requirements of the Act. However, in those instances where the Department of the Interior does not respond, programs shall take care to always avoid or mitigate adverse effects on river components and study areas.

If the Department of the Interior determines that the proposed action will directly and adversely affect the area, no further action shall take place whenever the proposed action involves the construction of a water resources project.

The above requirements do not apply to types of actions excluded from the review process by appropriate Department of Interior or Agriculture regulations.

H. *Integration with NEPA.* The determination of the effects of a proposed water resources project shall be made in compliance with the National Environmental Policy Act (NEPA). To the extent possible, OPDIVs/STAFFDIVs should ensure that any environmental studies, assessments, or environmental impact statements prepared for a water resources project adequately address the environmental effects on resources protected by the Wild and Scenic Rivers Act, and that the Department of Agriculture is apprised of ongoing analyses so as to facilitate coordination and identification of Wild and Scenic River related issues.

To the extent practicable, impacts on Wild and Scenic River values will be considered in the context of other review procedures as provided by law. OPDIVs/STAFFDIVs are encouraged to consult with the Forest Service in order to identify measures which could eliminate any direct and adverse effects, thereby increasing the likelihood of securing consent.

Subject: National Environmental Policy Act (NEPA) Review

30–50–00 Background

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4370d, establishes policy and requirements governing all Federal Departments and agencies with respect to protecting the environment. This

chapter supplements specific requirements established by NEPA and by the associated implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508). This chapter also establishes Department policy and procedures with respect to the implementation of NEPA and provides guidance to HHS Staff Divisions (STAFFDIVs) and Operating Divisions (OPDIVs) in establishing additional regulations for implementing NEPA that are unique to each OPDIV/STAFFDIV.

NEPA requires all Federal Departments and agencies to assess, as an integral part of their decision making process, the potential environmental impacts of their actions prior to initiation of those actions. NEPA establishes environmental policy, set goals (Section 101), and provides procedures (Section 102) for carrying out the policy. Specifically, Section 102(2)(C) of NEPA requires all agencies of the Federal Government to include an environmental statement ''in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment * * *'' The purpose of this and other requirements is to ensure that environmental information is available to public officials and citizens before Federal agencies make decisions to take actions which could significantly affect the quality of the human environment.

30–50–05 Definitions and Acronyms

A. *CEQ Regulations Definitions.* Definitions that apply to the terms used in this chapter are set forth in the CEQ regulations under 40 CFR part 1508. The terms and the sections of 40 CFR part 1508 in which they are defined follow:

Categorical Exclusion (40 CFR 1508.4)
Cooperating Agency (40 CFR 1508.5)
Cumulative Impact (40 CFR 1508.7)
Effects (40 CFR 1508.8)
Environmental Assessment (EA) (40 CFR 1508.9)
Environmental Document (40 CFR 1508.10)
Environmental Impact Statement (EIS) (40 CFR 1508.11)
Federal Agency (40 CFR 1508.12)
Finding of No Significant Impact (FONSI) (40 CFR 1508.13)
Human Environment (40 CFR 1508.14)
Jurisdiction by Law (40 CFR 1508.15)
Lead Agency (40 CFR 1508.16)
Legislation (40 CFR 1508.17)
Major Federal Action (40 CFR 1508.18)
Mitigation (40 CFR 1508.20)
NEPA Process (40 CFR 1508.21)
Notice of Intent (40 CFR 1508.22)
Proposal (40 CFR 1508.23)
Scope (40 CFR 1508.25)
Significantly (40 CFR 1508.27)

B. *Chapter 30–50 Definitions.* The following terms are defined solely for the purpose of implementing the supplemental procedures provided by this chapter and are not necessarily applicable to any other statutory or regulatory requirements. To the extent that a definition of one of these terms should conflict with a definition in an applicable statute, regulation or Executive Order, that statute, regulation or Executive Order definition shall supersede the GAM definition.

''Department'' means the U.S. Department of Health and Human Services (HHS).

''Pollution Prevention'' includes, but is not limited to, reducing or eliminating hazardous or other polluting inputs, which can contribute to both point and non-point source pollution; modifying manufacturing, maintenance, or other industrial practices; modifying product designs; recycling (especially in-process, closed loop recycling); preventing the disposal and transfer of pollution from one media to another; and increasing energy efficiency and conservation. Pollution prevention can be implemented at any stage—input, use or generation, and treatment—and may involve any technique—process modification, waste stream segregation, inventory control, good housekeeping or best management practices, employee training, recycling, and substitution. Any reasonable mechanism which successfully avoids, prevents, or reduces pollutant discharges or emissions other than by the traditional method of treating pollution at the discharge end of a pipe or stack should, for purposes of this chapter, be considered pollution prevention. (This definition of ''pollution prevention'' has been adopted by CEQ. See Council on Environmental Quality, ''Memorandum to Heads of Federal Departments and Agencies Regarding Pollution Prevention and the National Environmental Policy Act,'' 58 FR 6478 (1993).)

Note: A definition of ''pollution prevention'' that has been developed by the U.S. Environmental Protection Agency is used in Chapters 30–60 through 30–90.

''Responsible official'' means the Secretary, the Departmental decision-maker designated by the Secretary of Health and Human Services or the Secretary's designated representative, or the Head of an OPDIV/STAFF, or an official designated by the Head of an OPDIV/STAFFDIV, or the Federal agency official who makes the decision to irreversibly and irretrievably commit the agency's resources to execute the proposed action.

C. *Acronyms.* The following acronyms are used in this chapter:

CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
EA—Environmental Assessment
EIS—Environmental Impact Statement
EPA—Environmental Protection Agency
FONSI—Finding of No Significant Impact
HHS—U.S. Department of Health and Human Services
NEPA—National Environmental Policy Act of 1969
NOI—Notice of Intent
OPDIV—HHS Operating Division
ROD—Record of Decision
STAFFDIV—HHS Staff Division
U.S.C.—United States Code

30–50–10 Applicability

This chapter applies to all organizational elements of HHS. This chapter applies to any HHS action affecting the quality of the environment of the United States, its territories, or possessions. HHS actions having environmental effects outside of the United States, its territories or possessions are subject to the provisions of Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (1979), 42 U.S.C. 4321 note. HHS guidelines implementing Executive Order 12114 are located at Section 30–50–75.

30–50–15 Responsibilities

All HHS policies and programs will be planned, developed, and implemented so as to achieve the policies declared by NEPA and required by the CEQ regulations to ensure responsible stewardship of the environment for present and future generations.

Environmental impact consideration is an integral part of HHS's planning and decision-making process. For actions initiated by the Department or one of its OPDIVs/STAFFDIVs, the process begins when an issue is identified that requires action under the statutes it administers. The identifying organization also may issue a public call for environmental data or otherwise consult with affected individuals or groups when a contemplated action in which it is or may be involved poses potentially significant environmental impacts.

Assessment of environmental factors continues throughout planning and is integrated with other program planning at the earliest possible time. Assessment of environmental factors includes the identification of the parts of the environment that may be affected by the action, the evaluation of pertinent

environmental data, and the consideration of alternatives consistent with 40 CFR 1502.14.

NEPA and the CEQ regulations establish a mechanism for building environmental considerations into federal agency decision-making. This mechanism will be used to incorporate pollution prevention into the early planning stages of a proposal.

OPDIVs/STAFFDIVs shall determine, utilizing the procedures in the CEQ regulations and this chapter, whether any HHS proposal:

1. Is categorically excluded from preparation of an EIS or an EA (30–50–25; 30–20–40);

2. Requires preparation of an EA (30–50–30);

3. Requires preparation of an EIS (30–50–35).

OPDIVs/STAFFDIVs may choose to prepare a NEPA document for any HHS action at any time to further the purposes of NEPA.

OPDIVs/STAFFDIVs shall determine for each major federal action (hereinafter ''action'') not categorically excluded, the data needed for an environmental assessment and a system for acquiring such data. OPDIVs/STAFFDIVs shall prepare an environmental assessment for each proposed action not categorically excluded and, as a result of its findings prepare a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS).

30–50–20 Purpose, Content, and Availability of Environmental Documents

Sections 30–50–40 through 30–50–65 describe the environmental documents that may be required during the process of considering the environmental aspects of an action. These sections describe the various types of NEPA documents including their purposes and contents. OPDIVs/STAFFDIVs may publish in the **Federal Register** additional requirements for the preparation of environmental documents under their responsibility. Data and information that are protected from disclosure by 18 U.S.C. 1905 or 21 U.S.C. 331(j) or 360j(c) or other applicable laws shall not be included in environmental documents prepared under this chapter. When such data and information are pertinent to the environmental review of a proposed action, an applicant or petitioner shall submit such data and information separately as a confidential section of the application or petition, but shall summarize the confidential data and information in the environmental document to the extent possible.

30–50–25 Actions That May Be Excluded From the Requirement To Prepare an Environmental Assessment or an Environmental Impact Statement

Categorical Exclusions. Actions within a class that individually or cumulatively have been determined under Section 30–20–40 not to significantly affect the quality of the human environment ordinarily are excluded from the preparation of an EA or EIS. To find that a proposed action is categorically excluded, OPDIVs/STAFFDIVs shall determine if:

1. The proposal fits within a class of actions described in 30–20–40 or a categorical exclusion developed by the OPDIV/STAFFDIV in accordance with 30–20–30; and

2. No extraordinary circumstances are related to the proposed action that may affect the significance of the environmental effects of the proposal.

30–50–30 Other Actions Requiring Preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)

Any proposed action of a type specified in this section ordinarily requires the preparation of an EA, unless it qualifies for exclusion under Section 30–20–40. Such actions include:

1. Major recommendations or reports made to Congress on proposals for legislation in instances where the Department or OPDIV/STAFFDIV has primary responsibility for the subject matter involved; and

2. Actions Involving Extraordinary Circumstances. As provided by 40 CFR 1508.4, and EA or an EIS will be required for any specific action that ordinarily is excluded if the OPDIV/STAFFDIV has sufficient evidence to establish that the specific proposed action may significantly affect the quality of the human environment. OPDIVs/STAFFDIVs shall prepare an EA when there are extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Extraordinary circumstances include the following:

(a) Unique situations presented by specific proposals, such as scientific controversy about the environmental effects of the proposal;

(b) Uncertain effects or effects involving unique or unknown risks; or

(c) Unresolved conflicts concerning alternate uses of available resources within the meaning of Section 102(2)(E) of NEPA.

3. Actions Involving Cumulative Impacts. The CEQ regulations require consideration of three types of actions when determining the scope of environmental impact statements. These actions are: (1) Connected actions; (2) cumulative actions; and (3) similar actions. An action may have three types of impacts: (1) Direct; (2) indirect; or (3) cumulative. A determination that an action is categorically excluded will be precluded if the action is connected to another action that may require an environmental impact statement or when viewed with other proposed actions may have cumulatively significant impacts. CEQ defines ''connected actions'' and ''cumulative actions'', at 40 CFR 1508.25, as follows:

(a) *Connected Actions.* ''Connected'' actions means actions that are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements;

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; or

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(b) *Cumulative Actions.* ''Cumulative actions'' are actions which, when viewed with other proposed actions, have cumulatively significant impacts and should therefore be discussed in the same impact statement.

30–50–35 Categories of Actions Requiring Preparation of an Environmental Impact Statement (EIS)

EIS's are prepared for HHS organization actions when:

1. Evaluation of data in an Environmental Assessment (EA) leads to a finding by the responsible official that a proposed action may significantly affect the quality of the human environment under the criteria in 40 CFR 1508.14 and 1508.27; or

2. Initial evaluation by the responsible official of any action, including any action for which an EA would otherwise be required, establishes that significant environmental effects may be associated with one or more of the probable courses of action being considered.

30–50–40 Environmental Assessments

A. *Purpose.* As defined by CEQ in 40 CFR 1508.9, an Environmental Assessment (EA) is the public document in which environmental and other pertinent information on a proposed action are presented, providing a basis for a determination whether to prepare an Environmental Impact Statement (EIS) or a Finding or Significant Impact (FONSI).

An EA shall be prepared for each action not excluded pursuant to Section

30–20–40. The EA shall be a complete, objective, and well-balanced document that allows the public to understand the HHS organization's decision.

B. *Contents.* The EA shall:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or FONSI;

2. Briefly discuss the need for the proposed action;

3. Describe the potential environmental impacts of the proposed action;

4. Describe measures, including suitable pollution prevention techniques, which would be taken to avoid or mitigate potential environmental impacts associated with the proposed action;

5. Describe in detail the environmental impact of reasonable alternatives to the proposed action (including no action), particularly those that will enhance the quality of the environment and avoid some or all of the adverse environmental effects of the proposed action;

6. Include a comparative analysis of environmental benefits and risks of the proposed action and alternatives, identifying the preferred action based on environmental factors;

7. Include, if appropriate, a floodplain/wetlands assessment prepared under Sections 30–40–40 or 30–40–70 and analyses needed for other environmental determinations;

8. List those persons preparing the assessment and their areas of expertise and persons and agencies consulted; and

9. List complete citations for all referenced documents and include copies of referenced articles that are not generally available.

Consistent with 40 CFR 1500.4(j) and 1502.21, EAs may incorporate by reference information presented in other documents that are reasonably available to HHS and to the public within the time to comment.

OPDIVs/STAFFDIVs may specify formats and additional content of EAs that are required to be prepared for proposed actions within their responsibility. A notice of the availability of OPDIV/STAFFDIV formats and instructions for preparation of environmental assessments shall be published in the **Federal Register**.

C. *Criteria.* In determining whether a proposed action will or will not ''significantly affect the quality of the human environment.'' OPDIVs/STAFFDIVs should evaluate the expected environmental consequences of a proposed action by means of the following steps, utilizing the guidance provided in 40 CFR 1508.27:

Step One—Identify those things that will happen as a result of the proposed action. An action normally produces a number of consequences. For example, a grant to construct a hospital may terminate human services; will involve destruction and construction; will provide a service. Actions may be connected, cumulative, or similar (see 40 CFR 1508.25(a)).

Step Two—Identify the ''human environments'' that the proposed action will affect. In accordance with 40 CFR 1508.27, the significance of an action must be analyzed in several contexts, such as society as a whole (human, national), the affected region, the affected interests, and the locality. The significance of an action will vary with the setting of the proposed action. Environments may include terrestrial, aquatic, subterranean, and aerial environments, such as islands, cities, rivers or parts thereof.

Step Three—Identify the kinds of effects that the proposed action will cause on these ''human environments.'' A change occurs when a proposed action causes the ''human environment'' to be different in the future than it would have been, absent the proposed action. These changes involve the introduction of various ''resources'' (including those often characterized as waste).

Example: A decrease in the amount of soil entering a stream; the introduction of a new chemical compound to natural environments.

In addition to organisms, substances, and compounds, the term ''resources'' include energy (in various forms), elements, structures, and systems (such as a trash collection service in a city). Present environmental impacts and reasonably foreseeable future environmental impacts must be considered.

In identifying changes caused by the proposed action, OPDIVs/STAFFDIVs should identify the magnitude of the changes likely to be caused within smaller and larger ''human environments'' affected (*e.g.,* part of a city, the whole city, the metropolitan area).

The impacts resulting from the proposed action may be direct, indirect, or cumulative (see 40 CFR 1508.25(c)).

Step Four—Identify whether these changes are significant. The following points should be considered in conjunction with 40 CFR 1508.8 (effects), 40 CFR 1508.14 (human environment), and 40 CFR 1508.27 (''significantly'') in making a decision concerning significance:

- A change in the characterization of an environment is significant (*e.g.,* from terrestrial to aquatic);
- The establishment of a species in or removal of a species from an environment may be significant;
- The more dependent an environment becomes on external resources, the larger the magnitude of change (and the more likely it is to be significant);
- The larger the environment under consideration, the lower the amount of change needed before the change may be significant.

The CEQ regulations in 40 CFR 1508.27 describe a number of factors that should be considered in evaluating severity (intensity) of an impact. OPDIVs/STAFFDIVs should consider the cumulative effect of the proposed action. An action may be individually insignificant but cumulatively significant when the action is related to other actions. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

Step Five—Consider alternatives to the proposed action. Alternatives to the proposed action include:

- No action alternative;
- Other reasonable courses of action; and
- Mitigation measures.

30–50–45 Findings of No Significant Impact

A. *Purpose.* A Finding of No Significant Impact (FONSI) is a document prepared by an OPDIV/STAFF that briefly presents the reasons why an action, not otherwise excluded (see 30–20–40), will not have a significant effect on the human environment and for which, therefore, an EIS will not be prepared (40 CFR 1508.13).

B. *Responsibilities.* The responsible official will evaluate the information contained in the EA to determine whether it is accurate and objective, whether the proposed action may significantly affect the quality of the human environment, and whether an EIS will be prepared. The responsible official will examine the environmental effects of the proposed action and the alternative courses of action, select a course of action, and ensure that any necessary mitigating measures are implemented as a condition for approving the selected course of action. When the responsible official has determined that the proposed action will not have a significant effect on the

human environment, the responsible official will sign the FONSI, thereby establishing that the official approves the conclusion not to prepare an EIS for the action under consideration.

A FONSI shall be prepared only if the related EA supports the finding that the proposed action will not have a significant effect on the quality of the human environment. The environmental assessment (or a summary of the EA) shall be included as a part of the FONSI.

If significant effects requiring the preparation of an EIS are identified, a Notice of Intent (NOI) to prepare an EIS will be published in the **Federal Register** in accordance with § 30–50–55. If an EA does not support a FONSI, an EIS shall be prepared and a Record of Decision (ROD) issued before action is taken on the proposal addressed by the EA, except as permitted under 40 CFR 1506.1.

C. *Contents.* The FONSI shall include the following:

1. The supporting EA or a summary of it (including a brief description of the proposed action and alternatives considered in the EA, environmental factors considered, projected impacts);

2. References to any other related environmental documents (40 CFR 1501.7(a)(5));

3. Any mitigation measures that will render the impacts of the proposed action not significant;

4. Any findings required by Sections 30–40–40 or 30–40–70 in conneciton with floodplain or wetlands environmental reviews;

5. The date of issuance; and

6. The signature of the approving official.

If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

D. *Proposed Action.* An OPDIV/STAFFDIV may proceed with the proposed action after the FONSI is issued, subject to any mitigation measures identified in the FONSI that are essential to render the impacts of the proposed action not significant.

30–50–50 Public Availability of Environmental Assessments and Findings of No Significant Impact

A. *Public Availability of FONSI and EA.* OPDIVs/STAFFDIVs shall make a FONSI and its related EA available to the public as provided in the CEQ regulations at 40 CFR 1500.6, 1501.4(e)(1) and 1506.6, including making copies available for inspection in public reading rooms or other appropriate locations for a reasonable time.

B. *Public Availability of FONSI.* For a limited number of actions, the proposed FONSI and its related EA will be made available for public review (including review by state and area-wide information clearinghouses) for 30 days before a final determination is made whether to prepare an EIS and before the action may begin. This procedure will be followed when the proposed action is, or is closely similar to, one that normally requires an EIS or when the proposed action is one without precedent (40 CFR 1501.4(e)). OPDIVs/STAFFDIVs may issue a proposed FONSI for public review and comment in other situations as well.

C. *Revised FONSI.* If a FONSI is revised, it is subject to the public availability requirements of this section.

30–50–55 Notice of Intent and Scoping

A. *Purpose.* The Notice of Intent (NOI) notifies the public that an EIS will be prepared and considered (40 CFR 1508.22). This determination may be based on information contained in an EA or on other available information which indicates that potentially significant effects may be associated with a proposed action.

B. *Responsibilities.* When an environmental assessment indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project, an NOI shall be published in the **Federal Register** as soon as practicable after the responsible official has made a decision to prepare an EIS and before the scoping process. When the responsible official finds that there will be a lengthy period between the decision to prepare an EIS and the time of actual preparation, the NOI may be published at a reasonable time in advance of preparation of the draft EIS.

C. *Contents.* As required by 40 CFR 1508.22, the NOI will:

1. Describe the proposed action and possible alternatives;

2. Describe the proposed scoping process, which may include a request for information or suggestions regarding the scope of the EIS;

3. State whether a public scoping meeting will be held, and the location, date, and time of such meeting; and

4. State the identification of persons within the HHS organization to contract for information about the proposed action and the EIS.

D. *Scoping.* Publication of the NOI in the **Federal Register** begins the scoping process. Scoping is an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action (40 CFR 1501.7). The scoping process for an EIS shall be undertaken in accordance with the procedures in 40 CFR 1501.7. An NOI shall be made available to the public in accordance with 40 CFR 1500.6 and 1506.6. OPDIVs/STAFFDIVs shall allow a minimum of 30 days for the receipt of public comments during the scoping process.

E. *Public Scoping Meetings.* A public scoping meeting normally will be conducted whenever an NOI has been published, except that a public scoping process is optional for supplemental EISs (40 CFR 1502.9(c)(4)). Public scoping meetings shall not be held until at least 15 days after public notification. 40 CFR 1506.6(c)(2).

F. *Scoping Issues.* Pollution prevention should be considered an issue in the scoping process because it will encourage those outside the HHS organization to provide insights into pollution prevention technologies that might be available for use in connection with the proposal or its possible alternatives.

30–50–60 Environmental Impact Statements

A. *General.* An OPDIV/STAFFDIV responsible for carrying out a specific action is responsible for preparation of an EIS, if one is required. The final text of an EIS will be prepared by the responsible official after comments on the draft statement have been addressed and received full consideration in the OPDIV/STAFFDIV's decision-making process.

B. *Cooperation With Other Federal Agencies.* In cases in which HHS participates with other Federal agencies in a proposed action, one agency will be the lead agency and will supervise preparation of an EIS if one is required. A Memorandum of Understanding among all involved agencies may be useful in summarizing the relative responsibilities of all involved agencies. Lead agency responsibility should be determined in accordance with 40 CFR 1501.5.

HHS will act as a cooperating agency if requested. HHS may request to be designated as a cooperating agency if proposed actions may affect areas of HHS responsibility. As a cooperating agency, HHS will comply with the procedures in 40 CFR 1501.6(b) to the extent possible, depending on program commitments and the availability of funds and personnel.

Within the Department, lead or cooperating agency responsibility will be exercised by the OPDIV/STAFFDIV that is responsible for the subject matter of the proposed action. If a proposed action affects more than one OPDIV/

STAFFDIV, the Secretary will designate one of the OPDIVs/STAFFDIVs to be responsible for coordinating the preparation of required environmental documentation.

C. *Cooperation With States.* In cases in which an OPDIV/STAFFDIV participates with state and local governments in a proposed action, the OPDIV/STAFFDIV is responsible for preparing an EIS. However, a state agency may jointly prepare the statement if it has state-wide jurisdiction and HHS participates in its preparation, including soliciting the views or other state or Federal agencies affected by the statement.

D. *Proposals for Legislation.* A legislative EIS must be prepared for any legislative proposal developed by HHS which would significantly affect the quality of the human environment. A legislative EIS shall be submitted to Congress at the time the legislation is proposed to Congress or up to 30 days afterwards. Except as provided in 40 CFR 1506.8, a draft EIS shall accompany a legislative proposal. A scoping process is not required for a legislative EIS.

E. *Responsibilities.* Except for proposals for legislation, OPDIVs/STAFFDIVs shall prepare EISs in two stages: Draft and final. The responsible official will ensure that:

1. All reasonable alternatives (including no action) are rigorously explored and objectively evaluated,

2. There is balancing of environmental impacts with the OPDIV's/STAFFDIV's objective in choosing an appropriate course of action;

3. Appropriate mitigation measures are included in the proposed action or alternatives;

4. Diligent efforts are made to provide an opportunity for the public to participate in the environmental review process;

5. Comments on a draft EIS are carefully assessed and considered; and

6. The preferred alternative is the alternative which the OPDIV/STAFFDIV believes would fulfill its statutory mission and responsibilities giving consideration to economic, environmental, technical and other factors.

F. *OPDIV/STAFFDIV Action.* Except as provided at 40 CFR 1506.1 and 1506.10(b) and this section, no HHS OPDIV/STAFFDIV decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. If the subject of a final statement is also the subject of a regulation published in the **Federal Register**, this requirement may be met by simultaneous publication of the regulation and of a Notice of Availability of the final statement and the Record of Decision, provided that the regulation becomes effective no sooner than 30 days after the date of publication, unless such regulation is subject to formal internal appeal. For regulations subject to formal internal appeal, the period for formal appeal of the decision and the 30 day period may run concurrently.

G. *Record of Decision.* A Record of Decision (ROD) shall be prepared by the responsible official when an HHS organization decides to take action on a proposal covered by an EIS. See 40 CFR 1505.2. No action shall be taken until the decision has been made public, except as provided at 40 CFR 1500.6 and 1506.1. The contents of a ROD are specified in 30–50–65. (See further discussion in 30–50–65)

H. *Emergency Actions.* There are certain HHS organization actions which, because of their immediate importance to the public health, make adherence to the requirements of the CEQ regulations and this section concerning minimum periods of public review impractical. Compliance with the requirements for environmental analysis under NEPA is impossible where emergency circumstances require immediate action to safeguard the public health. For such actions, the responsible official shall consult with the CEQ about alternative arrangements before the action is taken, or after the action is taken if time does not permit prior consultation with CEQ. OPDIVs/STAFFDIVs shall, in accordance with 40 CFR 1506.11, limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. An OPDIV/STAFFDIV shall document, including publishing a notice in the **Federal Register**, an emergency action covered by this paragraph within 30 days after such action occurs. The documentation shall identify any adverse impacts from the actions taken; any further mitigation that is necessary; and any NEPA documents that may be required.

I. *Monitoring.* As described in 40 CFR 1505.3, an OPDIVISTAFFDIV may provide for monitoring to ensure that its decisions, any mitigating measures, and other conditions are carried out.

30–50–65 Contents of an EIS

A. *Format.* The format used for an EIS shall encourage good analysis and clear presentation of the proposed action, alternatives to the proposed action, their environmental effects and, when there is an interrelationship between economic or social and natural or physical environmental effects, their economic, and social impacts. See 40 CFR 1508.14. The CEQ regulations (40 CFR part 1502) provide detailed requirements for the preparation of an EIS.

The following CEQ recommended standard format for EIS's (40 CFR 1502.10) shall be used unless the responsible official determines that there is a compelling reason to do otherwise:

1. Cover Sheet;
2. Summary;
3. Table of Contents;
4. Purpose of and need for action;
5. Alternatives including proposed action;
6. Affected environment;
7. Environmental consequences;
8. List of preparers;
9. List of agencies, organizations, and persons to whom copies of the EIS are sent;
10. Index; and
11. Appendices (if any).

If a different format is used, it shall include paragraphs 1–3, 8–10, and shall include the substance of paragraphs 4–7 and 11, in any appropriate format.

B. *Cultural or Natural Assets.* If a proposed action will also affect a cultural or natural asset, the EIS shall incorporate the material required by the applicable statute or Executive Order.

C. *Pollution Prevention.* Pollution prevention should be an important component of mitigation of the adverse impacts of a Federal action. To the extent practicable, pollution prevention considerations should be included in the proposed action and in the reasonable alternatives to the proposal, and should be addressed in the environmental consequences section of the EIS (40 CFR 1502.14(f), 1502.16(h), and 1508.20).

D. *Draft EIS.* Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process and shall satisfy to the fullest extent possible the requirements established for final EISs. All substantive comments received during the comment period held as part of the public scoping process shall be considered in determining the scope of the EIS. The draft statement should discuss all major points of view on the environmental impacts of the alternatives, including the proposed action.

E. *Final EIS.* A final EIS shall be prepared following the public comment period and hearing on the draft EIS. The HHS organization's responses to comments shall be made in accordance with 40 CFR 1503.4. A final EIS shall contain any additional relevant

information gathered after the publication of the draft EIS, a copy of or a summary of oral and written comments received during the public review of the draft EIS, and the HHS organization's responses to the comments. Any responsible opposing view that was not adequately discussed in the draft statement shall be addressed in the final EIS. A final EIS shall also include any mitigation measures necessary to make the recommendation alternative environmentally acceptable and any findings required by Sections 30–40–40 or 30–40–70 in connection with floodplain or wetlands environmental reviews.

F. *Consideration of Comments on the Draft EIS.* Comments received on the draft EIS shall be carefully assessed and considered. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided by 40 CFR 1503.4.

G. *Supplemental Statement.* OPDIVs/STAFFDIVs shall prepare supplements to either draft or final statements if there are substantial changes in the proposed action which are relevant to environmental concerns bearing on the proposed action, if significant new information becomes available, or new circumstances occur. Preparation and circulation of supplements is the same as that for draft and final EISs.

H. *Record of Decision.* When an OPDIV/STAFFDIV reaches a decision on a proposed action after preparing an EIS, the responsible official shall prepare a concise public record of decision which includes:

1. The decision;

2. All alternatives considered, specifying the alternative or alternatives which were considered to be environmentally preferable;

3. A discussion of factors which were involved in the decision, including any essential considerations of national policy which were balanced by the organization in making its decision and a statement of how those considerations entered into its decision;

4. A statement of whether all practicable means to avoid or minimize potential environmental harm from the alternative selected have been adopted, and if not, why they were not;

5. A description of mitigation measures that will be undertaken to make the selected alternative environmentally acceptable;

6. A discussion of the extent to which pollution prevention is included in the decision and how pollution prevention measures will be implemented; and

7. A summary of any monitoring and enforcement program adopted for any mitigation measures.

30–50–70 Public Involvement and Circulation of Environmental Impact Statements

A. *Public Notice.* The public has the opportunity to offer comments and otherwise participate in the NEPA process as set forth in 40 CFR 1506.6 from the time the decision is made to prepare an EIS. A Notice of Intent (30–50–55) to prepare an EIS is published in the **Federal Register** and serves as the first public notification that an EIS will be prepared. The scoping process (30–50–55), as announced in the Notice of Intent, allows the public, Indian tribes, Federal agencies, States, and local governments to participate in determining the issues to be considered in the EIS.

OPDIVs/STAFFDIVS shall make diligent efforts to involve the public in the environmental review process by providing public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected. The responsible official shall ensure that public notice is provided for in accordance with 40 CFR 1500.6 and 1506.6(b). Notice shall be made through direct mail, the **Federal Register,** local media, or other means appropriate to the scope, issues, and extent of public concern. In all cases, notice shall be given to those who have requested it on an individual action. Public notice shall include the name and location of a contact official through whom additional material may be obtained. EPA will publish in the **Federal Register** a Notice of Availability of HHS draft and final EISs.

OPDIVs/STAFFDIVs must give public notice in the following instances:

1. Prior to preparing a draft statement in order to solicit public participation; and

2. Prior to any public hearings.

B. *Public Hearings.* OPDIVs/STAFFDIVs shall hold public hearings as part of the NEPA environmental review process when hearings will assist substantially in forming environmental judgments. The hearings shall be conducted in a manner that is consistent with OPDIV/STAFFDIV program requirements. The responsible official shall conduct a public hearing on a draft EIS and shall ensure that the draft EIS is made available to the public and the hearing announced at least 15 days in advance of the hearing. The announcement shall identify the subject of the draft EIS and include the location, data, and time of the public hearing.

C. *Availability of Draft EIS.* Draft EISs will be prepared, forwarded to EPA for filing, and made available to the public early enough in the consideration of the proposed action to permit meaningful review of the environmental issues involved. A draft EIS will be sent to any party having an interest in the document, and will be available to the public upon request for the purpose of receiving substantive comment, corrections, and additional information on the issues covered by the statement. Copies of draft statements shall be provided to:

1. U.S. Environmental Protection Agency;

2. Council on Environmental Quality;

3. Other Federal agencies having related special expertise or jurisdiction by law;

4. Appropriate local and national organizations;

5. Appropriate State and local agencies, including those authorized to develop and enforce environmental standards;

6. Indian tribes, as appropriate, and

7. Others requesting a copy of the draft statement.

D. *Comments on Draft EIS.* After preparing a draft EIS and before preparing a final EIS, the responsible official shall obtain the comments of Federal agencies, Indian tribes, State and local government agencies, and the public in accordance with 40 CFR 1503.1. The responsible official shall respond to comments in the final EIS in accordance with 40 CFR 1503.4. There shall be a 45-day minimum comment period for a draft EIS after EPA publishes a Notice of Availability of the document in the **Federal Register** (40 CFR 1506.10(c)). Procedures for the preparation and circulation of a supplemental statement are contained in 30–50–65G.

E. *Proposed Rulemaking.* If the subject of a draft EIS is also the subject of a notice of proposed rulemaking, the **Federal Register** notice of proposed rulemaking will state that the draft EIS is available upon request, and will solicit comments from all interested persons.

F. *Final EIS.* Copies of final statements shall be provided in accordance with the list subsection C and to all agencies, persons, or organizations who submitted comments regarding the draft statement. Copies of each final EIS will be available upon request, and the responsible HHS organization will make copies of the final statement available for public inspection in public reading room(s).

G. *Record of Decision.* The responsible official shall publish the ROD in the **Federal Register** and disseminate the ROD to the public as

provided in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c).

30–50–75 Environmental Effects Abroad of Major Agency Actions

A. *Consideration of Environmental Effects.* In accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (1979), 42 U.S.C. 4321 note, the responsible official shall consider the environmental effects abroad of a major action by the Department or one of its OPDIVs/STAFFDIVs, including whether the action involves:

1. Potential environmental effects on the global commons and areas outside the jurisdiction of any nation, *e.g.,* oceans, Antarctica, and the upper atmosphere;

2. Potential environmental effects on a foreign nation not participating with or otherwise involved with the United States and not otherwise involved in an HHS organization activity;

3. The export of products (or emissions or effluent) that in the United States are prohibited or strictly regulated because their effects on the environment create a serious public health risk; or

4. Potential environmental effects on natural and ecological resources of global importance designated under the Executive Order.

Before deciding on any action falling into the categories specified in subsection A of this section, the responsible official shall determine in accordance with Section 2–3 of the Executive Order whether such actions may have a significant environmental effect abroad.

B. *Type of Environmental Review.* If the responsible official determines that an action may have a significant environmental effect abroad, the responsible official shall determine in accordance with Section 2–4(a) and (b) of the Executive Order whether the subject action calls for:

1. An EIS;

2. A bilateral or multilateral environmental study; or

3. A concise environmental review.

C. *Preparation of Environmental Documents.* In preparing environmental documents under this section, the responsible official shall:

1. Determine, as provided in Section 2–5 of the Executive Order, whether proposed actions are subject to the exemptions, exclusions, and modification in contents, timing, and availability of documents; and

2. Coordinate all communications with foreign governments concerning environmental agreements and other arrangements in implementing the Executive Order.

30–50–80 Reviewing External Environmental Impact Statements

HHS has a responsibility under section 102(2)C of NEPA to review and comment on draft EISs developed by other Federal agencies. In accordance with 40 CFR 1503.2, HHS must comment on each EIS on issues for which it has ''jurisdiction by law or special expertise.''

A. *Jurisdiction by Law.* An OPDIV/STAFFDIV reviewing a draft EIS should review each alternative action discussed in an EIS in terms of the Departments statutory responsibilities. For example, the reviewer should examine:

1. Potential effects on the delivery or quality of health, social, or welfare services;

2. Potential effects associated with the manufacture, transportation, use, storage, and disposal of chemicals or other hazardous or radioactive materials;

3. Potential changes in plant or animal populations (This includes examination of the potential effects the proposed action may have on human health. Changes in natural predator populations may upset the ecological balance to the extent that an increased incidence of morbidity or mortality will occur unless offsetting safeguards are instituted); and

4. Potential changes in the physical environment that could affect human health or welfare (*e.g.,* air pollution, change in land use). (This shall also include an examination of the availability and quality of water, sewage, and solid waste disposal facilities.)

B. *Jurisdiction by Special Expertise.* Individuals reviewing EISs may comment, in addition, in areas beyond their immediate job responsibilities when they have special expertise which may be appropriate. For example, a veterinarian employed in a disease prevention program can comment on an EIS discussion about the effects of a forestry project on animal populations.

C. *Types of Comments.* Comments on an EIS or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both. A reviewer's comment on an external EIS can address one or more of the following:

1. That data are missing or inaccurate;

2. That the organization of the EIS precludes a valid review;

3. That the projections or descriptions of effects are not complete or are inaccurate;

4. That the reviewer does not concur with the projections (stating reasons);

5. That certain safeguards will lessen the extent of an effect or the magnitude of an impact;

6. A preference for an action alternative (or no action); or

7. An objection to a federal agency's preferred alternative (if one is identified in the draft EIS) and recommend adoption of new or existing alternatives.

Objections to a federal agency's alternative should be lodged on the basis of the direct or indirect effects on HHS programs or mission. When an objection or reservation about the proposal is made on grounds of environmental impacts, an OPDIV/STAFFDIV shall specify the mitigation measures it considers necessary to allow it to grant or approve applicable permit, license, or related requirements or concurrences (40 CFR 1503.3).

If a lead federal agency's predictive methodology is criticized, the OPDIV/STAFFDIV should describe the alternative methodology which it prefers and the rationale for its preference. An OPDIV/STAFFDIV shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, an OPDIV/STAFFDIV shall specify any additional information it needs to comment adequately on the draft statements analysis of significant site-specific effects associated with the granting or approving of necessary Federal permits, licenses, or entitlements.

D. *Resolution of Comments.* If an OPDIV/STAFFDIV objects to all or part of a Federal agency's proposed action and, after consultation with the agency, is unable to resolve its differences, it shall determine if the proposed action meets the criteria for referral in 40 CFR 1504.2. If the criteria are met, the OPDIV/STAFFDIV head shall refer the objection to CEQ within 25 days of the date that the final EIS is made available to EPA in accordance with 40 CFR 1504.3.

Subject: Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) Requirements

30–60–00 Background
30–60–05 Applicability
30–60–10 Responsibilities
30–60–20 Emergency Planning
30–60–30 Notification of Release of Extremely Hazardous Substance
30–60–40 Material Safety Data Sheet Reporting
30–60–50 Emergency and Hazardous Chemical Inventory Reporting
30–60–60 Treatment of Mixtures in MSDS

30–60–00 Background

EPCRA was enacted in 1986 as Title III of the Superfund Amendments and Reauthorization Act (SARA), Pub. L. No. 99–499, 100 Stat. 1729 (codified at 42 U.S.C. 11001–11050 (1988)). Although they are sometimes connected by their emergency notification and reporting requirements, EPCRA is a separate act from the ''Superfund'' law or, as it is officially titled, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

EPCRA's provisions form two primary programs: (1) emergency planning, and (2) community right-to-know. EPCRA establishes a mechanism for providing the public with important information on the hazardous and toxic chemicals in their communities, and it creates emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances. The law requires local communities to prepare plans for dealing with emergencies relating to the release of extremely hazardous substances from facilities within those communities. EPCRA also provides the public and local and state governments with the right to obtain information concerning the types, amount, location, storage, use, disposition, and possible health effects from the release of hazardous and extremely hazardous substances from facilities that are in their communities.

Facilities that are subject to EPCRA are required to provide information and reports to EPA and state and local groups. Five distinct reporting requirements are contained in EPCRA:

1. Emergency planning (30–60–20);
2. Notification of release (30–60–30);
3. Material safety data sheet submission (30–60–40);
4. Emergency and hazardous chemical inventory reporting (30–60–50), and
5. Toxic chemical release reports (30–60–70).

Each of these reporting requirements and other facility responsibilities are described in the following sections.

30–60–05 Applicability

A. *Executive Order 12856.* EPCRA applies to ''persons''. The term ''person'' is defined in the act to include individuals, partnerships, corporations, states, and municipalities. The definition does not cover most United States government agencies. EPCRA is made applicable to federal agencies by Executive Order 12856. E.O. 12856 incorporates by reference all definitions found in EPCRA and EPA implementing regulations, except that it modifies the term ''person'' to include Federal executive agencies as defined in 5 U.S.C. 105 (1988). Executive agencies are Executive Departments, government corporations, and independent establishments of the United States. HHS is an executive Department and is subject to EPCRA because of Executive Order 12856.

B. *Agency Facilities.* Executive Order 12856 provides that EPCRA applies to all Federal executive agencies that either own or operate a ''facility'' as that term is defined in EPCRA, if such facility meets the statute's threshold requirements for compliance. The statutory definition of facility is:

> 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). For purposes of [emergency release notification], the term includes motor vehicles, rolling stock, and aircraft (42 U.S.C. 11049(4)).

EPA regulations revise the statutory definition of facility to include ''manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.'' (40 CFR 355.20, 370.2). The purpose of the revision was to clarify that the definition applies to certain subsurface structures.

C. *Covered Facilities.* Each Federal agency must apply all of the provisions of Executive Order 12856 to each of its covered facilities, including those facilities which are subject, independent of the Executive order, to the provisions of EPCRA (*e.g.,* certain Government-owned/contractor-operated facilities (GOCO's) for chemicals meeting EPCRA thresholds). Executive Order 12856 does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad. EPA may be consulted to determine the applicability of Executive Order 12586 to particular OPDIV/STAFFDIV facilities.

D. *Preliminary List of Covered Facilities.* The Secretary was required by Executive Order 12856 to provide the EPA Administrator by December 31, 1993, with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA.

30–60–10 Responsibilities

A. *HHS.* Executive Order 12856 makes the Secretary responsible for ensuring HHS compliance with emergency planning and community right-to-know provisions established pursuant to all implementing regulations issued pursuant to EPCRA. The Order requires Federal agencies to report in a public manner toxic chemicals entering any waste stream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification. The objective of Executive Order 12856 is to make the Federal Government a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals.

B. *OPDIVs/STAFFDIVs.* The head of each OPDIV/STAFFDIV is responsible for compliance with the provisions of EPCRA as described in this chapter and Executive Order 12856. An OPDIV/STAFFDIV must comply with provisions set forth in sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of any applicable guidance as provided by EPA. Dates for compliance with individual sections of EPCRA vary and are set forth in the appropriate sections below. Executive Order 12856 provides that the compliance dates are not intended to delay implementation of earlier timetables already agreed to by Federal agencies and are inapplicable to the extent they interfere with those timetables. Compliance with EPCRA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person.

C. *Agency Contractors.* Executive Order 12856 requires each Federal agency to provide, in all appropriate future contracts, for the contractor to supply all information the Federal agency deems necessary for it to comply with the order. To the extent that compliance with the Executive Order is made more difficult due to lack of information from existing contractors, OPDIVs/STAFFDIVs must take practical steps to obtain the information needed to comply with the Executive Order from such contractors. Nothing in Executive Order 12856 alters the

obligations which GOCO's and Government corporation facilities have under EPCRA independent of the Executive Order or subjects such facilities to EPCRA if they are otherwise excluded. However, each OPDIV/STAFFDIV shall include the releases and transfers from all such facilities when meeting all of the organization's responsibilities under Executive Order 12856.

30–60–20 Emergency Planning (EPCRA Sections 301–30; 42 U.S.C. 11001–30)

A. *Basic Requirement.* Facilities that are covered by EPCRA must notify the State emergency response commission that they are subject to the Act's emergency planning provisions. A local emergency planning committee, comprised of state and local officials, community organizations, and facility representatives, must prepare an emergency plan for responding to the release of extremely hazardous substances in the local community. A covered facility must provide any information that is necessary for developing the local emergency plan. The facility must also notify the local committee of relevant changes at the facility that may affect the emergency plan and designate an emergency planning coordinator who will participate in the emergency planning process. EPA regulations governing emergency planning and notification under EPCRA are contained in 40 CFR part 355.

B. *Applicability of Requirement.* A facility is subject to the EPCRA emergency planning requirements if an amount of any extremely hazardous substance equal to or in excess of the threshold planning quantity (TPQ) established for that substance is present at the facility. An ''amount of any extremely hazardous substance'' means the total amount of an extremely hazardous substance present at any one time at a facility at concentrations greater than one percent by weight, regardless of location, number of containers, or method of storage.

E.O. 12856 makes the EPCRA emergency planning requirements in Sections 302 and 303 of the Act applicable to Federal agencies. A Governor or a State commission may designate additional facilities in the State which shall be subject to the EPCRA emergency planning requirements. The authority of a Governor or a State commission to designate additional facilities does not extend to Federal executive agencies (except government corporations).

C. *Extremely Hazardous Substances and Threshold Planning Quantities.* An ''extremely hazardous substance'' is defined in EPA regulations to mean a substance that is listed in Appendices A (in alphabetical order) and B (by CAS number) of 40 CFR part 355. The Appendices contain tables which indicate the threshold planning quantity (TPQ) for each extremely hazardous substance.

EPCRA authorizes EPA to modify the list and TPQ of extremely hazardous substances from time to time based on the toxicity, reactivity, volatility, dispersability, combustibility, and flammability of a substance. Because extremely hazardous substances are periodically removed or added to the list, and threshold quantities may be revised, facilities must be sure that the list of extremely hazardous substances they consult is current. EPA regulations in 40 CFR 355.30(e) (1992) set forth the rules and techniques for calculating the TPQ of extremely hazardous substances that are solids or present in mixtures, solutions, and molten materials.

D. *State and Local Planning Groups.* EPCRA requires the Governor of each State or Chief Executive Officer of an Indian Tribe to appoint an Emergency Response Commission (''commission''). The commission must designate emergency planning districts in order to facilitate preparation and implementation of an emergency plan. The commission must also appoint local emergency planning committees (''committee'') in each emergency planning district and supervise and coordinate the activities of such committees.

Local committees include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to EPCRA.

E. *Local Emergency Plan.* Each local emergency planning committee was to have completed preparation of a local emergency plan no later than October 17, 1988. The committee must review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require. The rules of the committee must include provisions for public notification of committee activities, public meetings to discuss the emergency plan developed by the committee, public comments on the emergency plan and response to such comments by the committee, and distribution of the emergency plan. EPCRA requires that each local emergency plan prepared by a local committee shall include (but is not limited to) each of the following:

1. Identification of facilities subject to the EPCRA's requirements that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to EPCRA requirements, such as hospitals or natural gas facilities;

2. Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances;

3. Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan;

4. Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of EPCRA Section 11004);

5. Methods for determining the occurrence of a release, and the area or population likely to be affected by such release;

6. A description of emergency equipment and facilities in the community and at each facility in the community subject to EPCRA requirements, and an identification of the persons responsible for such equipment and facilities;

7. Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

8. Training programs, including schedules for training of local emergency response and medical personnel; and

9. Methods and schedules for exercising the emergency plan.

F. *Review of Emergency Plans.* After completion of an emergency plan for an emergency planning district, the local emergency planning committee must submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission must review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response

plans of other emergency planning districts.

Regional response teams, as established pursuant to CERCLA's National Contingency Plan (42 U.S.C. 9605), may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review may not delay implementation of the plan. The national response team must publish guidance documents for preparation and implementation of emergency plans.

G. *Emergency Planning Notification.* Each covered facility shall notify the commission for the state in which the facility is located that the facility is subject to EPCRA emergency planning requirements.

Thereafter, if a substance on the list of extremely hazardous substances first becomes present at the facility in excess of the TPQ established for such substance, or if there is a revision of the list of extremely hazardous substances and the facility has present a substance on the revised list in excess of the TPQ established for such substance, the covered facility shall notify the state emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that the facility is subject to the EPCRA emergency planning requirements. (EPCRA, 302(c)).

H. *Facility Emergency Response Coordinator.* A facility representative shall be designated for each facility who will participate in the local emergency planning process as a facility emergency response coordinator. The name of the facility emergency response coordinator shall be provided to the local emergency planning committee of the State (or the Governor if there is no committee) in which the facility is located.

I. *Provision of Information and Technical Assistance.*

1. *Provision of Information.* Upon request of the local committee, the facility must promptly provide to the committee any information necessary for development or implementation of the local emergency plan. Executive Order 12856 provides that all information necessary for the applicable local committee to prepare or revise the local emergency plan must also be provided. A covered facility shall inform the local emergency planning committee of any changes occurring at the facility which may be relevant to emergency planning.

EPCRA section 322 (42 U.S.C. 11042) provides for the withholding of certain trade secret information, provided the claim of trade secrecy is substantiated in accordance with EPA regulations. Withholding and disclosure of trade secret information is discussed in section 30–60–80.

2. *Technical Assistance.* OPDIVs/STAFFDIVs, to the extent practicable, shall provide technical assistance, if requested, to local emergency planning committees in the development of emergency plans and in fulfillment of their community right-to-know and risk reduction responsibilities.

30–60–30 Notification of Release of Extremely Hazardous Substance (EPCRA Section 304; 42 U.S.C. 11004)

A. *Basic Requirement.* A facility must immediately notify the local committee for any area likely to be affected, and the commission of any state likely to be affected, or off-site spills or any releases from the facility of a ''reportable quantity'' (RQ) of an EPCRA ''extremely hazardous substance'' or a CERCLA ''hazardous substance''. The initial report must be made by such means as telephone, radio, or in person. A follow-up written report must be furnished to the committee and commission. EPA regulations governing notification of release of an extremely hazardous substance are contained in 40 CFR Part 355.

B. *Applicability.* The EPCRA emergency release notification requirements apply to any facility:

1. At which a hazardous chemical is produced, used, or stored; and

2. At which there is release of a reportable quantity of any extremely hazardous substance or CERCLA hazardous substance.

Executive Order 12856 provides that the release notification requirements in EPCRA section 304 (42 U.S.C. 11004) shall be effective beginning January 1, 1994.

OPDIVs/STAFFDIVs should be aware that the release notification requirements of EPCRA section 304 covers more facilities than the emergency planning requirements of EPCRA sections 301–303. An OPDIV/STAFFDIV facility must notify the local emergency planning committee of a release under section 304 even if a section 302(b) ''threshold planning quantity'' of a substance is not present. Furthermore, section 304 is the only section of EPCRA that applies to ''transportation facilities.''

C. *Reportable Quantities.* EPA regulations in 40 CFR part 355 establish the list of extremely hazardous substances, threshold planning quantities, and facility notification responsibilities necessary for the development and implementation of state and local emergency response plans. The reportable quantities for extremely hazardous substances are set out in 40 CFR part 355, Appendices A (alphabetical order) and B (by CAS number).

D. *CERCLA Release Reporting.* The EPCRA notification of release requirements are in addition to the release reporting requirements imposed by CERCLA section 103(42 U.S.C. 9603). Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its reportable quantity must immediately notify the National Response Center of the release. The purpose of the CERCLA notification requirement is to inform the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely manner. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or substantial threat of a release of a hazardous substance into the environment. Response activities are to be taken, to the extent practicable, accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

Releases of CERCLA hazardous substances are subject to the release reporting requirements that are codified at 40 CFR part 302. The list of CERCLA hazardous substances and their reportable quantities is found at 40 CFR 302.4. The National Response Center telephone number for release reporting is (800) 424–8802.

Note: Currently, only releases of those extremely hazardous substances that are also CERCLA hazardous substances are required to be reported to the National Response Center under CERCLA section 103. Discrepancies exist between the substances on the list of EPCRA extremely hazardous substances and those on the list of CERCLA hazardous substances. Moreover, the reportable quantity of the same substance may differ between lists. EPA has published a proposed rule to designate 226 non-CERCLA extremely hazardous substances as CERCLA hazardous substances (54 FR 3388 (1989). The purpose of the proposed rule is to eliminate potential confusion concerning the different EPCRA (notification to state and local officials only) and CERCLA (notification to the National Response Center in addition to notification to state and local officials) requirements. EPA has also published a proposed rule to adjust the reportable quantities for 225 substances on the EPCRA extremely hazardous substances list, which EPA has proposed for designation as CERCLA hazardous substances, and 19 substances that are CERCLA hazardous substances (54 FR 35988 (1989)).

E. *Comparison of EPCRA and CERCLA Release Reporting Requirements.* Table 1 indicates the differences in reporting a release of a reportable quantity of a CERCLA hazardous substance or an EPCRA extremely hazardous substance.

Note: A petroleum release that contains a reportable quantity of an extremely hazardous substance as a constituent is exempt under CERCLA but not under EPCRA section 304. The petroleum exclusion under CERCLA does not apply to EPCRA (52 FR 13378, 13385 (1987)).

TABLE 1. COMPARISON OF CERCLA AND EPCRA RELEASE NOTIFICATION REQUIREMENTS

Reporting requirement	Substance only on CERCLA list of hazardous substances (40 CFR § 302.4)	Substance only on EPCRA list of extremely hazardous substances (40 CFR Part 355, Appx A & B)	Substance on CERCLA and EPCRA lists
Notify State and Local Officials	Yes	Yes (unless release results in exposure only to persons solely within the boundaries of the facility).	Yes
Notify National Response Center	Yes	No	Yes
Does the petroleum exclusion apply?	Yes	No	Yes—CERCLA Report; No—EPCRA Report

F. *Notice Requirements.* A facility shall immediately notify the community emergency coordinator for the local emergency planning committee of any area likely to be affected by the release and the state emergency response commission of any state likely to be affected by the release. If there is no local emergency planning committee, notification shall be provided to relevant local emergency response personnel.

Emergency release notice requirements for a transportation-related release may be satisfied by providing the information indicated in subsection G. *Notice Contents* by telephone to the 911 operator, or in the absence of a 911 emergency telephone number, to the operator. A ''transportation-related release'' means a release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee.

G. *Notice Contents.* The emergency release notice shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

1. The chemical name or identity of any substance involved in the release.

2. An indication of whether the substance is an extremely hazardous substance.

3. An estimate of the quantity of any such substance that was released into the environment.

4. The time and duration of the release.

5. The medium or media into which the release occurred.

6. Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

7. Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

8. The names and telephone number of the person or persons to be contacted for further information.

H. *Following Emergency Notice.* As soon as practicable after a release which requires notice under subsection F. *Notice Requirements,* a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required in subsection G. *Notice Contents* and including additional information with respect to:

1. Actions taken to respond to and contain the release;

2. Any known or anticipated acute or chronic health risks associated with the release; and

3. Where appropriate, advice regarding medical attention necessary for exposed individuals.

I. *Transportation Exemption Not Applicable.* EPCRA generally exempts from its requirements the transportation, including the storage incident to such transportation, of any substance or chemical subject to EPCRA. This transportation exemption does not apply to this section (30–60–30) or EPCRA's requirements for notification of the release of an extremely hazardous substance (EPCRA section 304; 42 U.S.C. 11004).

Refer to subsection F. *Notice Requirements* for requirements pertaining to transportation-related releases.

J. *Exempted Releases.* The notification requirements of this section (30–60–30) do not apply to:

1. Any release which results in exposure to persons solely within the boundaries of the facility (note: CERCLA does not contain a similar exemption);

2. Any release which is a ''Federally permitted release'' as defined in section 101 (10) of CERCLA (42 U.S.C. 9601 (10));

3. Any release that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8(b).* Exemption from notification under this subsection does not include exemption from:

(a) Initial telephone or written notifications of a continuous release as defined in 40 CFR 302.8(d) and (e);

(b) Notification of a ''statistically significant increase,'' defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range, which is to be submitted to the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release;

(c) Notification of a ''new release'', defined in 40 CFR 302.8(g)(1) as any change in the composition or source(s) of the release; or

(d) Notification of a change in the normal range of the release as required under 40 CFR 302.8(g)(2).**

*The referenced definitions that apply to the notification of a continuous release state: ''A continuous release is a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes. * * * A routine release is a release that occurs during normal operating procedures or processes. * * * A release that is stable in quantity and rate is a release that is predictable and regular in amount and rate of emission.'' (40 CFR 302.8(b)).

**''The normal range of a release is all releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions during the preceding year. Only releases that are both

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4. Any release of a pesticide product exempt from CERCLA section 103(a) (42 U.S.C. 9603(a)) reporting under CERCLA section 103(e) (42 U.S.C. 9603(e)) (CERCLA exempts from its notification requirements the application of a pesticide product registered under FIFRA or the handling and storage of such a pesticide product by an agricultural producer);

5. Any release not meeting the definition of release under section 101 (22) of CERCLA (42 U.S.C. 9601(22)), and therefore exempt from CERCLA section 103(a) reporting (42 U.S.C. 9603(a)) (*e.g.,* engine exhaust emissions, certain nuclear material releases, the normal application of fertilizer); and

6. Any radionuclide release which occurs:

(a) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land;

(b) Naturally from the disturbance of land for purposes other than mining, such as for agricultural or construction activities;

(c) From the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and

(d) From coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

30–60–40 Material Safety Data Sheet Reporting (EPCRA 311; 42 U.S.C. 11021)

A. *Basic Requirement.* A material safety data sheet (MSDS) or a list of hazardous chemicals shall be provided to the local emergency planning committee, the State emergency planning commission, and the fire department with jurisdiction over the facility for each hazardous chemical present at the facility according to the minimum threshold schedule provided in 40 CFR 370.20(b) (see subsection D. *Minimum Thresholds for Reporting).* An MSDS must include such information as the hazardous chemical's common and chemical names, physical and chemical characteristics, physical and health hazards, primary routes of entry, exposure limits, possible carcinogenic effects, safe handling and use precautions, control measures, and emergency and first aid procedures. (29 CFR 1910.1200(g)(2)). EPA regulations governing MSDS reporting are contained in 40 CFR part 370.

Note: Requirements for the reporting of mixtures is contained in section 30–60–60.

B. *Applicability.* The requirement in section 311 of EPCRA to submit a MSDS or list of hazardous chemicals applies to each facility that is required to prepare or have available a MSDS for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) and regulations promulgated under that Act (see 29 CFR 1910.1200(g)). The Act requires a facility to have a MSDS for each hazardous chemical it uses, produces, or imports (29 CFR 1910.1200(g)(1)).

C. *Alternative Reporting.* In lieu of the submission of an MSDS for each hazardous chemical, the following may be submitted:

1. A list of the hazardous chemicals for which an MSDS is required, grouped by hazard category as defined by 40 CFR 370.2 (*e.g.,* ''immediate (acute) health hazard'' or ''delayed (chronic) health hazard'');

2. The chemical or common name of each hazardous chemical as provided on the MSDS; and

3. Except for reporting of mixtures under 40 CFR 370.28(a)(2) (see section 30–60–60, subsection A.2.), any hazardous component of each hazardous chemical as provided on the MSDS.

D. *Minimum Threshold Levels for MSDS Reporting.* Except in response to certain requests for submission of an MSDS, an MSDS shall be submitted:

1. For all hazardous chemicals present at the facility at any one time in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.); and

2. For all extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs. approximately 55 gallons) or the TPQ, whichever is lower.

The minimum threshold for reporting in response to a request for submission of an MSDS by a local emergency planning committee (see subsection H. *Submission of MSDS Upon Committee Request)* shall be zero.

E. *Definition of ''Hazardous Chemical''.* The term ''hazardous chemical'', as defined in 29 CFR 1910.1200(c), means any chemical which is a physical hazard or a health hazard, except that such term does not include the following substances:

1. Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

2. Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

3. Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

4. Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

5. Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Note: The definition of ''hazardous chemical'' in this section (30–60–40) is broader than ''hazardous substance'' under CERCLA or ''extremely hazardous substance'' under EPCRA (see sections 30–60–20, 30–60–30).

F. *Reporting Period.* Executive Order 12856 provides that to the extent that a facility is required to maintain MSDSs under any provisions of law or Executive order, information required under section 311 of EPCRA shall be submitted no later than August 3, 1994. Thereafter, a facility shall submit an MSDS for a hazardous chemical or a list within three months after a hazardous chemical requiring an MSDS becomes present in an amount exceeding the threshold established in 40 CFR 370.20(b) (see subsection D. *Minimum Threshold Levels for Reporting).*

G. *Supplemental Reporting.* A revised MSDS shall be provided to the local emergency planning committee, the State emergency planning commission, and the fire department with jurisdiction over the facility within three months after discovery of significant new information concerning the hazardous chemical for which the MSDS was submitted.

H. *Submission of MSDS Upon Committee Request.* A facility that has not submitted the MSDS for a hazardous chemical present at the facility shall submit the MSDS for any such hazardous chemical to the local emergency planning committee upon its request. The MSDS shall be submitted within 30 days of the receipt of such request. The minimum threshold for reporting in response to a request for submission of an MSDS by a local committee shall be zero.

I. *Public Request for MSDS Information.* EPA regulations permit any person to obtain an MSDS with respect to a specific facility by submitting a written request to the local emergency planning committee. If the committee does not have the MSDS in its possession, the EPA regulations authorize the committee to request a submission of the MSDS from the owner or operator of the facility that is the subject of the request and make the sheet available to the requester.

J. *Withholding of Trade Secret Information.* EPCRA section 322 (42 U.S.C. 11042) provides that any person

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continuous and stable in quantity and rate may be included in the normal range.'' (40 CFR 302.8(b)).

may withhold from the submittal of an MSDS the specific chemical identity (including the chemical name and other specific identification) of a hazardous chemical when such information is a trade secret and the claim of trade secrecy is substantiated in accordance with EPA regulations. Withholding and disclosure of trade secret information is discussed in section 30–60–80.

30–60–50 Emergency and Hazardous Chemical Inventory Reporting (EPCRA 312; 42 U.S.C. 1022)

A. *Basic Requirement.* A facility shall submit annually an Emergency and Hazardous Chemical Inventory Reporting Inventory Form (Tier I form) to the local emergency planning committee, the State emergency response commission, and the fire department with jurisdiction over the facility for hazardous chemicals present at the facility during the preceding calendar year that are above the minimum threshold levels established for those chemicals (see subsection D. *Minimum Threshold Levels for Tier I or Tier II Form Reporting).* The Tier I form provides aggregate information on the categories, amounts, and general location of the hazardous chemicals at the facility. EPA regulations governing annual inventory reporting are contained in 40 CFR part 360.

Note: Requirements for the reporting of mixtures is contained in section 30–60–60.

B. *Alternative Reporting.* With respect to any specific hazardous chemical at the facility, a Tier II form (see subsection G. *Contents of Tier II Form)* may be submitted in lieu of the Tier I information.

C. *Applicability of the Requirement.* The requirement in section 312 of EPCRA to submit an emergency and hazardous chemical inventory form applies to each facility that is required to prepare or have available an MSDS for a hazardous chemical under OSHA and regulations promulgated under that Act. OSHA requires facilities that use, distribute, produce, or import chemicals to have a material safety data sheet for each hazardous chemical which they use (29 CFR 1910.1200(g)(1)).

D. *Minimum Threshold Levels for Tier I or Tier II Form Reporting.* Except in response to certain requests for submission of a Tier II form, a Tier I (or Tier II) form shall be submitted covering:

1. All hazardous chemicals present at the facility at any one time during the preceding calendar year in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.); and

2. Extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs.—approximately 55 gallons) or the TPQ, whichever is lower.

The minimum threshold for reporting in response to a request for submission of a Tier II form by a State emergency response commission, local emergency planning committee, or fire department having jurisdiction over the facility (see subsection H. *Submission of Tier II Information to State Commissions, Local Committees, or Fire Departments)* shall be zero.

E. *Annual Reporting Period.* An inventory form containing Tier I (or Tier II) information on hazardous chemicals present at the facility during the preceding calendar year above the threshold levels established in 40 CFR 370.20(b) (see subsection D. *Minimum Threshold Levels for Tier I or Tier II Form Reporting* shall be submitted on or before March 1 each year. Executive Order 12856 provides that the first year of compliance with this reporting requirement for federal agencies shall be no later than the 1994 calendar year, with reports due on or before March 1, 1995.

F. *Content of Tier I Form.* The Tier I Emergency and Hazardous Chemical Inventory Form (with instructions) is set out in 40 CFR 370.40(b). In lieu of the form, a facility may submit a State or local form that contains identical content. The Tier I Inventory Form requires a facility to provide the following information in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under OSHA and regulations promulgated under that Act.

1. An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

2. An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

3. The general location of hazardous chemicals in each category.

The EPA regulations consolidate 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200, into two health hazard and three physical hazard categories. The five Tier I Form hazard categories are: fire hazards; sudden release of pressure hazards; reactivity hazards; immediate (acute) health hazards; and delayed (chronic) health hazards.

G. *Contents of Tier II* Form. Tier II Emergency and Hazardous Chemical Inventory Forms (with instructions) is set out in 40 CFR 370.41(b). In lieu of the form contained in the EPA regulations, a facility may submit a state or local form that contains identical content. The Tier II Inventory Form requires the following additional information for each hazardous chemical present at the facility:

1. The chemical name or the common name of the chemical as provided on the MSDS.

2. An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

3. An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

4. A brief description of the manner of storage of the hazardous chemical.

5. The location at the facility of the hazardous chemical.

6. An indication of whether the facility elects to withhold information regarding the location of the hazardous chemical from disclosure to the public under 42 U.S.C. 11044 (see subsection L. *Withholding Certain Information From Public Disclosure.*

H. *Submission of Tier II information to State Commissioners, Local Committees, or Fire Departments.* Upon request by a State emergency response commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, a facility shall provide Tier II information to the person making the request. Any such request shall be with respect to a specific facility. The Tier II Form shall be submitted within 30 days of the receipt of each request. The minimum threshold for reporting in response to a request for submission of a Tier II form by a State commission, local committee, or fire department shall be zero.

I. *Availability of Tier II Information to Other State and Local Officials.* A State or local official acting in his or her official capacity may have access to Tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for Tier II information, the State commission or local committee is authorized by EPA regulations to request the facility for the Tier II information and make available such information to the official.

J. *Availability of Tier II Information to General Public.* Any person may request Tier II information with respect to a specific facility by submitting a written request to the State commission or local committee in accordance with EPA requirements in 40 CFR 370.30(b). If the

committee or commission does not have the Tier II information in its possession, EPA regulations authorize it to request a submission of the Tier II form from the facility that is the subject of the request, provided that the request is limited to hazardous chemicals stored at the facility in an amount in excess of 10,000 pounds. If the request is for Tier II information on chemicals present at a facility in an amount less than 10,000 pounds, the requestor must include a general statement of need in the request. The location of any chemical shall be withheld by the State commission or local committee upon request of the facility (see subsection L. *Withholding Certain Information From Public Disclosure).*

EPCRA requires a State commission or local committee to respond to a request for Tier II information no later than 45 days after the date of receipt of the request.

K. *Fire Department Inspection.* A facility that has submitted an inventory form shall allow on-site inspection by the fire department having jurisdiction over the facility upon request of the department, and shall provide to the department specific location information on hazardous chemicals at the facility.

L. *Withholding Certain Information From Public Disclosure.*

1. *Physical Location of Hazardous Chemical.* All information obtained from a facility in response to a public request to a State commission or local committee for a Tier II form must be made available to the person submitting the request, provided, upon request of the facility, the commission or committee shall withhold from disclosure the location of any specific chemical identified in the Tier II form.

2. *Trade Secret Information.* EPCRA section 322(42 U.S.C. 11042) provides that any person may withhold from a submittal of an emergency and hazardous chemical inventory reporting form the specific chemical identify (including the chemical name and other specific identification) of a hazardous chemical when such information is a trade secret and the claim of trade secrecy is substantiated in accordance with EPA regulations. Withholding and disclosure of trade secret information is discussed in section 30–60–80.

30–60–60 Treatment of Mixtures in MSDS and Inventory Reporting

A. *Basic Reporting.* A facility may meet the MSDS reporting requirements of 40 CFR 370.21 (see 30–60–40) and the inventory reporting requirements of 40 CFR 370.25 (see 30–60–50) for a hazardous chemical that is a mixture of hazardous chemicals by:

1. Providing the required information on each component in the mixture which is a hazardous chemical*; or

2. Providing the required information on the mixture itself.

***Note:** If more than one mixture has the same component, only MSDS or listing on the inventory form for the component is necessary.

B. *Same Manner of Reporting.* Where practicable, the reporting of mixtures by a facility shall be in the same manner of MSDS (see 30–60–40) and inventory (see 30–60–50) reporting.

C. *Calculation of the Quantity.* If the reporting is on each component of the mixture which is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) shall be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture. If the reporting is on the mixture itself, the total quantity of the mixture shall be reported.

D. *Aggregation of Extremely Hazardous Substances.* To determine whether the reporting threshold for an extremely hazardous substance has been equaled or exceeded, the owner or operator of a facility shall aggregate the following:

1. The quantity of the extremely hazardous substance present as a component in all mixtures at the facility, and

2. All other quantities of the extremely hazardous substance present at the facility.

If the aggregate quantity of an extremely hazardous substance equals or exceeds the reporting threshold, the substance shall be reported.

If extremely hazardous substances are being reported and are components of a mixture at a facility, the owner or operator of a facility may report either:

1. The mixture, as a whole, even if the total quantity of the mixture is below its reporting threshold; or

2. The extremely hazardous substance component(s) of the mixture.

30–60–70 Toxic Chemical Release Inventory Reporting (EPCRA 313; 42 U.S.C. 11023)

A. *Basic Requirement.* A facility that is subject to the EPCRA section 313 reporting requirement shall submit annually a Toxic Chemical Release Inventory Reporting Form (Form R) to EPA and to affected States and Indian tribes. The purpose of this reporting is to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to assist research, and to aid in the development of regulations, guidelines, and standards.

A completed Form R must be submitted for each toxic chemical manufactured, processed, or otherwise used at the facility in excess of the threshold quantity established for that chemical. The facility must report the activities and uses of the toxic chemical at the facility, quantity released to the environment (air, water, or land), maximum amount on-site during the calendar year, and amount contained in wastes transferred off-site. The facility must also provide certain treatment and pollution prevention data. Mandatory source reduction and recycling data reporting requirements were added to Form R after enactment of the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109). Reporting of source reduction and recycling data is discussed in chapter 30–80.

Suppliers must also notify persons to whom they distribute mixtures or trade name products containing toxic chemicals that they contain such chemicals.

EPA regulations governing annual toxic chemical release inventory reporting and supplier notification are contained in 40 CFR part 372.

B. *Applicability of the Reporting Requirement.* Section 313 of EPCRA requires that toxic chemical release inventory (TRI) reports be filed by facilities that meet all three of the following criteria during a calendar year.

1. The facility has ten or more full-time employees;

2. The facility is included in Standard Industrial Classification (SIC) Codes 20 through 39 (Note: Executive Order 12856 requires Federal facilities to comply with section 313 without regard to standard industrial classification); and

3. The facility manufactured (including imported), processed, or otherwise used any listed toxic chemical in excess of the established threshold quantity of that chemical (see subsection D. *Reporting Threshold*).

Executive Order 12856 provides that the head of each Federal agency shall comply with the provisions set forth in section 313 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA. The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases,

transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in section 3–304(a) of the Order.

40 CFR 372.38(f) addresses reporting where two or more organizations operate establishments within a single facility on leased property without common ownership or control.

Note: The TRI reporting requirement is different from the reporting requirements in the preceding sections, because a section 313 report is not triggered by the release of a certain amount of a toxic chemical. The criteria for reporting under section 313 is based on the amount of a toxic chemical that a facility uses in a year. If a facility uses more than a certain amount of a listed toxic chemical in a year, all releases of that chemical must be reported (unless the use of release is exempted).

C. *Information Required To Be Reported.*

1. *Toxic Chemical Release Inventory.* Information elements that are reportable on EPA Form R or equivalent magnetic media format (see subsection I. *Form R Availability)* include the following:

(a) Name and CAS number (if applicable) of the chemical reported. The toxic chemicals that are subject to EPCRA section 313 reporting are listed in 40 CFR 372.65. The EPA regulations contain three listings of the toxic chemicals: (a) An alphabetical order listing of those chemicals that have an associated Chemical Abstracts Service (CAS) Registry number; (b) a CAS number order list of the same chemicals; and (c) an alphabetical listing of the chemical categories for which reporting is required.

(b) An indication of the activities and uses the chemical at the facility.

(c) An indication of the maximum amount of the chemical on site at any point in time during the reporting year.

(d) An estimate of total releases in pounds per year from the facility plus an indication of the basis of estimate for the following:

(1) Fugitive or non-point air emissions.

(2) Stack or point air emissions.

(3) Discharges to receiving streams or water bodies including an indication of the percent of releases due to stormwater (and the name(s) of receiving stream(s) or water body to which the chemical is released).

(4) Underground injection on site.

(5) Releases to land on site.

(e) Information on transfers of the chemical in wastes to off-site locations.

(f) Information relative to waste treatment.

(g) If the chemical identity is claimed trade secret, a generic name for the chemical.

(h) A mixture component identity if the chemical identity is not known.

Within the ''Instructions for Completing EPA Form R'', EPA warns that **because a complete Form R consists of at least nine unique pages, any submission containing less than nine unique pages will not be** considered a valid submission. A complete report for any listed toxic chemical that is not claimed as a trade secret consists of the following completed parts:

Part I with an original signature on the certification statement (section 2); and Part 11 (section 8 is now mandatory).

The instructions to Form R contain guidance for voluntary revision of a previously-submitted Form R.

Note: Reporting requirements for a current calender year may differ from previous years. Changes from the previous year are described in the instructions for Form R and should be carefully noted. Significant changes to the reporting requirements may occur because chemicals are added to the toxic chemical list for the current reporting year or have been delisted and are not covered for the reporting year. **See the Form R Reporting Instructions for the names and CAS number of chemicals that have been delisted from, or added to, the toxic chemical list.**

2. *Source Reduction and Recycling Data.* Section 8 of EPA Form R asks for data related to source reduction and recycling. Reporting requirements for source reduction and recycling data are described in chapter 30–80.

3. *Facility Identifying Information.* Certain identifying information about the facility must be reported on Form R, including facility name and address; main business activity; all facility identifiers (I.D.) (*e.g.,* EPA RCRA I.D. Number, NPDES permit number; Underground Injection Well Code (UIC) I.D., TRI facility I.D.); name and telephone number for both a technical contact and a public contact; and latitude and longitude coordinates for the facility.

4. *Certification by Senior Management Official.* A senior management official of the facility shall sign the Form R and make the following certification: ''I hereby certify that I have reviewed the attached documents and, to the best of my knowledge and belief , the submitted information is true and complete and that amounts and values in this report are accurate based upon reasonable estimates using data available to the preparer of the report.''

D. *Reporting Threshold.* 40 CFR 372.25 contains threshold amounts for reporting chemicals. If more than 25,000 pounds of a listed toxic chemical is manufactured (including imported) or processed at a facility in a calendar year, the chemical must be reported. If more than 10,000 pounds of a listed toxic chemical is not manufactured or processed but is otherwise used at a facility in a given calendar year, the chemical must be reported. When more than one threshold applies to an activity at a facility, the facility must report if it exceeds any applicable threshold and must report on all activities at the facility involving the chemical, unless exempted (see subsection F. *Exemptions from Reporting).*

When a facility manufactures, processes, or otherwise uses more than one member of a chemical category listed in 40 CFR 372.65(c), the facility must report if it exceeds any applicable threshold for the total volume of all the members of the category involved in the applicable activity. Any such report must cover all activities at the facility involving members of the category.

A facility may process or otherwise use a toxic chemical in a recycle/reuse operation. To determine whether the facility has processed or used more than an applicable threshold of the chemical, the facility shall count the amount of the chemical added to the recycle/reuse operation during the calendar year. In particular, if the facility starts up such an operation during a calendar year, or in the event that the contents of the whole recycle/reuse operation are replaced in a calendar year, the facility shall also count the amount of the chemical replaced into the system at these times.

If a toxic chemical is listed in 40 CFR 372.65 with the notation that only persons who manufacture the chemical, or manufacture it by a certain method, are required to report, a facility that solely processes or uses such a chemical is not required to report for that chemical. Only a facility that manufactures that chemical in excess of the threshold applicable to such manufacture is required to report. In completing the reporting form, the manufacturing facility is only required to account for the quantity of the chemical so manufactured and releases associated with such manufacturing, but not releases associated with subsequent processing or use of the chemical at that facility.

E. *Toxic Chemical Components of a Mixture or Trade Name Product.* A report is required on a toxic chemical that is known to be present as a component of a mixture or trade name

product which is received from another person, if that chemical is imported, processed, or otherwise used by the receiving facility in excess of an applicable threshold quantity as part of that mixture or trade name product. For purposes of EPA regulations, knowledge that a toxic chemical is present as a component of a mixture or trade name product exists if the operator of the facility:

1. Knows or has been told the chemical identity or Chemical Abstracts Service Registry Number of the chemical and the identity or Number corresponds to an identity or Number in 40 CFR 372.65, or

2. Has been told by the supplier of the mixture or trade name product that the mixture or trade name product contains a toxic chemical subject to EPCRA section 313.

Guidance in determining whether a toxic chemical which is a component of a mixture or trade name product has been imported, processed, or otherwise used in excess of an applicable threshold at the facility can be found at 40 CFR 372.30(b)(3).

F. *Exemptions from Reporting.*

1. *Laboratory Activities.* Toxic chemicals manufactured, processed, or used in a laboratory at a covered facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee)* do not have to be considered in determining whether a threshold has been met unless the laboratory is engaged in:

(a) Specialty chemical production;

(b) Manufacture, processing, or use of toxic chemicals in pilot plant-scale operations; or

(c) Activities conducted outside the laboratory.

* 40 CFR 720.3(ee) defines ''technically qualified individual'' as ''a person or persons (1) who, because of education, training, or experience, or a combination of these factors, is capable of understanding the health and environmental risks associated with the chemical substance which is used under his or her supervision; (2) who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or chemical research to minimize such risks; and (3) who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting a research and development activity.''

2. *Other Uses.* If a toxic chemical is used at a covered facility for one of the following purposes, the facility is not required to consider the quantity of the toxic chemical used for such purpose when determining whether an applicable threshold has been met or determining the amount of releases to be reported:

(a) Use as a structural component of the facility;

(b) Use of products for routine janitorial or facility grounds maintenance (*e.g.*, use of janitorial cleaning supplies, fertilizers, and pesticides similar in type or concentration to consumer products);

(c) Personal use by employees or other persons at the facility of foods, drugs, cosmetics, or other personal items containing toxic chemicals, including supplies of such products within the facility such as in a facility operated cafeteria, store, or infirmary;

(d) Use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility;

(e) Use of toxic chemicals present in process water and non-contact cooling water as drawn from the environment or from municipal sources, or toxic chemicals present in air used either as compressed air or as part of combustion.

Note: If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as described in this subsection, in excess of an applicable threshold quantity, the facility is required to report under 40 CFR 372.30.

3. *De Minimis Concentrations of a Toxic Chemical in a Mixture.* A facility is not required to consider the quantity of a toxic chemical present in a mixture of chemicals when determining whether an applicable threshold has been met or determining the amount of release to be reported if the toxic chemical is in a concentration in the mixture which is:

(a) Below 1 percent of the mixture; or

(b) Below 0.1 percent of the mixture in the case of a toxic chemical which is a carcinogen as defined in 29 CFR 1910.1200(d)(4).

This exemption applies whether the facility received the mixture from another person or the facility produced the mixture, either by mixing the chemicals involved or by causing a chemical reaction which resulted in the creation of the toxic chemical in the mixture.

Note: If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the mixture or in a mixture at higher concentrations, in excess of an applicable threshold quantity, the facility is required to submit a Form R.

4. *Articles.* The quantity of a toxic chemical present in an article at a covered facility need not be considered when determining whether an applicable threshold has been met or determining the amount of release to be reported. ''Article'' means a manufactured item which:

(a) Is formed to a specific shape or design during manufacture;

(b) Has end-use functions dependent in whole or in part upon its shape or design during end-use; and

(c) Does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishments.

This exemption applies whether the facility received the article from another person or the facility produced the article. However, this exemption applies only to the quantity of the toxic chemical present in the article. If the toxic chemical is manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the article, in excess of an applicable threshold quantity, the facility is required to submit a Form R. If a release * of a toxic chemical occurs as a result of the processing or use of an item at the facility, that item does not meet the definition of ''article''.

5. *Ownership of Leased Real Estate.* EPA regulations provide that the owner of a covered facility ''is not subject to TRI reporting if such owner's only interest in the facility is ownership of the real estate upon which the facility is operated.'' (40 CFR 372.38(e)). This exemption applies to owners of facilities, such as industrial parks, all or part of which are leased to persons who operate establishments within SIC code through 39 where the owner has no other business interest in the operation of the covered facility.

G. *Annual Reporting Period.* Reports are due annually and contain data on releases during the previous calendar year. The report for any calendar year must be submitted on or before July 1 of the following year. Executive Order 12856 provides that the first year of compliance for Federal agencies with the reporting in EPCRA Section 313 shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

H. *Reporting for Establishments Within a Facility.* For purposes of submitting a Form R, a ''covered facility'' may consist of more than one

* ''Release'' means ''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.'' (40 CFR 372.3)

establishment. A separate Form R may be submitted for each establishment or for each group of establishments within the facility, provided that activities involving the toxic chemical at all the establishments within the covered facility are reported. If each establishment or group of establishments files separate reports, then separate reports must be submitted for all other chemicals subject to reporting at that facility. An establishment or group of establishments does not have to submit a report for a chemical that is not manufactured (including imported), processed, otherwise used, or released at that establishment or group of establishments.

I. *Form R Availability.* Reports under 313 of EPCRA are made on EPA Form R (EPA Form 9350–1), the *Toxic Chemical Release Inventory (TRI) Reporting Form.* Form R is submitted to EPA, affected States, and Indian tribes. A completed Form R must be submitted for each toxic chemical manufactured, processed, or otherwise used at each covered facility in excess of an applicable threshold.

EPA encourages facilities to submit the required information to EPA by using magnetic media (computer disk or tape) in lieu of Form R. Instructions for submitting and using magnetic media may also be obtained from the address given in this subsection.

The most current version of EPA Form R, including instructions for Form R, and related documents may be obtained from: Section 313 Document Distribution Center, P.O. Box 12505, Cincinnati, OH 45212.

EPA Form R and instructions also may be obtained by calling the EPCRA Information Hotline. Questions about completing Form R may be directed to the EPCRA Information Hotline at the following address or telephone numbers: Emergency Planning and Community Right-to-Know (EPCRA) Information Hotline, Environmental Protection Agency, 401 M Street, SW (OS–120), Washington, DC 20460, 800–535–2002 or 703–920–9877 from 8:30 a.m. to 7:30 p.m. Eastern Time, (Mon-Fri, except Federal holidays.)

The toll-free number is accessible throughout the United States, including Washington, DC, and Alaska. EPA Regional Staff may also be of assistance.

EPA has developed a package called the *Toxic Chemical Release Inventory Reporting System.* The diskette comes with complete instructions for use. It also provides prompts and messages to help report according to EPA instructions. For copies of the diskette, call the EPCRA Hotline.

J. *Where Reports Are To Be Sent.* Reports are to be sent to EPA and to the State-designated Sec. 313 contact for the State in which the facility is located or the designated official of an Indian tribe if it is located on Indian land.

Send reports to EPA by mail to: EPCRA Reporting Center, P.O. Box 23779, Washington, DC 20026–3779, Attn: Toxic Chemical Release Inventory.

To submit a Form R via hand delivery or certified mail, the EPCRA Information Hotline may be called to obtain the street address of the EPCRA Reporting Center. The Form R instructions include appropriate State submission addresses. Note that ''state'' also includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S.-Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. The Form R instructions also include information on sending copies to the applicable Indian tribe and submission of reports in magnetic media and computer-generated facsimile forms.

K. *Supplied Notification Requirement.*

1. *Basic Requirement.* EPA regulations provide that a facility that manufactures (including imports) or processes a toxic chemical and sells or otherwise distributes a mixture or trade name product containing the toxic chemical to a facility in Standard Industrial Classification Codes 20 through 39 that employs ten or more people, or to a person who in turn may sell or otherwise distribute such mixture or trade name product to such a facility, must provide a notification to each person to whom the mixture or trade name product is sold or otherwise distributed from the facility.

Note: 40 CFR 372.45 states that only those facilities that are in Standard Industrial Classification (SIC) codes 20 through 39 (see 40 CFR 372.22(b)) must provide a supplier notification. However, Executive Order 12856 states that each Federal agency is to comply with the provisions set forth in section 313 of EPCRA and all implementing regulations without regard to the SIC delineations that apply to the Federal agency's facilities.

40 CFR 372.45(h) addresses operation of separate establishments within a single facility by two organizations that do not have common ownership or control.

2. *Notification Contents.* The notification shall be in writing and shall include:

(a) A statement that the mixture or trade name product contains a toxic chemical or chemicals subject to the reporting requirements of EPCRA section 313 and 40 CFR part 372.

(b) The name of each toxic chemical, and the associated Chemical Abstracts Service registry number of each chemical if applicable, as set forth in 40 CFR 372.65.

(c) The percent by weight of each toxic chemical in the mixture or trade name product.

3. *Notification Procedure.* The written notice shall be provided to each recipient of the mixture or trade name product with at least the first shipment of each mixture or trade name product in each calendar year, beginning with the chemical's applicable effective date (see 40 CFR 372.65 for effective dates).

If an MSDS is required to be prepared and distributed for the mixture or trade name product in accordance with 29 CFR 1910.1200, the notification must be attached to or otherwise incorporated into the MSDS. When the notification is attached to the MSDS, the notice must contain clear instructions that the notifications must not be detached from the MSDS and that any copying and redistribution of the MSDS shall include copying and redistribution of the notice attached to copies of the MSDS subsequently redistributed.

4. *Exemption from Notification.* Notifications are not required in the following instances:

(a) If a mixture or trade name product contains no toxic chemical in excess of the applicable *de minimis* concentration (see subsection F. *Exemptions from Reporting).*

(b) If a mixture or trade name product is one of the following:

(1) an ''article'' (see subsection F. *Exemptions from Reporting);.*

(2) foods, drugs, cosmetics, alcoholic beverages, tobacco, or tobacco products packaged for distribution to the general public.

(3) any consumer product as the term is defined in the Consumer Product Safety Act (15 U.S.C. 1251 *et seq.*) packaged for distribution to the general public.

Note: EPA regulations also state that a person is not subject to the supplier notification requirement to the extent the person does not know that the facility or establishment(s) is selling or otherwise distributing a toxic chemical to another person in a mixture or trade name product. However * * * a person has such knowledge if the person receives a notice * * * from supplier of a mixture or trade name product and the person in turn sells or otherwise distributes that mixture or trade name product to another person.'' (40 CFR 372.45(g))

5. *Change in Mixture or Trade Name Product.* If a facility changes a mixture or trade name product for which notification was previously provided by

adding a toxic chemical, removing a toxic chemical, or changing the percent by weight of a toxic chemical in the mixture or trade name product, the facility shall provide each recipient of the changed mixture or trade name product a revised notification reflecting the change with the first shipment of the changed mixture or trade name product to the recipient.

If a facility discovers:

(a) That a mixture or trade name product previously sold or otherwise distributed to another person during the calendar year contains one or more toxic chemicals, and

(b) That any notification provided to such other person in that calendar year either did not properly identify any of the toxic chemicals or did not accurately present the percent by weight of any of the toxic chemicals in the mixture or trade name product,

The facility shall provide a new notification to the recipient within 30 days of the discovery and identify the prior shipments of the mixture or product to which the new notification applies.

6. *Trade Secret.* If the specific identity of a toxic chemical in a mixture or trade name product is considered to be a trade secret under provisions of 29 CFR 1910.1200, the notice shall contain a generic chemical name that is descriptive of that toxic chemical.

If the specific percent by weight composition of a toxic chemical in the mixture or trade name product is considered to be a trade secret under applicable state law or under the Restatement of Torts section 757, comment b, the notice must contain a statement that the chemicals is present at a concentration that does not exceed a specified upper bound concentration value. For example, a mixture contains 12 percent of a toxic chemical. However, the supplier considers the specific concentration of the toxic chemical in the product to be a trade secret. The notice would indicate that the toxic chemical is present in the mixture in a concentration of no more than 15 percent by weight. The upper bound value chosen must be no larger than necessary to adequately protect the trade secret.

L. *Recordkeeping.*

1. *Retention of Form R Materials and Documentation.* Each facility subject to the reporting requirements of this chapter (30–60) must retain the following records for a period of 3 years from the date of the submission of a Form R.

(a) A copy of each Form R submitted by the facility;

(b) All supporting materials and documentation used to make the compliance determination that the facility is a covered facility;

(c) Documentation supporting a submitted Form R, including:

(1) Documentation supporting any determination that a claimed allowable exemption from reporting applies.

(2) Data supporting the determination of whether a threshold applies for each toxic chemical.

(3) Documentation supporting the calculations of the quantity of each toxic chemical released to the environment or transferred to an off-site location.

(4) Documentation supporting the use indications and quantity on site reporting for each toxic chemical, including dates of manufacturing, processing, or use.

(5) Documentation supporting the basis of estimate used in developing any release or off-site transfer estimates for each toxic chemical.

(6) Receipts or manifests associated with the transfer of each toxic chemical in waste to off-site locations.

(7) Documentation supporting reported waste treatment methods, estimates of treatment efficiencies, ranges of influent concentration to such treatment, the sequential nature of treatment steps, if applicable, and the actual operating data, if applicable, to support the waste treatment efficiency estimate for each toxic chemical.

2. *Retention of Supplier Notification Materials and Documentation.* Each facility subject to the supplier notification requirement (see subsection K. *Supplier Notification Requirement)* must retain the following records for a period of 3 years from the date of the submission of a notification:

(a) A copy of each notice.

(b) All supporting materials and documentation used to make the compliance determination that the facility is a covered facility.

(c) All supporting materials and documentation used by the facility to determine whether a supplier notification is required.

(d) All supporting materials and documentation used in developing each required notice.

3. *Availability of Records.* Records must be maintained at the facility to which the Form R report applies or from which a notification was provided. Such records must be readily available for purposes of inspection by EPA. According to the Form R instructions, in the event of a problem with data elements on a facility's Form R, EPA may request documentation that supports the information reported from the facility. EPA may conduct data quality reviews of past Form R submissions. An essential component of this process would be to review a facility's records for accuracy and reliability. The Form R instructions include a list of records that a facility should maintain in addition to those that are required to be maintained.

30–60–80 Public Availability of Information; Withholding and Disclosure of Trade Secrets

A. *Availability of Information to Public.* EPCRA section 324 (42 U.S.C. 11044) provides that each emergency response plan MSDS, list of hazardous chemicals, inventory form, toxic chemical release form, and follow-up emergency notice shall be made available to the general public, subject to trade secret limitations, at locations designated by the Administrator of EPA, Governor, State emergency response commission, or local emergency planning committee. Each local emergency planning committee must annually publish a notice in local newspapers indicating where members of the public may review documents that have been submitted pursuant to EPCRA. EPA also maintains a national toxic chemical inventory, based on TRI reports, in a computer data base that is available to the public on a cost-reimbursable basis.

The Administrator of EPA, in any case in which the identity of a toxic chemical is claimed as a trade secret, must identify the adverse health and environmental effects associated with the toxic chemical and assure that such information is included in the TRI computer database and is provided to any person requesting information about such toxic chemical. The appropriate Governor or state commission must identify the adverse health effects associated with a hazardous chemical or extremely hazardous substance, when its identity is claimed as a trade secret, and provide such health effects information to any person requesting information about the hazardous chemical or extremely hazardous substance.

Section 5–508 of Executive Order 12856 also provides that the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under the order by the agency preparing the strategy, plan, or report (to the extent permitted by law). When the reports are submitted to EPA, EPA is to compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged by the Executive Order to provide such strategies, plans and reports to the State

and local authorities where their facilities are located for an additional point of access to the public. Section 6–601 of Executive Order 12856 authorizes an agency to withhold certain information. (See 30–90)

B. *Trade Secret Procedures.* EPCRA section 322 (42 U.S.C. 11042) provides that a claim of trade secrecy may be made for the specific chemical identity of an extremely hazardous substance, a hazardous chemical, or a toxic chemical. Detailed information on how to submit a trade secrecy claim for information submitted pursuant to an EPCRA reporting requirement is contained in 40 CFR part 350. A trade secrecy claim may be submitted only to EPA and must be substantiated by providing specific answers to questions on an EPA form entitled ''Substantiation to Accompany Claims of Trade Secrecy'' (see 40 CFR 350.27). The submitter shall include with its EPCRA report both a sanitized and unsanitized trade secret substantiation form. The unsanitized version must contain all of the information claimed as trade secret or business confidential, properly marked in accordance with EPA regulations. The sanitized version is identical to the unsanitized version in all respects except that all of the information claimed as trade secret or business confidential is deleted, and a generic class or category to describe the trade secret chemical is included. This sanitized version is the one that is submitted to state or local authorities, as appropriate.

C. *Public Petition for Disclosure of Trade Secret Information.* The public may request the disclosure of a chemical identity claimed as trade secret by submitting a written petition to EPCRA Reporting Center, Environmental Protection Agency, P.O. Box 3348, Merrifield, Va. 22116–3348. The required contents of the petition are described in 40 CFR 350.15. This public petition process covers only requests for public disclosure of a chemical identify claimed as trade secret. Requests for disclosure of other types of information must be submitted under EPA's Freedom of Information Act regulations at 40 CFR part 2.

D. *Access by Federal Representatives or State Employees.*

1. *Authorized Federal Representative Access.* Under EPCRA section 322(f) (42 U.S.C. 11042(f)), EPA possesses the authority to disclose information to any authorized representative of the United States concerned with carrying out the requirements of EPCRA, even though the information might otherwise be entitled to trade secret or confidential treatment under EPA regulations. Such authority will be exercised by EPA only in accordance with 40 CFR 350.23.

2. *State Employee Access.* Any State may request access to trade secrecy claims, substantiations, supplemental substantiations, and additional information submitted to EPA in accordance with 40 CFR 350.19. EPA must release this information, even if claimed confidential, to any State in response to its written request if the request is from the Governor of the State and the State agrees to safeguard the information with procedures equivalent to those which EPA uses to safeguard the information. The Governor may disclose such information only to State employees.

E. *Access by Health Professionals.* EPCRA section 323 (42 U.S.C. 11043) allows health professionals to gain access to chemical identities, including those claimed as trade secret, in the following circumstances:

- for non-emergency treatment and diagnosis of an exposed individual;
- by health professionals employed by a local government to conduct preventive research studies and to render medical treatment; or
- for emergency diagnosis and treatment.

1. *Non-emergency Access.* In all circumstances but the medical emergency, the health professional must submit a written request and a statement of need, as well as a confidentiality agreement, to the facility holding the trade secret. The statement of need verifies that the health professional will be using the trade secret information only for the needs permitted in the statute, and the confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret. The required contents of the written request for access, including a certification signed by the health professional stating that the information contained in the statement of need is true, and the confidentiality statement are contained in 40 CFR 350.40. Following receipt of a written request, the facility to which such request is made shall provide the requested information to the health professional promptly.

2. *Emergency Access.* In the event of medical emergency,* a facility which is subject to the EPCRA reporting requirements must provide a copy of a MSDS, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information. The treating physician or nurse must have first determined that:

(a) A medical emergency exists as to the individual or individuals being diagnosed or treated;

(b) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(c) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

The specific chemical identity must be provided to the requesting treating physician or nurse immediately following the request, without requiring a written statement of need or a confidentiality agreement in advance. A written statement of need and confidentiality agreement may be required from the treating physician or nurse as soon as circumstances permit. The required contents of the statement of need and confidentiality agreement are specified in 40 CFR 350.40.

30–60–90 Compliance

A. *Internal Reviews.* OPDIVs/STAFFDIVs shall conduct internal reviews and audits and take such other steps as may be necessary to monitor compliance with the requirements of this chapter (30–60) and Executive Order 12856. Compliance with EPCRA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person.

B. *Annual Progress Report.* The Secretary will submit annual progress reports to the EPA Administrator beginning on October 1, 1995, regarding the progress that has been made in complying with all aspects of Executive Order 12856. This report and OPDIV/STAFFDIV responsibilities are described in chapter 30–09.

C. *Technical Assistance from EPA.* OPDIVs/STAFFDIVs are encouraged to request technical advice and assistance from EPA in order to foster full compliance with Executive Order 12856 and this chapter (30–60).

D. *EPA Monitoring.* Executive Order 12856 provides that the Administrator of EPA, in consultation with the Secretary, may conduct such reviews and inspections as may be necessary to monitor compliance with the agency's EPCRA responsibilities contained in

* ''Medical emergency'' means ''any unforeseen condition which a health professional would judge to require urgent and unscheduled medical attention. Such a condition is one which results in sudden and/or serious symptom(s) constituting a threat to a person's physical or psychological well-being and which requires immediate medical attention to prevent possible deterioration, disability, or death.'' (40 CFR 350.40(a)).

sections 30–60–20 through 30–60–70 of this chapter. OPDIVs/STAFFDIVs are to cooperate fully with the efforts of the Administrator to ensure compliance with Executive Order 12856. Should the Administrator notify an OPDIV/STAFFDIV that it is not in compliance with an applicable provision of Executive Order 12856, the OPDIV/STAFFDIV shall achieve compliance as promptly as is practicable.

E. *State and Local Right-to-Know Requirements.* OPDIVs/STAFFDIVs are encouraged to comply with all state and local right-to-know requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

F. *Prior Agreements for Application of EPCRA.* The compliance dates for application of EPCRA set forth in Executive Order 12856 are not intended to delay implementation of earlier timetables already agreed to by an OPDIV/STAFFDIV and are inapplicable to the extent they interfere with those timetables.

30–60–100 Civil and Criminal Penalties

EPCRA section 325 (42 U.S.C. 11045) establishes administrative, civil, and criminal penalties for violation of the Act. Table 2, following, indicates penalties that apply for specific violations. Certain section 325 penalties do not apply to government entities. Moreover, Executive Order 12856 does not make the provisions of section 325 applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provision.

TABLE 2.—SUMMARY OF EPCRA PENALTIES

Requirement	Administrative penalty	Civil penalty	Criminal penalty
Emergency Planning (42 U.S.C. § 11002(c); § 11003(d))	.....	$25,000 per day	
Emergency Release Notification (42 U.S.C. § 11004)	$25,000 per day. Second violation: $75,000 per day.	$25,000 per day. Second violation: $75,000 per day.	$25,000 or two (2) years imprisonment or both. Second conviction: $50,000 or five (5) years imprisonment or both.
MSDS Reporting (42 U.S.C. § 11021) [1]	$10,000 per day	$10,000 per day	
Inventory Reporting (42 U.S.C. § 11022) [1]	$25,000 per day	$25,000 per day	
TRI Reporting (42 U.S.C. § 11023) [1]	$25,000 per day	$25,000 per day	
Provision of Information to Health Professionals (42 U.S.C. § 11043(b)) [1]	$10,000 per day	$10,000 per day	
Failure to Substantiate Trade Secret Claim (42 U.S.C. § 11042(a)(2))	$10,000 per day	$10,000 per day	
Frivolous Trade Secret Claim	$25,000 per claim	$25,000 per claim	
Disclosure of Trade Secret Information (42 U.S.C. § 11042)	.....	.....	$20,000 or one year imprisonment or both.

[1] Penalty does not apply to a ''government entity.''

Subject: Pollution Prevention Act of 1990 (PPA) Requirements

30–70–00 Background
05 Applicability
10 Responsibilities
20 Pollution Prevention Policy
30 Definitions
40 Toxic Chemical Source Reduction and Recycling Reporting
50 Public Availability of Source Reduction Information
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30–70–00 Background

The Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109, establishes national policy that pollution is to be prevented or reduced at the source. The Act also requires the reporting of efforts to reduce toxic chemical releases through source reduction and recycling. This reporting requirement affects all facilities required to submit Form R under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (see 30–60).

The Administrator of EPA is required by the PPA to develop a strategy to promote source reduction and to submit a biennial report to Congress that describes the actions taken to implement the strategy and analyzes the source reduction and recycling data submitted on Form R. EPA must also promote source reduction practices in other federal agencies; review EPA regulations to determine their effect on source reduction; make matching grants to states to promote the use of source reduction techniques by businesses; and establish a Source Reduction Clearinghouse.

30–70–05 Applicability

A. *Agency Facilities.* Executive Order 12856 provides that EPCRA and the PPA apply to all Federal executive agencies that either own or operate a ''facility'' as that term is defined in EPCRA, if such facility meets the EPCRA's threshold requirements for compliance. The statutory definition of facility is:

> 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). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft (42 U.S.C. 11049(4)).

EPA regulations revise the statutory definition of facility to include ''manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.'' (40 CFR 355.20, 370.2). The purpose of the revision was to clarify that the definition applies to certain subsurface structures.

Executive Order 12856 modifies the statutory definition of facility in one respect. Each OPDIV/STAFFDIV must comply with the reporting provisions of the PPA without regard to the Standard Industrial Classification (SIC) delineations that apply to the organization's facilities, and such reports shall be for all releases, transfers, and wastes at such facilities without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the applications on the application of EPCRA section 313 shall apply to the

PPA reporting requirements in this chapter (see 30–60–70).

B. *Covered Facilities.* The reporting requirements of this chapter apply to facilities that must submit a Toxic Chemical Release Inventory Report (Form R) under section 313 of EPCRA. A completed Form R must be submitted for each toxic chemical manufactured, processed, or otherwise used at a covered facility in excess of the threshold quantity established for that chemical (see 30–60–70). Each OPDIV/STAFFDIV must apply all of the provisions of this chapter to each of its covered facilities, except for a federal agency facility outside the customs territory of the United States.

C. *GOCO'S.* Executive Order 12856 does not alter the obligations which government-owned, contractor-operated facilities (GOCOS) have under EPCRA and the PPA independent of that order or subjects such facilities to EPCRA or PPA if they are otherwise excluded. However, each OPDIV/STAFFDIV shall include the releases and transfers from all such facilities when meeting all of its responsibilities under this chapter.

D. *Preliminary List of Covered Facilities.* The Secretary was required by Executive Order 12856 to provide the Administrator of EPA by December 31, 1993, with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions EPCRA, PPA, and Executive Order 12856.

30–70–10 Responsibilities

A. *HHS.* An objective of Executive Order 12856 (see 30–80) is to ensure that all Federal agencies, conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated, or disposed of in a manner protective of public health and the environment. Executive Order 12856 requires the Secretary to comply with the reporting provisions set forth in section 6607 of the PPA (42 U.S.C. 13106), all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA.

B. *OPDIVs/STAFFDIVs.* The head of each OPDIV/STAFFDIV is responsible for ensuring that the OPDIV/STAFFDIV takes all necessary actions to prevent pollution in accordance with Executive Order 12856, and for that organization's compliance with the provisions of the PPA. Compliance with the PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person. An OPDIV/STAFFDIV should consult with EPA when a question arises as to the applicability of Executive Order 12856 to a particular facility.

30–70–20 Pollution Prevention Policy

A. *Pollution Prevention Act.* Section 6602(b) (42 U.S.C. 13101(b)) of the PPA states that it is the national policy of the United States that:

> pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

OPDIVs/STAFFDIVs are to incorporate the environmental management hierarchy stated in this policy into their environmental management practices and procedures.

Source reduction is fundamentally different and more desirable than waste management and pollution control. Preventing pollution before it is created is preferable to trying to manage, treat, or dispose of pollution after it is generated. OPDIVs/STAFFDIVs are encouraged to take advantage of opportunities to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes can result in substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

B. *Executive Order 12856.* Executive Order 12856 indicates that the Federal government should become a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies. Additional policies and requirements that apply to pollution prevention are contained in chapter 30–80.

30–70–30 Definitions

A. *Pollution Prevention.* Executive Order 12856 defines ''pollution prevention'' in section 2–203 to mean ''source reduction,'' as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through:

- Increased efficiency in the use of raw materials, energy, water, or other resources; or
- Protection of natural resources by conservation.

EPA has issued a Statement of Definition of Pollution Prevention that is identical to the definition in section 2–203 of Executive Order 12856 (Memorandum from F. Henry Habicht II, Deputy Administrator, Environmental Protection Agency, Subject: EPA Definition of ''Pollution Prevention'', to All EPA Personnel (May 28, 1992)). The Statement of Definition explains that recycling, energy recovery, treatment, and disposal are not included within EPA's definition of pollution prevention. In distinguishing between prevention of pollution and recycling, EPA includes ''in-process recycling'' within the definition of ''pollution prevention.'' ''Out-of-process recycling'' is part of recycling and is not part of the definition. The Statement of Definition also comments that recycling that is conducted in an environmentally sound manner shares many of the advantages of prevention—it can reduce the need for treatment or disposal, and conserve energy and resources.

Note: A different definition of pollution prevention is used in guidance from the Council on Environmental Quality in NEPA matters (see 30–50–50).

B. *Source Reduction.* ''Source reduction'' is defined in PPA section 6603(6) (42 U.S.C. 13102(5)) to mean any practice that:

- Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal; and
- Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

The term ''source reduction'' does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that is not integral to and

necessary for producing a product or providing a service.

30–70–40 Toxic Chemical Source Reduction and Recycling Reporting

A. *Requirement.* Section 6607 of the PPA (42 U.S.C 13106) directs each facility that is required to file an annual toxic chemical release form (Form R) under Sec. 313 of EPCRA to include a toxic chemical source reduction and recycling report with its toxic chemical release filing. The report must cover each toxic chemical required to be reported on Form R. Form R is discussed in 30–60–70. Reporting requirements under the PPA cover releases of toxic chemicals to all media (air, water, and land).

B. *Reporting Period.* A facility that is subject to the EPCRA section 313 and PPA section 6607 reporting requirements shall submit annually a Toxic Chemical Release Inventory Reporting Form (Form R) to EPA and to affected States and Indian tribes (see 30–60–70). Executive Order 12856 provides that the first year of compliance for Federal agencies with the PPA's reporting requirements shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

C. *Toxic Chemicals to be Reported.* The toxic chemicals that are subject to EPCRA section 313 and PPA section 6607 reporting are listed in 40 CFR 372.65. Additions to, or deletions from, the list are described each year in the *EPA Toxic Chemical Release Inventory Reporting Form R and Instructions* published in the **Federal Register** and available in booklet form from EPA. A completed Form R must be submitted for each toxic chemical manufactured, processed, or otherwise used at a covered facility in excess of the threshold quantity established for that chemical (see 30–60–70). Form R now includes data elements mandated by section 6607 of the PPA. A facility must provide information about source reduction and recycling activities related to each toxic chemical reported on Form R.

D. *Information to be Reported based on the ''Instructions for Completing EPA Form R''*

1. *Chemical Quantities.* Facilities must provide the following quantity information (in pounds) for each toxic chemical reported on Form R for the current reporting year, the prior year, and quantities anticipated in both the first year immediately following the reporting year and the second year following the reporting year (future estimates):

(a) Quantity of the toxic chemical (prior to recycling, treatment or disposal but not including one-time events) entering any waste stream or otherwise released * into the environment.

(b) Quantity of the toxic chemical or a mixture containing a toxic chemical that is used for energy recovery on-site or is sent off-site for energy recovery, unless it is a commercially available fuel;

Note: Reportable on-site and off-site energy recovery is the combustion of a residual material containing a TRI toxic chemical when (I) the combustion unit is integrated into an energy recovery system (i.e., industrial furnaces, industrial kilns, and boilers); and (ii) the toxic chemical is combustible and has a heating value high enough to sustain combustion.

(c) Quantity of the toxic chemical or a mixture containing a toxic chemical that is recycled on-site or is sent off-site for recycling;

(d) Quantity of the toxic chemical or a mixture containing a toxic chemical that is treated on-site or is sent to an off-site location for waste treatment; and

(e) Total quantity of toxic chemical released directly into the environment or sent off-site for recycling, waste treatment, energy recovery, or disposal during the reporting year due to any of the following events:

(1) Remedial actions,

(2) Catastrophic events, such as earthquakes, fires, or floods; or

(3) One-time events not associated with normal or routine production processes.

Note: The PPA separates the reporting of quantities of toxic chemicals recycled, used for energy recovery, treated, or disposed that are associated with normal or routine production operations from those that are not. Other sections of Form R dealing with releases to the environment and off-site transfers must include all releases and transfers as appropriate, regardless of whether they arise from catastrophic, remedial, or routine process operations.

Information available at the facility that may be used to estimate the prior year's quantities include the prior year's Form R submission, supporting documentation, and recycling, energy recovery, or treatment operating logs or invoices. However, for the first year of reporting these data elements, prior year quantities are required only to the extent such information is available. EPA expects reasonable future quantity estimates using a logical basis. Reporting facilities should take into account protections available for trade secrets as provided in EPCRA section 322 (42 U.S.C. 11042) (see 30–60–80).

2. *Production Ratio or Activity Index.* The facility must report a ratio of reporting year production to prior year production, or an ''activity index'' based on a variable other than production that is the primary influence on the quantity of the reported toxic chemical recycled, used for energy recovery, treated, or disposed.

3. *Source Reduction Activities.* If a facility engaged in any source reduction activity for the reported toxic chemical during the reporting year, the facility shall report the activity that was implemented. The information is to be reported only if a source reduction activity was newly implemented specifically (in whole or in part) for the reported toxic chemical during the reporting year. ''Source reduction activities'' are those actions that are taken to reduce or eliminate the amount of the reported toxic chemical released, used for energy recovery, recycled, or treated. Actions taken to recycle, threat, or dispose of the toxic chemical are not considered source reduction activities. Form R provides for the reporting of source reduction activities by category. The categories include:

- Good Operating Practices
- Inventory Control
- Spill and Leak Prevention
- Raw Material Modifications
- Process Modifications
- Cleaning and Degreasing
- Modified Containment Procedures for Cleaning Units
- Surface Preparation and Finishing
- Product Modifications

4. *Source Reduction Techniques.* If a facility engaged in any source reduction activity for the reported toxic chemical during the reporting year, the facility must also report the method used to identify the opportunity for the activity implemented. Methods to identify source reduction opportunities include:

- Internal or external pollution prevention opportunity audit(s)
- Materials balance audits
- Participative team management
- Employee recommendations (under a formal OPDIV/STAFFDIV Program or independent of a formal program)
- Federal or state government technical assistance program
- Trade association/industry technical assistance program
- Vendor assistance

5. *Additional Source Reduction, Recycling, or Pollution Control Information.* Form R provides an opportunity for a reporting facility to

* Reportable releases include ''any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment of barrels, containers, and other closed receptacles).'' (EPCRA section 329(8); 42 U.S.C. 11049(8)).

indicate any additional information on source reduction, recycling, or pollution control activities implemented at the facility in the reporting year or in prior years for the reported toxic chemical.

E. *Relationship to RCRA Reporting.* The reporting categories for quantities recycled, treated, used for energy recovery, and disposed apply to completing the source reduction section as well as to the rest of Form R. According to EPA, these categories are to be used only for TRI reporting. They are not intended for use in determining, under the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations, whether a secondary material is a waste when recycled. These categories (and their definitions) also do not apply to the information that may be submitted in a Hazardous Waste Report by hazardous waste generators and treatment, storage, and disposal (TSD) facilities to EPA or an authorized state under RCRA sections 3002 and 3004 (42 U.S.C. 6922, 6924). Differences in terminology and reporting requirements for toxic chemicals reported on Form R and for hazardous wastes regulated under RCRA occur because EPCRA and the PPA focus on specific chemicals, while the RCRA regulations and the Hazardous Waste Report focus on wastes, including mixtures.

F. *Form R. Availability.* Reports under EPCRA section 313 and PPA section 6607 are made on EPA Form R (EPA Form 9350–1), the *Toxic Chemical Release Inventory (TRI) Reporting Form.* EPA encourages facilities to submit the required information to EPA by using magnetic media (computer disk or tape) in lieu of Form R. More complete guidance on obtaining Form R and sources of information regarding, the submitted of Form R is contained in section 30–60–70.

G. *Where Reports Are to be Sent.* Form R is submitted to EPA, affected States, and affected Indian tribes.

Send reports to EPA by mail to: EPCRA Reporting Center, P.O. Box 23779, Washington, DC 20026–3779, Attn: Toxic Chemical Release Inventory.

To submit a Form R via hand delivery or certified mail, the EPCRA Hotline (800–535–2002) may be called to obtain the street address of the EPCRA Reporting Center.

Additional information on submitting a Form R is contained in section 30–60–70.

H. *Trade Secrets.* The provisions of EPCRA section 322 (42 U.S.C. 11042) dealing with the protection of trade secrets apply to the reporting requirements of this section in the same manner as to the reports required under section 313 of EPCRA (see 30–60–80).

30–70–50 Public Availability of Source Reduction Information

A. *OPDIVs/STAFFDIVs.* Unless such documentation is withheld pursuant to a statutory requirement of Executive Order, the public shall be afforded ready access to all reports required to be prepared by an OPDIV/STAFFDIV under this chapter. OPDIVs/STAFFDIVs are encouraged to provide such reports to the state and local authorities where their facilities are located for an additional point of access to the public. Public availability of information submitted on Form R is also discussed in section 30–60–80.

B. *EPA.* The PPA and Executive Order 12856 require the Administrator of EPA to make available to the public the source reduction information gathered pursuant to the PPA and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. Subject to the trade secret provisions of EPCRA, EPA must make the data collected on Form R, pursuant to section 6607 of the PPA, publicly available in the same manner as the data collected under EPCRA section 313. The Administrator has also established, in accordance with PPA section 6606 (42 U.S.C. 13105), a Source Reduction Clearinghouse to compile information, including a computer data base that contains information on management, technical, and operational approaches to source reduction. The data base permits entry and retrieval of information by any person.

30–70–60 Compliance

A. *Internal Reviews.* OPDIVs/STAFFDIVs shall conduct internal reviews and audits, and take such other steps, as may be necessary to monitor compliance with the requirements of this chapter and Executive Order 12856.

B. *Annual Progress Report.* The Secretary will submit annual progress reports to the EPA Administrator beginning on October 1, 1995, regarding the progress that has been made in complying with all aspects of Executive Order 12856, including the pollution reduction requirements. This report and OPDIV/STAFFDIV responsibilities are described in Chapter 30–80.

C. *Technical Assistance from EPA.* OPDIVs/STAFFDIVs are encouraged to request technical advice and assistance from EPA in order to foster full compliance with Executive Order 12856 and this chapter.

D. *EPA Monitoring.* Executive Order 12856 provides that the Administrator of EPA, in consultation with the Secretary, may conduct such reviews and inspections as may be necessary to monitor compliance with the PPA responsibilities contained in this chapter. OPDIVs/STAFFDIVs are to cooperate fully with the efforts of the Administrator to ensure compliance with Executive Order 12856. Should the Administrator notify an OPDIV/STAFFDIV that it is not in compliance with an applicable provision of Executive Order 12856, the OPDIV/STAFFDIV shall achieve compliance as promptly as is practicable.

E. *State and Local Pollution Prevention Requirements.* OPDIVs/STAFFDIVs are encouraged to comply with all State and local pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

F. *Funding Pollution Prevention Programs.* In accordance with Executive Order 12856, OPDIVs/STAFFDIVs shall place high priority on obtaining funding and resources needed for implementing pollution prevention strategies, plans, and assessments by identifying, requesting, and allocating funds through line-item or direct funding requests. Funding requests shall be made in accordance with the Federal Agency Pollution Prevention and Abatement Planning Process and through budget requests as outlined in Office of Management and Budget (OMB) Circulars A–106 and A–11, respectively.

G. *Life Cycle Analysis and Total Cost Accounting.* OPDIVs/STAFFDIVs should apply, to the maximum extent practicable, life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this chapter.

H. *Contractors.* All OPDIVs/STAFFDIVs shall provide, in all future contracts between the organization and its relevant contractors, for the contractor to supply all information the OPDIV/STAFFDIV deems necessary for it to comply with this chapter. In addition, to the extent that compliance with this chapter and Executive Order 12856 is made more difficult due to lack of information from existing contractors, an OPDIV/STAFFDIV shall take practical steps to obtain the information from such contractors that is needed to comply.

I. *Prior Agreements for Application of EPCRA and PPA.* The compliance dates for application of EPCRA and PPA set forth in Executive Order 12856 are not intended to delay implementation of earlier timetables already agreed to by a Federal agency and are inapplicable to

the extent they interfere with those timetables.

30–70–70 Civil and Criminal Penalties

EPCRA section 325(c) (42 U.S.C. 11045(c)), which provides civil and administrative penalties for failure to report TRI information, also applies to the PPA's requirement to report toxic chemical source reduction and recycling information on Form R. The penalty for failure to file a Form R is $25,000 for each day of violation of the law.

EPCRA section 325(c) penalties do not apply to a governmental entity. Moreover, Executive Order 12856 does not make the provisions of section 325 applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provisions.

Subject: Executive Order 12856, Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

30–80–00 Background

The objective of Executive Order 12856, August 3, 1993 (58 FR 41981), is to foster the Federal government as a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals. The Order also encourages the Federal government to be a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies. Executive Order 12856 seeks to ensure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable:

- The quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction;
- Waste that is generated is recycled to the maximum extent practicable; and
- Any wastes remaining are stored, treated, or disposed of in a manner protective of public health and the environment.

Executive Order 12856 requires Federal agencies to comply with the requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109). EPCRA establishes programs to provide the public with important information on the hazardous and toxic chemicals in their communities and emergency planning and notification requirements to protect the public in the event of release of extremely hazardous substances. The order requires Federal agencies to report in a public manner toxic chemicals entering any wastestream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification. Facilities that are subject to EPCRA are required to provide information and reports to EPA and state and local groups. Five distinct reporting requirements are contained in EPCRA. Each of these reporting requirements and other facility responsibilities under EPCRA and Executive Order 12856 are described in chapter 30–60.

The PPA establishes national policy that pollution is to be prevented or reduced at the source. The Act also requires the reporting of efforts to reduce toxic chemical releases through source reduction and recycling. The PPA reporting requirement and other facility responsibilities under the PPA and Executive Order 12856 are described in chapter 30–70.

Executive Order 12856 also places other responsibilities on federal agencies that are not contained in EPCRA or PPA. It requires Federal agencies to develop voluntary goals to reduce total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal; a pollution prevention strategy and plan; a plan and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals; and a plan and goals for voluntarily reducing agency manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. These additional responsibilities under Executive Order 12856 are described in this chapter.

30–80–05 Applicability

A. *Covered Facilities.* Executive Order 12856 is applicable to all OPDIVs/STAFFDIVs that either own or operate a ''facility'' as that term is defined in EPCRA section 329(4) (42 U.S.C. 11049(4)), if such facility meets EPCRA's threshold requirements for compliance. Each of the threshold requirements for EPCRA compliance are discussed in chapter 30–60. The statutory definition of ''facilities:

> 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). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

EPA regulations revise the statutory definition of facility to include ''manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.'' (40 CFR 355.20, 370.2). The purpose of the revision was to clarify that the definition applies to certain subsurface structures.

Each OPDIV/STAFFDIV must apply all of the provisions of Executive Order 12856 to each of its covered facilities, including those facilities which are subject, independent of the Executive Order, to the provisions of EPCRA (e.g., certain government-owned/contractor-operated facilities (GOCOS)).

Executive Order 12856 does not apply to Federal agency facilities outside the customs territory of the United States. EPA may be consulted to determine the applicability of Executive Order 12586 to particular OPDIV/STAFFDIV facilities.

B. *Preliminary List of Covered Facilities.* The Secretary was required by Executive Order 12856 to provide the EPA Administrator by December 31, 1993, with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and Executive Order 12856.

30–80–10 Responsibilities

The head of each OPDIV/STAFFDIV is responsible for ensuring that all necessary actions are taken for the prevention of pollution with respect to that organization's activities and facilities, and for ensuring compliance with the appropriate pollution prevention and emergency planning and community right-to-know provisions of the PPA and EPCRA. To the maximum

extent practicable, the head of each OPDIV/STAFFDIV shall strive to comply with the purposes, goals, and implementation steps set forth in Executive Order 12856.

HHS Headquarters has developed the Pollution Prevention Strategy. The head of each OPDIV/STAFFDIV with facilities covered by the Executive Order must ensure that the organization develops, consistent with the HHS Pollution Prevention Strategy:

1. Voluntary goals to reduce the organization's total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal from facilities covered by Executive Order 12856;

2. A written pollution prevention plan;

3. A plan and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals;

4. A plan and goals for voluntarily reducing manufacturing, processing, and use of extremely hazardous substances and toxic chemicals.

The OPDIV/STAFFDIV shall submit progress reports, conduct internal reviews and audits, and take such other steps as may be necessary to monitor compliance with the requirements of this chapter and Executive Order 12856. The head of each OPDIV/STAFFDIV with facilities covered by the Executive Order shall also place high priority on obtaining funding and resources needed for implementing all aspects of this chapter and Executive Order 12856.

30–80–15 Definitions

Executive Order 12856 incorporates by reference all definitions found in EPCRA and PPA and implementing regulations (except the term ''person'', as defined in section 329(7) (42 U.S.C. 11049(7)) of EPCRA, also includes Federal agencies). The following definitions are used in this chapter and chapters 30–60 and 30–70:

A. *Extremely Hazardous Substance.* An ''extremely hazardous substance'' is defined in EPCRA section 329(3) (42 U.S.C. 11049(3)) and EPA regulations in 40 CFR 355.20 to mean a substance that is listed in Appendices A (in alphabetical order) and B (by CAS number) of 40 CFR part 355.

B. *Pollution Prevention.* Pollution prevention is defined in section 2–203 of Executive Order 12856 to mean ''source reduction,'' as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through:

- Increased efficiency in the use of raw materials, energy, water, or other resources; or
- Protection of natural resources by conservation.

EPA has issued a Statement of Definition of Pollution Prevention that is identical to the definition in Executive Order 12856 (Memorandum from F. Henry Habicht II, Deputy Administrator, Environmental Protection Agency, Subject: EPA Definition of ''Pollution Prevention'', to All EPA Personnel (May 28, 1992)). The Statement of Definition explains that recycling, energy recovery, treatment, and disposal are not included within EPA's definition of pollution prevention. In distinguishing between prevention of pollution and recycling, EPA includes ''in-process recycling'' within the definition of ''pollution prevention.'' ''Out-of-process recycling'' is part of recycling and is not part of the definition. The Statement of Definition also comments that recycling that is conducted in an environmentally sound manner shares many of the advantages of prevention—it can reduce the need for treatment of disposal, and conserve energy and resources.

Note: A different definition of pollution prevention is used in guidance from the Council on Environmental Quality in NEPA matters (see 30–50–50).

C. *Source Reduction.* ''Source reduction'' is defined in PPA section 6603(5) (42 U.S.C. 13102(5)) to mean any practice that:

- Reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

The term ''source reduction'' does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that is not integral to and necessary for producing a product or providing a service.

D. *Toxic Chemical.* Toxic chemical means a substance on the list described in section 313(c) of EPCRA (42 U.S.C. 11023(c)) and contained in 40 CFR 372.65 (see 30–60–70).

E. *Toxic Pollutants.* Under the provisions of section 313 of EPCRA as of December 1, 1993 (see 30–60–70), OPDIVs/STAFFDIVs may choose to include releases and transfers of other chemicals, such as:

- An ''extremely hazardous substance'' as defined in section 329(3) of EPCRA (42 U.S.C. 11049(3)) and listed in 40 CFR part 355, Appendices A & B (see 30–60–20 and –30);
- A ''hazardous waste'' under section 3001 of RCRA (42 U.S.C. 6921) as defined in 40 CFR 261.3 (see section 30–00–30); or
- A ''hazardous air pollutant'' listed under section 112(b) of the Clean Air Act (42 U.S.C. 7412(b)) (see 30–00–30).

For the purposes of establishing the OPDIV/STAFFDIV baseline under subsection C of section 30–80–30, such ''other chemicals'' are in addition to (not instead of the EPCRA section 313 chemicals. The term ''toxic pollutants'' does not include hazardous waste subject to remedial action generated prior to August 3, 1993.

30–80–20 Pollution Prevention Strategy

A. *Achievement of Executive Order 12856 Requirements.* The HHS Pollution Prevention Strategy was developed to achieve the following requirements specified in sections 3–302 through 3–305 of Executive Order 12856:

1. *Toxic Chemical Release Reduction Goals.* Voluntary goals to reduce the Department's total releases of toxic chemicals or toxic pollutants to the environment and off-site transfers of such toxic chemicals or toxic pollutants for treatment and disposal from facilities covered under Executive Order 12856 by 50 percent December 31, 1999, utilizing, to the maximum extent practicable, source reduction practices.

2. *Acquisition and Procurement Goals and Plans.* Plans and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances of toxic chemicals and a plan and goal for voluntarily reducing manufacturing, processing, and use of extremely hazardous substances and toxic chemicals.

3. *Toxic Chemical Release Inventory and Pollution Prevention Act Reporting.* Compliance with the provisions of EPCRA section 313 (42 U.S.C. 11023) and PPA section 6607 (42 U.S.C. 13106) and all implementing regulations.

4. *Emergency Planning and Community Right-to-Know Reporting Responsibilities.* Compliance with the

provisions set forth in sections 301 through 312 of EPCRA (42 U.S.C. 11001–11022) and all implementing regulations.

B. *Strategy Contents.* The Pollution Prevention Strategy includes the following elements:

1. *Pollution Prevention Policy Statement.* The HHS Pollution Prevention Strategy contains a Pollution Prevention Policy Statement that reflects the Department's commitment to incorporate pollution prevention through source reduction in facility management and acquisition. The statement designates principal responsibilities for development, implementation, and evaluation of the strategy. The statement also identifies an individual responsible for coordinating the Department's efforts in pollution prevention.

2. *Source Reduction Commitment.* The Pollution Prevent Strategy commits the Department to utilize pollution prevention through source reduction, where practicable, as the primary means of achieving and maintaining compliance with all applicable federal, state, and local environmental requirements.

3. *Executive Order 12856 Achievement Plan.* The strategy contains plans for achieving the requirements specified in sections 3–302 through 3–305 of Executive Order 12856, as summarized in subsection A of this section.

30–80–30 Toxic Chemical Reduction Goals

A. *OPDIV/STAFFDIV Toxic Chemical Release Reduction Goals.* Each OPDIV/STAFFDIV having facilities covered by Executive Order 12856 shall develop voluntary goals to reduce total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal by 50 percent by December 31, 1999. To the maximum extent practicable, such reductions shall be achieved by implementation of source reduction practices.

B. *Baseline Measurement.* The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal in subsection A of this section for each OPDIV/STAFFDIV is the first year in which releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported. The baseline amount to which the 50 percent reduction goal applies is the aggregate amount of toxic chemicals reported in the baseline year for all that OPDIV/STAFFDIV's covered facilities. In no event shall the baseline be later than the 1994 reporting year.

C. *Alternate Toxic Pollutants Reduction Goal.* As an alternative to a 50 percent reduction goal for toxic chemicals, an OPDIV/STAFFDIV may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the OPDIV/STAFFDIV shall delineate the scope of its reduction program in the written pollution prevention plan that is required by section 30–80–40. The baseline for measuring reductions for purposes of achieving the 50 percent reduction requirement for each OPDIV/STAFFDIV shall be the first year in which releases of toxic pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that OPDIV/STAFFDIV's facilities encompassed by its pollution prevention plan. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the OPDIV/STAFFDIV in the baseline year. For any toxic pollutants included by the OPDIV/STAFFDIV in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the OPDIV/STAFFDIV shall report on such toxic pollutants annually as part of its toxic chemical release inventory report (see 30–60–70), if practicable, or through a report that is made available to the public.

30–80–40 Pollution Prevention Plan

A. *Pollution Prevention Plan.* The head of each OPDIV/STAFFDIV shall ensure that each of its covered facilities developed a written Pollution Prevention Plan. Each facility plan shall set forth the facility's contribution to the OPDIV's/STAFFDIV's toxic chemical reduction goals (see 30–90–30).

B. *Facility Assessments.* OPDIVs/STAFFDIVs shall conduct assessments of their facilities as necessary to ensure development of facility pollution prevention plans and pollution prevention programs.

30–80–50 Acquisition and Procurement Plans and Goals

A. *Plans and Goals*

1. *Toxic Chemical Acquisition Reduction Plan and Goals.* Each OPDIV/STAFFDIV shall establish a plan and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals.

2. *Toxic Chemical Use Reduction Plan and Goal.* Each OPDIV/STAFFDIV shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals.

B. *Specifications and Standards Review.* OPDIVs/STAFFDIVs shall also review (in coordination with GSA, EPA, and other Federal agencies where appropriate) their standardized documents, including specifications and standards, and identify opportunities to eliminate or reduce the use of extremely hazardous substances and toxic chemicals, consistent with the safety and reliability requirements of their missions. All appropriate revisions to these specifications and standards shall be made by 1999.

C. *Coordination with EPA.* Each OPDIV/STAFFDIV shall establish priorities for implementing this section in coordination with EPA.

D. *Innovative Pollution Prevention Technologies.* OPDIVs/STAFFDIVs are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, Government laboratories, academia, and others to assess and deploy, innovative environmental technologies for domestic use and for markets abroad.

30–80–60 EPCRA and Pollution Prevention Act Responsibilities

A. *Emergency Planning and Community Right-to-Know Responsibilities.* The head of each OPDIV/STAFFDIV is responsible for assuring compliance with the provisions set forth in sections 301 through 312 of EPCRA (42 U.S.C. 11001–11022). Procedures for complying with these requirements are contained in chapter 30–60.

B. *Toxic Chemical Release Inventory and Pollution Prevention Act Reporting.* The head of each OPDIV/STAFFDIV is responsible for assuring compliance with the reporting requirements set forth in EPCRA section 313 (42 U.S.C. 11023) and PPA section 6607 (42 U.S.C. 13106). Procedures for complying with these reporting requirements are contained in chapters 30–60 and 30–70. In accordance with Executive Order 12856, each OPDIV/STAFFDIV shall comply with these reporting requirements without regard to the Standard Industrial Classification (SIC) delineations that apply to the organization's facilities, and such reports shall be for all releases, transfers, and wastes at such facilities without regard to the SIC code of the

activity leading to the release, transfer, or waste.

30–80–70 Compliance

A. *Scope of Compliance.* Executive Order 12856 provides that compliance with EPCRA and PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person.

B. *Internal Reviews.* OPDIVs/STAFFDIVs shall conduct internal reviews and audits, and take such other steps as may be necessary, to monitor compliance with the requirements of this chapter and Executive Order 12856, including conducting assessments of their facilities to ensure development of facility pollution prevention plans and pollution prevention programs.

C. *Annual Progress Reports*

1. *HHS Annual Report to EPA.* The Secretary will submit annual progress reports to the EPA Administrator beginning on October 1, 1995. These reports will include a description of the progress that has been made in complying with all aspects of Executive Order 12856, including pollution reduction requirements. This reporting requirement expires after the report due on October 1, 2001. All OPDIVs/STAFFDIVs must institute procedures that will permit timely progress reporting by OPDIV/STAFFDIV facilities and the gathering of information for the Secretary's report.

2. *EPA Annual Report to President.* Executive Order 12856 requires EPA to submit an annual report to the President on Federal agency compliance with toxic chemical release inventory reporting under EPCRA section 313 and toxic chemical source reduction and recycling reporting under PPA section 6607 (see chapters 30–60 and 30–70). All OPDIVs/STAFFDIVs must institute procedures that will permit timely progress reporting to EPA for its report to the President.

D. *Contractor Reporting Responsibilities.* To facilitate compliance with Executive Order 12856, OPDIVs/STAFFDIVs shall provide, in all future contracts between the organization and its relevant contractors, for the contractor to supply to the OPDIV/STAFFDIV all information that the OPDIV/STAFFDIV deems necessary for it to comply with the order. In addition, to the extent that compliance with Executive Order 12856 is made more difficult due to lack of information from existing contractors, OPDIVs/STAFFDIVs shall take practical steps to obtain the information needed to comply with the order from such contractors. Although Executive Order 12856 does not alter the obligations which GOCOs have under EPCRA and PPA independent of the order or subjects such facilities to EPCRA or PPA if they are otherwise excluded, the releases and transfers from all such facilities are to be included when meeting all of the OPDIV's/STAFFDIV's responsibilities under Executive Order 12856.

E. *Technical Assistance from EPA.* OPDIVs/STAFFDIVs are encouraged to request technical advice and assistance from EPA in order to foster full compliance with Executive Order 12856 and this chapter.

F. *Technical Assistance to Local Emergency Planning Committees.* OPDIVs/STAFFDIVs shall provide technical assistance, if requested, to local emergency planning committees in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities (see 30–60).

G. *EPA Review.* Executive Order 12856 provides that the Administrator of EPA, in consultation with the Secretary, may conduct such reviews and inspections as may be necessary to monitor compliance with HHS responsibilities under EPCRA (see 30–60) and the PPA (see 30–70). OPDIVs/STAFFDIVs are to cooperate fully with the efforts of the Administrator to ensure compliance with Executive Order 12856. Should the Administrator notify on OPDIV/STAFFDIV that it is not in compliance with an application provision of Executive Order 12856, the OPDIV/STAFFDIV shall achieve compliance as promptly as is practicable.

H. *State and Local Right-to-Know Requirements.* OPDIVs/STAFFDIVs are encouraged to comply with all State and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

I. *Exemption for Particular Federal Facilities.* Section 6–601 of Executive Order 12856 provides that the head of a Federal agency may request from the President in the interest of national security, an exemption from complying with the provision of any or all aspects of the order for particular Federal agency facilities, provided that the procedures set forth in CERCLA section 1200)(1) (42 U.S.C. 9620(j)(1)) are followed.

30–80–80 Public Availability of Information

To the extent permitted by law, and unless such documentation is withheld pursuant to section 6–601 of Executive Order 12856, the public shall be provided ready access to all strategies, plans, and reports required to be prepared by the Department or an OPDIV/STAFFDIV under Executive Order 12856. OPDIVs/STAFFDIVs are encouraged to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public.

30–80–90 Funding and Resources

Each OPDIV/STAFFDIV shall place high priority on obtaining funding and resources needed for implementing all aspects of this chapter and Executive Order 12856, including the pollution prevention strategies, plans, and assessments required by Executive Order 12856, by identifying, requesting, and allocating funds through line-item or direct funding requests. OPDIVs/STAFFDIVs are to make such budget requests as required in the Federal Agency Pollution Prevention and Abatement Planning Process and through budget requests as outlined in Office of Management and Budget (OMB) Circular A–11. OPDIVs/STAFFDIVs should apply, to the maximum extent practicable, a life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this chapter and Executive Order 12856.

Subject: Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition

30–90–00 Background

A. *Executive Order 13101.* Executive Order 13101 requires Federal agencies to strive to increase the procurement of products that are environmentally preferable or that are made with recovered materials and to set goals to maximize the number of recycled products purchased, relative non-recycled alternatives. Each agency is to establish either a goal for solid waste

prevention and for recycling or a goal for solid waste diversion. It is the national policy to prefer pollution prevention, whenever feasible.

Each Executive agency is to initiate a program, compatible with State and local requirements, to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. Federal agencies are also to consider cooperative ventures with State and local governments to promote recycling, and waste reduction in the community. The order directs that in acquisition planning and in the evaluation and award contracts, agencies are to consider, among other factors, use of recovered materials, life cycle costs, and recyclability. Each Executive department and major procuring agency must establish model facility demonstration programs that include comprehensive waste prevention and recycling programs and emphasize the procurement of recycled and environmentally preferable products and services. A government-wide award will be presented annually by the White House to the best, most innovative program implementing the objectives of Executive Order 13101 to give greater visibility to these efforts so that they can be incorporated government-wide.

The Executive Order creates a Federal Environmental Executive and establishes high-level Environmental Executive positions within each agency to be responsible for expediting the implementation of the order and statutes that pertain to the Order.

Executive Order 13101 was effective immediately upon its issuance by the President of September 14, 1998. Executive Order 13101 revokes Executive Order 12873, dated October 20, 1993.

B. *Resource Conservation and Recovery Act of 1976 (RCRA).* Executive Order 13101 requires Federal agencies to comply with the sections of RCRA that cover Federal procurement of recycled products. Section 6002(c)(1) of RCRA (42 U.S.C. 6962(c)(1)) imposes a duty on Federal agencies to procure items ''composed of the highest percentage of recovered materials practicable * * * consistent with maintaining a satisfactory level of competition. * * *'' The Administrator of the Environmental Protection Agency (EPA) is required by Section 6002 to develop guidelines that designate those items which are or can be produced with recovered materials and set forth recommended practices with respected to the procurement of recovered materials and items containing such materials. To assist procuring agencies in complying with the requirements of section 6002, EPA has issued guidelines for the Federal procurement of building insulation products containing recovered materials, cement and concrete containing fly ash, paper and paper products containing recovered materials, lubricating oils containing re-refined oil, and retread tires (see 40 CFR part 247).

RCRA 6002 also requires each procuring agency to develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

C. *OFPP Policy Letter 92–4.* RCRA section 6002 (42 U.S.C 6962) requires the Office of Federal Procurement Policy (OFPP) to issue coordinated policies to maximize Federal use of recovered material. Executive Order 13101 requires Federal agencies, consistent with policies established by OFPP Policy Letter 92–4 (57 FR 53362 (1992)), to comply with executive branch policies for the acquisition and use of environmentally preferable products and services and to implement cost-effective procurement preference programs favoring the purchase of these products and services. OFPP Policy Letter 92–4, establishes Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services. The OFPP Policy Letter also provides guidance to be followed by Executive agencies in implementing section 6002 of RCRA.

OFPP Policy Letter requires the implementation of cost-effective procurement preference programs for the purchase of environmentally-sound, energy-efficient products and services. It applies to Federal executive agencies that use appropriated Federal funds for procurement purposes. The Policy Letter provides direction for developing affirmative procurement programs and for the procurement of paper containing post-consumer waste. The letter also implements the Energy Policy and Conservation Act, 42 U.S.C. 6201–6422, and two Executive Orders.

Policy Letter 92–4 directs executive agencies to consider energy conservation and efficiency factors in the procurement of property and services. It also requires Federal agencies to give preference in their procurement programs to practices and products that conserve natural resources and protect the environment. Energy conservation and efficiency data are to be considered, along with estimated cost and other relevant factors, in the development of purchase requests, invitations for bids and solicitations for offers. In addition, with respect to the procurement of consumer products, as defined under Part B, Title III of the Energy Policy and Conservation Act, agencies shall consider energy use/efficiency labels (42 U.S.C. 6294) and prescribed energy efficiency standards (42 U.S.C. 6295) in making purchasing decisions.

The Policy Letter is intended to apply to all products and services. There are differing requirements for the guideline items than for other items.

30–90–05 Applicability

A. *OPDIVs/STAFFDIVs.* Consistent with the demands of efficiency and cost effectiveness, the head of each OPDIV/STAFFDIV shall incorporate waste prevention and recycling in the organization's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products. Consistent with policies established by Office of Federal Procurement Policy (''OFPP'') Policy Letter 92–4, OPDIVs/STAFFDIVs shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

B. *Contractor Operated Facilities.* Contracts that provide for contractor operation of a government-owned or leased facility and/or contracts, awarded after the effective date of Executive Order 13101, shall include provisions that obligate the contractor to comply with the requirements of the order within the scope of its operations. In addition, to the extent permitted by law and where economically feasible, existing contracts should be modified to include provisions that obligate the contractor to comply with the requirements of Executive Order 13101.

C. *Real Property Acquisition and Management.* Within 90 days after the date of this order, and to the extent permitted by law and where economically feasible, OPDIVs/STAFFDIVs shall ensure compliance with the provisions of this order in the acquisition and management of Federally owned and leased space. Agencies shall also include environmental and recycling provisions in the acquisition and management of all leased space and in the construction of new Federal buildings.

D. *Retention of Funds.* The Administrator of General Services shall continue with the program that retains

for the agencies the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

E. *Agencies in non-GSA Managed Facilities.* OPDIVs/STAFFDIVs, to the extent permitted by law, should develop a plan to retain the proceeds from the sale of materials recovered through recycling or waste prevention programs.

F. *Model Facility Programs.* Each executive agency shall establish a model demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and biobased products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; composting organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

G. *Recycling Programs.* Each OPDIV/STAFFDIV shall designate a recycling coordinator for each facility or installation. The recycling coordinator shall implement or maintain waste prevention and recycling programs in the agencies' action plans. Agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

30–90–10 Responsibilities

The head of each OPDIV/STAFFDIV shall develop and implement to the maximum extent practicable affirmative procurement programs in accordance with RCRA section 6002 (42 U.S.C. 6962) and Executive Order 13101.

The head of each OPDIV/STAFFDIV shall ensure that the organization meets or exceeds minimum materials content standards when purchasing or causing the purchase of printing and writing paper.

30–90–15 Definitions

A. ''Acquisition'' means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when HHS organization needs are established and includes the description of requirements to satisfy organization needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling organization needs by contract.

B. ''Environmentally preferable'' means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

C. ''Life Cycle Cost'' means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

D. ''Life Cycle Assessment'' means the comprehensive examination of a products environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

E. ''Postconsumer material'' means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. ''Post-consumer material'' is a part of the broader category of ''recovered material''.

F. ''Recovered materials'' means waste materials and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903(19)).

Manufacturing, forest residues, and other wastes also fit within the definition of ''recovered materials''. Such wastes include dry paper and paperboard waste generated after completion of the paper-making process; finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others; fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes; wastes generated by the conversion of goods made from fibrous material; and fibers recovered from waste water which otherwise would enter the waste-stream.

G. ''Recyclability'' means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

H. ''Recycling'' means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

I. ''Waste prevention'' means any change in the design, manufacturing, purchase or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

J. ''Waste reduction'' means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

K. ''Pollution prevention'' means ''source reduction'' as defined in the Pollution Prevention Act of 1990, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

L. ''Biobased product'' means a commercial or industrial product (other than food or feed: that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

M. ''Major procuring agencies'' shall include any executive agency that procures over $50 million per year of goods and services.

30–90–20 Roles of the Federal Environmental Executive and Agency Environmental Executives

A. *Federal Environmental Executive.* The Federal Environmental Executive is designated by the President and is located within the Environmental Protection Agency (''EPA''). The Federal Environmental Executive is authorized to take all actions necessary to ensure that Federal agencies comply with the requirements of Executive Order 13101. The Federal Environmental Executive's responsibilities include:

Identifying and recommending initiatives for government-wide implementation that will promote the purposes of Executive Order 13101, including:

(a) The development of a government-wide Waste Prevention and Recycling Strategic Plan for implementation of Executive Order 13101 and appropriate incentives to encourage the acquisition of recycled and environmentally preferable products by the Federal Government,

(b) Chairing the Task Force under the steering committee established by Executive Order 13101, and

(c) Preparing a biennial report on this Order.

The Federal Environmental Executive will establish committees and work groups to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the Federal Environmental Executive. As these committees and work groups are created, OPDIVs/STAFFDIVs may be requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, waste prevention, and recycling, and others as needed to staff and work on the initiatives of the Executive. OPDIVs/STAFFDIVs shall make their services, personnel and facilities available to the Federal Environmental Executive to the maximum extent practicable for the performance of functions under Executive Order 13101.

B. *HHS Environmental Executive.* Executive Order 13101 requires the Secretary to designate an Agency Environmental Executive, who serves at a level no lower than at the Assistant Secretary level or equivalent. The Agency Environmental Executive is responsible for:

1. Translating the Government-wide Strategic Plan into specific agency and service plans;

2. Implementing the specific agency and service plans;

3. Reporting to the Federal Environmental Executive (FEE) on the progress of plan implementation;

D. Working with the FEE and the Task Force in furthering implementation of this order;

E. Tracking agencies' purchases of EPA-designated guideline items and reporting agencies' purchases of such guideline items to the FEE per the recommendations developed in this Order. Agency acquisition and procurement personnel shall justify in writing to the file and the Agency Environmental Executive (AEE) the rationale for not purchasing such items, above the micropurchase threshold, and submit a plan and timetable for increasing agency purchases of the designated item(s);

F. One year after a product is placed on the USDA Biobased Products List, estimating agencies' purchases of products on the list and reporting agencies' estimated purchases of such products to the Secretary of Agriculture; and

G. Reviewing Departmental programs and acquisitions to ensure compliance with this Order.

30–90–30 Acquisition Planning and Affirmative Procurement Programs

A. *Acquisition Planning.* In developing plans, drawings, work statements, specifications, or other product descriptions, OPDIVs/STAFFDIVs shall consider, as appropriate, a broad range of factors including:

—Elimination of virgin material requirements;

—Use of recovered materials;

—Reuse of product;

—Life cycle cost;

—Recyclability;

—Use of environmentally preferable products;

—Waste prevention (including toxicity reduction or elimination); and

—Ultimate disposal, as appropriate.

These factors should be considered in acquisition planning for all procurements and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

B. *OPDIV/STAFFDIV Responsibilities.* In accordance with OFPP Policy Letter 924, OPDIVs/STAFFDIVs shall:

1. Identify and procure needed products and services that, all factors considered, are environmentally-sound and energy-efficient;

2. Procure products, including packaging, that contain the highest percentage of recovered materials, and where applicable, post-consumer waste, consistent with performance requirements, availability, price reasonableness, and cost effectiveness;

3. Employ life cycle cost analysis, whenever feasible and appropriate, to assist in making product and service selections;

4. Use product descriptions and specifications that reflect cost-effective use of recycled products, recovered materials, water efficiency devices, remanufactured products and energy-efficient products, materials and practices;

5. Work with private standard setting organizations and participate, pursuant to OMB Circular No. A–119, in the development of voluntary standards and specifications defining environmentally-sound, energy-efficient products, practices and services;

6. Require vendors to certify the percentage of recovered materials used, when contracts are awarded wholly or in part on the basis of utilization of recovered materials;

7. Assure, when drafting or reviewing specifications for required items, that the specifications:

(a) Do not exclude the use of recovered materials;

(b) Do not unnecessarily require the item to be manufactured from virgin materials; and

(c) Require the use of recovered materials and environmentally-sound components to the maximum extent practicable without jeopardizing the intended end use of the item; and

8. Arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery. OPDIVs/STAFFDIVs that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuel derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(C) *Affirmative Procurement Programs.* RCRA section 6002(i) (42 U.S.C. 6962(i)) requires the development of an affirmative procurement program for each item that is covered by an EPA guideline. The affirmative procurement program is to assure that items composed of recovered materials will be purchased to the maximum extent practicable, consistent with applicable provisions of Federal procurement law.

1. OPDIVs/STAFFIDVs shall establish affirmative procurement programs for each of the items covered by guidelines developed by the Environmental Protection Agency pursuant to subsection 6002(e) of RCRA (see 40 CFR part 247). For newly designated items, OPDIVs/STAFFDIVs shall revise their internal programs within one year from the date EPA designated the new items. OPDIVs/STAFFDIVs shall ensure that responsibilities for preparation, implementation and monitoring of affirmative procurement programs are shared between program personnel and procurement personnel. The responsibility to establish an affirmative procurement program applies only to purchases of guideline items costing $10,000 or more or where the quantity of such items, or of functionally-equivalent items, acquired in the course of the preceding year was $10,000 or more.

2. For designated EPA guideline items, excluding biobased products as described in this Executive Order, OPDIVs/STAFFDIVs shall ensure that their affirmative procurement programs require that 100 percent of their purchases of products meet or exceed the EPA guideline standards unless

written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Written justification is not required for purchases below the micropurchase threshold. For micropurchases, agencies shall provide guidance regarding purchase of EPA-designated guideline items. This guidance should encourage consideration of aggregating purchases when this method would promote economy and efficiency.

3. *Program Elements.* Each OPDIV/STAFFDIV affirmative procurement program, at a minimum, must comply with RCRA subsection 6002(i) and must:

(a) State a preference for the procurement of the item covered by the EPA guideline;

(b) Promote the cost-effective procurement of the covered item;

(c) Require estimates of the total amount of the recovered item used in a contract, certification of the minimum amount actually used, where appropriate, and procedures for verifying the estimates and certifications;

(d) Provide for the annual review and monitoring of the effectiveness of the program; and

(e) Include one of the following options, or a substantially equivalent alternative, to insure that contracts for items covered by the guidelines are awarded, unless a waiver in granted, on the basis of:

• Case-by-case procurement, open competition between products made of virgin materials and products containing recovered materials; preference to be given to the latter, or

• Minimum-content standards, which identify the minimum content of recovered materials that an item must contain to be considered for award.

4. *Waiver.* OPDIVs/STAFFDIVs are to base decisions to waive, or not to procure, EPA guideline items composed of the highest percentages of recovered materials practicable on a determination that such items:

(a) Are not reasonably available within the time required;

(b) Fail to meet the performance standards set forth in applicable specifications or fail to meet the reasonable performances standards of the procuring agencies; or

(c) Are only available at an unreasonable price

5. The Agency Environmental Executive will track purchases of designated EPA guideline items and report purchases of such guideline items to the Federal Environmental Executive when requested.

A. Agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires. Fleet and commodity managers shall take immediate steps, as appropriate, to procure these items in accordance with section 6002 of RCRA. This provision does not preclude the acquisition of biobased (e.g., vegetable) oils.

B. The FEE shall work to educate executive agencies about the new Department of Defense Cooperative Tire Qualification Program, including the Cooperative Approval Tire List and Cooperative Plant Qualification Program, as they apply to retread tires.

30–90–40 Agency Goals and Reporting Requirements

Each OPDIV/STAFFDIV shall establish either a goal for solid waste prevention and a goal for recycling or a goal for solid waste diversion to be achieved by January 1, 2000. Each agency shall further ensure that the established goals include long-range goals to be achieved by the years 2005 and 2010. These goals shall be submitted to the FEE within 180 days after the date of this Order.

In addition to white paper, mixed paper/cardboard, aluminum, plastic, and glass, agencies should incorporate into their recycling programs efforts to recycle, reuse, or refurbish pallets and collect toner cartridges for re-manufacturing. Agencies should also include programs to reduce or recycle, as appropriate, batteries, scrap metal, and fluorescent lamps and ballasts.

30–90–40 Standards, Specifications and Designation of Items

A. *Designation of items that Contain Recovered Materials.* EPA shall designate Comprehensive Procurement Guidelines containing designated items that are or can be made with recovered materials. OPDIVS/STAFFDIVs shall modify their affirmative procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Concurrently with the issuance of the Comprehensive Procurement Guideline, EPA will publish Recovered Material Advisory Notice(s) that present the range of recovered material content levels within which the designated recycled items are currently available. These levels will be updated periodically to reflect changes in market conditions.

B. *Guidance for Environmentally Preferable Products.* In accordance with Executive Order 13101, EPA will issue guidance that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products. OPDIVs/STAFFDIVs are to use this guidance, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and shall modify their procurement programs by reviewing and revising specifications, solicitation procedures, and policies as appropriate. OPDIVs/STAFFDIVs may develop pilot projects to provide practical information to the EPA for further updating of the guidance.

C. *Designation of Biobased Items by the USDA.* The USDA Biobased Products Coordination Council shall, in consultation with the FEE, issue a Biobased Products List. The biobased Products List shall be published in the **Federal Register** by the USDA within 180 days after the date of this Order and shall be updated biannually after publication to include additional items. Once the Biobased Products List has been published, agencies are encouraged to modify their affirmative procurement program to give consideration to those products.

D. *Minimum Content Standard for Printing and Writing Paper.* Heads of OPDIVs/STAFFDIVs heads shall ensure their organizations meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper:

1. For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be no less than 30 percent post-consumer materials beginning December 31, 1998. If paper containing 30 percent post-consumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency shall purchase paper containing no less than 20 percent post-consumer material. The Steering Committee, in consultation with the AEEs, may revise these levels if necessary.

2. As an alternative to meeting the foregoing standards for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a

waste material byproduct of a finished product other than a paper or textile product which would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

E. Effective January 1, 1999, no executive branch agency shall purchase, sell, or arrange for the purchase of, printing and writing paper that fails to meet the minimum requirements of this section.

30–90–60 Recycling and Recycling Awareness Programs

A. *Recycling Program.* Each OPDIV/STAFFDIV shall designate a recycling coordinator for each facility or installation. Each OPDIV/STAFFDIV shall initiate a program to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. Each facility recycling program must be compatible with applicable state and local recycling requirements. Each facility shall also consider cooperative ventures with state and local governments to promote recycling and waste reduction in the community.

B. *Awards Programs.* Each OPDIV/STAFFDIV shall develop an internal awards program, as appropriate, to reward its most innovative environmental programs. Winners of OPDIV/STAFFDIV awards will be eligible for annual HHS and White House awards programs. The White House will annually present an award to the best, most innovative program implementing the objectives of Executive Order 13101.

C. *Model Facility Programs.* Executive Order 13101 requires HHS to establish a model facility demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and bio-based products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; composting organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

30–90–70 Real Property Acquisition and Management

Each OPDIV/STAFFDIV, to the extent permitted by law and where economically feasible, shall ensure compliance with the provisions of Executive Order 13101 in the acquisition and management of Federally owned and leased space. Environmental and recycling provisions shall be included in the acquisition of all leased space and in the construction of new Federal buildings.

30–90–80 Training

Each OPDIV/STAFFDIV shall provide training to program management and requesting activities as needed to ensure awareness of the requirements of this Order.

30–90–90 Compliance

Review of Implementation. The HHS Inspector General, at the request of the President's Council on Integrity and Efficiency (PCIE), will periodically review OPDIVs'/STAFFDIVs' affirmative procurement programs and reporting procedures to ensure their compliance with Executive Order 13101.

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