

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

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| DEPARTMENTAL REGULATION | | Number: 5600-005 |
| SUBJECT Environmental Management | DATE: September 24, 2012 | |
| | OPI: Office of Procurement & Property Management (OPPM) | |

1. PURPOSE

The purpose of this Department Regulation (DR) is to define responsibilities and requirements with respect to:

- a. USDA efforts towards sustainable operations, specifically:
 - Decreasing energy intensity;
 - Increasing renewable energy use;
 - Reducing petroleum consumption and increasing alternative fuel use;
 - Conserving water;
 - Promoting pollution prevention, waste reduction, and recycling;
 - Implementing sustainable building design, construction, and operation;
 - Increasing green procurement;
 - Promoting electronic product stewardship; and
 - Embracing environmental management systems.
- b. Restoring natural resources affected by hazardous substances, pollutant or contaminants.
- c. Minimizing and responding to the release or threatened release of hazardous substances which could endanger public health or the environment.
- d. Minimizing environmental liabilities by ensuring compliance with property disposal statutes and identifying potential environmental liabilities prior to property acquisition.

2. SPECIAL INSTRUCTIONS/CANCELLATION

This regulation is effective upon issuance and replaces DR 5500-001 USDA Facilities Energy and Water Conservation and Utilities Management in its entirety and integrates requirements from the existing Departmental Manual 5600-001 Environmental Pollution Prevention, Control, and Abatement. DM 5600-001 and the USDA Strategic Sustainability Plan (SSPP) will continue to provide supplemental guidance and direction for implementation of policy set forth in this document.

3. SCOPE

This regulation applies to all USDA (departmental, agency, and/or staff office) facilities in the United States and its possessions and territories including Puerto Rico, and Northern Mariana Islands. The USDA SSPP establishes parameters for implementation with respect to

sustainable operations including consideration of square footage, ownership, and primary purpose. The USDA Sustainable Operations Council (SOC) under the direction of the Senior Sustainability Officer (SSO) has the authority to grant specific exceptions to these requirements.

4. DEFINITIONS

Refer to Section 8 for key terms, references, definitions, and acronyms.

5. POLICY

- a. Environmental Compliance - USDA is committed to achieving environmental compliance with applicable Federal and state environmental laws and regulations as a necessary step toward protecting human health and the environment and achieving sustainable operations. USDA agencies shall:
 - (1) Utilize Environmental Management Systems (EMS) as a tool at appropriate organizational levels to assist in maintaining compliance and achieving sustainability.
 - (2) Develop and implement compliance management plans at all appropriate organizational levels. Where EMSs exist, compliance management plans shall be an integral part of the EMS. Each compliance management plan shall include the following elements:
 - (a) A commitment by senior leadership to achieve and maintain environmental compliance.
 - (b) Clearly articulated roles and responsibilities related to environmental performance.
 - (c) Environmental compliance review and audit procedures that identify actions needed for compliance and all possible root causes of non-compliance.
 - (d) Establish resource allocation procedures to ensure that audit findings are tracked and addressed.
 - (3) Report violations of environmental regulations, laws and directives to the Office of the General Counsel, pollution control team (OGC/PCT), and to the Office of Procurement and Property Management (OPPM), Environmental Management Division (OPPM/EMD). Notification can be in the form of an email, FAX or phone message Notification should occur within 48 hours of the alleged violation and include the following information:
 - (a) Location/facility,
 - (b) Point of contact,
 - (c) Regulatory/Enforcement Entity,
 - (d) Nature of violation, and
 - (e) Immediate Health and Safety concerns or environmental threats.
 - (4) Contact the National Response Center (NRC) to report a spill or release of oil, a hazardous substance, a pollutant, or contaminant upon discovery. Refer to the website, www.nrc.uscg.mil/, for reporting forms or call directly at 1- 800-424-8802. Notify EMD immediately after notifying the NRC. Reported information should include:
 - (a) Facility/Location,
 - (b) Date, time, and type of incident,
 - (c) Quantity and type of hazardous material, hazardous substance or hazardous waste,
 - (d) Who was involved in the incident, and
 - (e) Extent of any injuries.

- b. Sustainable Operations – When conducting its mission USDA has a responsibility to operate in a sustainable manner and minimize its environmental footprint. Recognizing that impacts to the environment can occur both directly or indirectly through various activities such as procurement choices, disposal methods, or design decisions, this policy applies to virtually every aspect of USDA operations. USDA agencies and offices will achieve sustainable operations objectives and targets where appropriate as outlined in USDA’s SSPP (<http://greening.usda.gov/USDASSPP2011.pdf>) specifically:
- (1) Reduce Scope 1 and 2 greenhouse gas (GHG) emissions by 21 percent by FY 2020, compared to the FY 2008 base year.
 - (2) Reduce Scope 3 GHG emissions by 7 percent by 2020, compared to the FY 2008 base year.
 - (3) Maintain a comprehensive GHG inventory in accordance with Executive Order (EO) 13514.
 - (4) Use sustainable building/site practices to design, construct, operate, and maintain facilities.
 - (5) Ensure coordination and partnerships with Federal agencies, States, local governments, communities, and Native American tribes whose actions contribute to the quality and integrity of the environment, atmosphere, land, and watersheds.
 - (6) Reduce potable water use intensity by at least 26 percent by FY 2020, relative to USDA’s FY 2007 baseline; and reduce agricultural, industrial, and landscaping water use by 20 percent by FY 2020, relative to USDA’s FY 2010 baseline.
 - (7) Divert 50 percent of non-hazardous solid waste by FY 2013, divert 55 percent of non-hazardous solid waste by FY 2014, and divert 50 percent of construction and demolition waste by FY 2015.
 - (8) Include sustainable products and services in 95 percent of new contract actions by FY 2014.
 - (9) Acquire ENERGY STAR qualified and Electronic Product Environmental Assessment Tool (EPEAT) registered products for a minimum of 95 percent of all electronics acquisitions by FY 2012.
 - (10) Enable power management on a minimum of 95 percent of all appropriate electronics by FY 2013.
 - (11) Process the disposition of 95 percent of excess and surplus electronics in an environmentally sound manner relative to USDA’s FY 2011 baseline.
 - (12) Promote innovative ideas that expand the Department’s sustainability mission.
- c. Environmental Cleanup and Potential Releases of Hazardous Substances, Pollutants or Contaminants - When environmental threats occur at USDA facilities or on lands under USDA jurisdiction custody or control, USDA will respond expeditiously and effectively to address environmental release, pursue responsible parties, and restore affected natural resources in concert with the Departments’ overall mission. USDA agencies shall:
- (1) Inventory, investigate and cleanup releases and threatened releases of hazardous substances by:
 - (a) Using delegated Comprehensive Environmental Response, Compensation, and Liability Act as amended, 42 USC 9601, et seq. (CERCLA) authorities as appropriate and maintaining consistency with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300 (NCP).
 - (b) Maintaining inventories of facilities and lands under the jurisdiction, custody, or control of USDA or other sites where activities by USDA may be affecting the environment from the release or potential release of hazardous substances, pollutants or contaminants, or oil.
 - (c) Complete assessment and investigation work at each inventoried site to determine

if there is a threat to public health, welfare, or the environment. Develop and implement a risk based priority setting process for cleanup of the inventoried contaminated facilities and lands.

- (2) Follow an “enforcement first” approach to cleanup actions by identifying financially viable potentially responsible parties (PRPs) prior to undertaking cleanup actions.
 - (3) At sites where USDA may be a PRP and is not the lead agency as defined in the NCP, work with Federal or state environmental regulators, as appropriate, to determine the share of USDA’s liability and to identify other PRPs. Work with the environmental regulators and other PRPs to complete needed environmental cleanup and natural resource restoration work in accordance with CERCLA and the NCP.
- d. Environmental Liabilities - CERCLA imposes strict environmental liability upon owners/operators or prior owners/operators of facilities where there has been a release of hazardous substances. USDA agencies shall:
- (1) Ensure that agency management activities for new or currently active operations minimize potential future environmental liabilities and will not result in new cleanup responsibilities.
 - (2) Ensure that permitted activities on lands under the jurisdiction, custody, or control of USDA do not create future environmental liabilities and will not result in new cleanup responsibilities. USDA agencies shall not allow permits for new municipal solid waste landfills or open dumps on USDA facilities and lands under the jurisdiction, custody, or control of USDA.
 - (3) Avoid unreasonable environmental liability for the Department when acquiring or disposing of real property (including easements). USDA agencies shall:
 - (a) Conduct property transfers under USDA jurisdiction, custody or control that meet the requirements of CERCLA §120h.
 - (b) Ensure that acquisition or disposal of real property is consistent with the USDA’s mission to protect human health and the environment, and that transactions are executed in accordance with applicable environmental authorities, statutes, and regulations.
 - (c) Identify known or potential environmental compliance or contamination issues prior to acquisition or disposal through the use of an environmental site assessment/audit, including the preparation of an estimate, by qualified parties, of the environmental compliance costs.
 - (d) Evaluate the extent of contamination, cleanup required, and associated costs and ensure that agencies are not acquiring real property that has an environmental cleanup cost in excess of or disproportionate to the fair market value of the property unless there is a clear and compelling justification approved by the Mission Area Under Secretary that the acquisition is necessary to the continued mission of the agency.
 - (e) Ensure land acquisition or disposal documents:
 1. Show proper due diligence is performed and cleanup is provided for prior to acquisition by USDA.
 2. Describe how compliance requirements will be met and which party will be responsible for compliance requirements and funding.
 - (f) Determine the future use of property prior to acquisition. When acquiring property from other Federal agencies, require the transferring agency to clean up the property to accommodate USDA’s future use prior to USDA acquisition.
 - (g) Ensure that foreclosed properties or otherwise involuntary acquisitions are managed to minimize or avoid environmental liability, and ensure that the lender liability exclusion

as provided by CERCLA Sections 101(20) (E) through (G) and 101(35) (A) (ii), and Resource Conservation and Recovery Act, (RCRA) - as amended, 42 USC 6901, et seq Section 9003(h) (9) (relating to underground storage tanks) is preserved and not voided through USDA actions.

6. RESPONSIBILITIES

- a. Assistant Secretary for Administration (ASA)
Serves as the SSO and the chair of USDA's SOC as directed under EO 13514 and DR 1058-001 to:
 - (1) Establish targets and goals as outlined in the USDA SSPP.
 - (2) Provide overarching authority to oversee the Department's environmental pollution prevention, control and abatement program.
 - (3) Ensure that all affected mission areas and agencies are involved in the Department's SSPP and environmental pollution prevention, control, and abatement.

- b. Director, OPFM
 - (1) Provides program leadership and coordination for sustainable operations and environmental pollution prevention, control and abatement.
 - (2) Develops goals, objectives, and targets for SOC approval.
 - (3) Develops and implements policy direction and guidance concerning sustainable practices and environmental pollution prevention, control, and abatement.
 - (4) Coordinates the preparation, review, analysis, and submission of required department level reports to oversight organizations.
 - (5) Monitors departmental progress in meeting the goals and requirements of the Department's SSPP.
 - (6) Provides technical assistance, guidance, and direction to USDA agencies with respect to sustainable practices and environmental pollution prevention, control, and abatement.
 - (7) Manages the Hazardous Materials Management Appropriation (HMMA) account to fund the necessary expenses of the Department to cleanup releases of hazardous substances under CERCLA and RCRA.

- c. USDA agency heads shall support and ensure compliance with USDA policies contained in this regulation and:
 - (1) Identify Agency Coordinator(s) to prepare the agency's required annual reports, implementation plans, and OMB scorecard data.
 - (2) Integrate sustainability within each agency's strategic planning, budgeting process, and EMSs.
 - (3) Identify agency activities, policies, plans, procedures, and practices relevant to the implementation of this Departmental Regulation.
 - (4) Identify specific agency goals, schedules, milestones, and approaches for achieving results and quantifiable metrics required by USDA's SSPP and track agency performance and progress towards meeting these goals.
 - (5) Document and implement EMSs with integrated Environmental Compliance Management plans and stand alone Environmental Compliance Plans where EMSs do not exist.
 - (6) In cooperation with the EPA and State and local environmental regulatory agencies, complete and maintain an inventory of facilities and lands under USDA jurisdiction, custody, or control or other sites where activities by USDA and others may affect the environment from the release or potential release of hazardous substances.
 - (7) Work with environmental regulators to complete assessment and investigation work at each inventoried site consistent with the NCP, to determine if there is a release or a potential

- release of a hazardous substance from the site, which may be a threat to public health, welfare, or the environment.
- (8) Establish an Environmental Cleanup priority setting procedures and plan to restore lands affected by hazardous substances, pollutants or contaminants under the jurisdiction custody or control of USDA or other sites where activities conducted by USDA has caused the contamination.
 - (9) Practice an enforcement first approach to cleanup actions by:
 - (a) Conducting PRP searches to determine existence and viability of PRPs, in consultation with EMD and the Office of the General Counsel (OGC);
 - (b) Seeking a PRP clearance memo from EMD in consultation with OGC, prior to the expenditure of significant HMMA or agency appropriated funds;
 - (c) Seeking to have PRPs perform or pay for required cleanup activities through enforceable agreements coordinated with EMD and OGC where there is a viable PRP; and
 - (d) Pursuing exceptions to USDA's enforcement first policy through EMD. Exceptions may be granted in limited situations, such as a time-critical removal action conducted pursuant to the NCP.
 - (10) Notify EMD when:
 - (a) Agencies contact the National Response Center reporting a spill or release of a hazardous substance, pollutant, contaminant, or oil;
 - (b) Agencies are transferring property to ensure appropriate measures are taken to avoid any associated environmental liabilities;
 - (c) Agencies receive notices of violations for noncompliance; and when
 - (d) Agencies intend to enter into partnerships where the partnership results in a joint or sole responsibility for managing long term maintenance and operation of hazardous substances, or waste disposal sites (e.g., waste repositories or waste water treatment systems).

7. REFERENCES

- a. All Appropriate Inquiries (40 CFR 312), the process of evaluating a property's environmental conditions and assessing potential liability for any contamination.
- b. Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC 9601, et seq., which establishes reporting requirements for releases of hazardous substances, authority for the Federal Government to respond to releases or threatened releases of hazardous substances, and liability for those who caused or contributed to such releases or threatened releases.
- c. Electronic Product Environmental Assessment Tool (EPEAT) - a comprehensive environmental rating that helps identify greener computers and other electronic equipment (<http://www.epeat.net/>).
- d. Environmental Pollution Prevention, Control, and Abatement Manual, (DM 5600) contains additional direction and guidance on the matters addressed by this regulation.
- e. Energy Independence and Security Act of 2005 EISA(2005) - requires Federal agencies to reduce their energy consumption by 30 percent by 2015; and install equivalent metering of natural gas and steam by 2016. EISA also permanently authorizes Energy Savings Performance Contracts (ESPCs), an alternative financing tool for upgrading the energy efficiency of federal building.
- f. Energy Independence Security Act of 2007 EISA (2007) - moves the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, buildings, and vehicles, to promote research on and deploy greenhouse gas capture and storage options, and to improve the energy performance of the Federal Government, and for other

- purposes.
- g. ENERGY STAR - is an international standard for energy efficient consumer products originated in the United States of America. - <http://www.energystar.gov/>.
 - h. Environmental Management Systems (EMS) - refers to the management of an organization's environmental programs in a comprehensive, systematic, planned and documented manner. EMS uses a 'Plan-Do-Check-Act' framework for understanding an organization's "environmental footprint," complying with environmental regulations and implementing proactive pollution prevention and sustainability strategies. The most widely accepted model in use today is the International Organization for Standardization's ISO 14001 standard.
 - i. Executive Order 12088, October 1978, Federal Compliance with Pollution Control Standards, which requires each Executive agency to ensure 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.
 - j. Executive Order 12580, January 1987, Superfund Implementation, which delegates the authorities CERCLA confers upon the President to various Executive agencies including USDA.
 - k. Executive Order 13016, August 1996, Amendment to Executive Order 12580, which delegates certain CERCLA enforcement authorities to various Executive agencies including USDA.
 - l. Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management," January 2007, strengthens key goals for the Federal Government. The order sets goals in the areas of energy efficiency, acquisition, renewable energy, toxics reductions, recycling, renewable energy, sustainable buildings, electronics stewardship, fleets, and water conservation.
 - m. Executive Order 13423, Implementing Instructions of March 2007, which is guidance further elaborating EO 13423 requirements and which has the same force and effect as the executive order.
 - n. Executive Order 13514, "Federal Leadership in Environmental, Energy, and Economic Performance," October 2009. EO 13514, beyond reinforcing and expanding upon the requirements of EO 13423, sets forth specific measurable sustainable practice goal.
 - o. Federal Energy Management Program (FEMP) – DOE facilitates the Federal Government's implementation of sound, cost-effective energy management and investment practices through FEMP. Refer to www.eere.energy.gov/femp.
 - p. Greenhouse Gas (GHG) - is defined under EO 13514 as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.
 - q. Hazardous Materials Management account (HMMA) - funds established for the necessary expenses of the Department to cleanup releases of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.) and the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. 6901 et seq.).
 - r. National Oil and Hazardous Substances Pollution Contingency Plan 40 CFR 300 (NCP), which outlines how the Federal Government will respond to releases or threatened releases of oil and hazardous substances and which is the main implementing regulation for CERCLA.
 - s. Potentially responsible party (PRP) is a possible polluter who may eventually be held liable under CERCLA for the contamination or misuse of a particular property or resource. Four classes of PRPs may be liable for contamination at a Superfund site:
 - (1) the current owner or operator of the site;
 - (2) the owner or operator of a site at the time that disposal of a hazardous substance, pollutant or contaminant occurred;
 - (3) a person who arranged for the disposal of a hazardous substance, pollutant or contaminant at a site; and

- (4) a person who transported a hazardous substance, pollutant or contaminant to a site, who also has selected that site for the disposal of the hazardous substances, pollutants or contaminants.
- t. Resource Conservation and Recovery Act,(RCRA) - as amended, 42 USC 6901, et seq., which establishes federal requirements for solid and hazardous waste management and underground storage tanks.
 - u. Sustainable Operations Council (SOC) - USDA established an SOC to assist in the development of environmental policies and procedures as outlined in DR1058-001.
 - v. Senior Sustainability Officer (SSO) - Executive Order 13514 required Federal agencies to designate SSOs from among the agency's senior management officials. These Officers are accountable for agency conformance with the requirements of this order, including the preparation of targets for agency-wide greenhouse gas reductions, the submission of a Strategic Sustainability Performance Plan, and the monitoring of agency performance and progress in meeting the goals of the order.
 - w. Strategic Sustainability Performance Plan (SSPP) - In October 2009, President Obama signed Executive Order (EO) 13514 that sets sustainability goals for Federal agencies and focuses on making improvements in environmental, energy and economic performance. USDA's SSPP represents USDA's strategy to meet the challenging requirements in E.O. 13514. This plan is available at <http://greening.usda.gov/USDASSPP2011.pdf>.

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