

U.S. DEPARTMENT OF COMMERCE

ENVIRONMENTAL COMPLIANCE MANAGEMENT MANUAL

July 2021

U.S. DEPARTMENT OF COMMERCE ENVIRONMENTAL COMPLIANCE
MANAGEMENT MANUAL

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August 4, 2021

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REVISION HISTORY

Version Number	Summary of Changes	Date
01	<ol style="list-style-type: none"> 1) Manual renamed from the Energy and Environmental Management Manual to the Environmental Compliance Management Manual to focus only on environmental compliance requirements. 2) Removed Part III Energy and Sustainability chapters (Chapter 23 through 36) and associated appendices (Appendix A, B, C, G, and H). 3) Removed Part I. Merged information in Part I, Chapters 1 through 3, Energy and Environmental Program Organization; Training; and Energy and Environmental Stewardship Awards, respectively, and merged into an introductory chapter (Chapter 1). 4) Added Authorities chapter (Chapter 2). 5) Removed Chapter 5, Environmental Management Systems and merged information into Chapter 4, Environmental Compliance Program and Environmental Management Systems. 6) Removed Chapter 7, Pollution Prevention and merged information within various applicable sections. 7) Removed Chapter 10 (Ozone Depleting Substances) and merged information into Chapter 6, Air Quality (previously Chapter 9). 8) Removed Chapter 13, Stormwater and merged information into Chapter 7, Clean Water (previously Chapter 11). 9) Removed Chapter 23, Coastal Zone Management and merged into Chapter 17, Natural Resources Management (previously Chapter 22) 10) Renumbered all chapters to account for removed chapters. 11) Renamed Chapter 6 Environmental Liabilities to Environmental Liabilities and Contingencies (currently Chapter 4). 12) Renamed Chapter 8, Procedures for Reporting on Use and Storage of Hazardous Materials and Implementing the Emergency Planning and Community Right-to-Know Act to Compliance with the Emergency Planning and Community Right-To-Know Act (EPCRA) (Currently Chapter 5). 13) Renamed Chapter 15 Oil Management to Used Oil Management (currently Chapter 10). 14) Renamed Chapter 17, Hazardous Waste Management to Hazardous and Universal Waste Management. (currently Chapter 12). 15) Expanded scope of Chapter 18, Polychlorinated Biphenyl (PCB) Management to include lead and asbestos and renamed chapter to Toxic Substances Control Act (TSCA) (currently Chapter 13). 16) Removed Appendix D, Award Categories; Appendix E, Clean Air Act General Conformity Evaluation Guidance; and F, Reporting Forms, and included information as applicable within the associated chapters. 17) Removed web links within sections and created Appendix A, Useful Web Links. 18) Added Appendix B: International Organization for Standardization (ISO) 14001:2015 elements and sub-elements. 19) Added Appendix D: Hazardous Waste Generator Regulatory Requirements 	9/10/2020

ABBREVIATIONS AND ACRONYMS

AC	alternating current
ACHP	Advisory Council on Historic Preservation
ACM	asbestos-containing material
AICPA	American Institute of Certified Public Accountants
AIRFA	American Indian Religious Freedom Act
ARPA	Archaeological Resources Protection Act
ASA	Assistant Secretary for Administration
AST	aboveground storage tank
BMP	best management practice
C&D	construction and demolition
CAA	Clean Air Act
CAM	<i>Commerce Acquisition Manual</i>
CCR	consumer confidence report
CELCP	Coastal and Estuarine Land Conservation Program
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFC	Chlorofluorocarbon
CFC-11	Trichlorofluoromethane
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CH ₄	Methane
CLC	Commerce Learning Center
CO	Carbon monoxide
CO ₂	Carbon dioxide
CPG	Comprehensive Procurement Guideline
CSO	Chief Sustainability Officer
CWA	Clean Water Act
CWS	community water system
CZMA	Coastal Zone Management Act
DAO	Department Administrative Order
DC	direct current
Department	U.S. Department of Commerce
DOI	U.S. Department of the Interior
DOT	U.S. Department of Transportation
DRO	designated responsible official
e-waste	electronic waste
ECARS	Environmental Compliance Assessment and Reporting System
ECHO	Enforcement and Compliance History Online
ECMM	Environmental Compliance Management Manual
EHS	extremely hazardous substance
EISA	Energy Independence and Security Act of 2007
EMS	environmental management system
E.O.	Executive Order
EPA	U.S. Environmental Protection Agency
EPAct05	Energy Policy Act of 2005
EPCRA	Emergency Planning and Community Right-to-Know Act
ERC	emission reduction credit
ESA	Endangered Species Act
FAR	Federal Acquisition Regulation
FASAB	Federal Accounting Standards Advisory Board
FEMP	Federal Energy Management Program
FFCA	Federal Facility Compliance Act
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIP	federal implementation plan
FMR	Federal Management Regulation
FOTW	federally owned treatment works
FPO	Federal Preservation Officer
FRP	facility response plan
GHG	greenhouse gas
GSA	General Services Administration
HC	hazardous chemical
HCHB	Herbert C. Hoover Building
HCFC	Hydrochlorofluorocarbon
HFC	Hydrofluorocarbon

HM	hazardous material
HS	hazardous substance
HSWA	Hazardous and Solid Waste Amendments
HW	hazardous waste
ICP	integrated contingency plan
ID	Identification
ISO	International Organization for Standardization
kg	Kilogram
kVA	kilovolt-ampere
LBP	lead-based paint
LDR	land disposal restriction
LEPC	local emergency planning committee
LQG	large quantity generator
MARPOL	International Convention for the Prevention of Pollution from Ships [maritime pollution]
MMPA	Marine Mammal Protection Act
MPRSA	Marine Protection, Research and Sanctuaries Act
MS4	municipal separate storm sewer system
N ₂ O	Nitrous oxide
NAAQS	National Ambient Air Quality Standards
NAGPRA	Native American Graves Protection and Repatriation Act
NAICS	North American Industry Classification System
National Register	National Register of Historic Places
NCWS	non-community water system
NEPA	National Environmental Policy Act
NESHAP	National Emission Standards for Hazardous Air Pollutants
NFPA	National Fire Protection Association
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NMSA	National Marine Sanctuaries Act
NO ₂	Nitrogen dioxide
NOAA	National Oceanic and Atmospheric Administration
NOI	notice of intent
NOV	notice of violation
NO _x	Nitrogen oxide
NPDES	National Pollutant Discharge Elimination System
NRC	National Response Center
NRT	National Response Team
NSPS	New Source Performance Standards
NTNCWS	non-transient non-community water system
O ₃	Ozone
O&M	operations and maintenance
OA	occupancy agreement
ODS	ozone-depleting substance
OFEQ	Office of Facilities and Environmental Quality
OFM	Office of Financial Management
OHS	oil and hazardous substances
OMB	Office of Management and Budget
OPA	Oil Pollution Act
OPPTM	Office of Personal Property and Transportation Management
ORPP	Office of Real Property Programs
OSBM	Office of Space and Building Management
OS	Office of the Secretary
OSEEP	Office of Sustainable Energy and Environmental Programs
OSHA	Occupational Safety and Health Administration
OU	Operating Unit
PBT	persistent, bioaccumulative, and toxic
PCB	Polychlorinated biphenyl
PE	professional engineer
PFC	Perfluorocarbon
Pub. L.	Public Law
PM _{2.5}	particulate matter 2.5 microns or smaller
PM ₁₀	particulate matter 10 microns or smaller
POTW	publicly owned treatment works
PP&E	property, plant, and equipment
PPE	personal protective equipment
ppm	parts per million

PWS	public water system
R-11	Trichlorofluoromethane
RA	Regional Administrator
RACM	regulated asbestos-containing material
RCRA	Resource Conservation and Recovery Act
RCS	Recovery Credit System
RI/FS	remedial investigation/feasibility study
RQ	reportable quantity
SAA	satellite accumulation area
SARA	Superfund Amendments and Reauthorization Act
SDS	safety data sheet
SDWA	Safe Drinking Water Act
SEE	Sustainability, Energy, and Environmental
SERC	State Emergency Response Commission
SF ₆	Sulfur hexafluoride
SFFAC	Statement of Federal Financial Accounting Concepts
SFFAS	Statement of Federal Financial Accounting Standard
SHPO	State Historic Preservation Officer
SIC	Standard Industrial Classification
SIP	state implementation plan
SNAP	Significant New Alternatives Policy
SO ₂	Sulfur dioxide
SOPEP	Shipboard Oil Pollution Emergency Plan
SPCC	spill prevention control and countermeasure
SQG	small quantity generator
sVGP	small vessel general permit
SWPPP	stormwater pollution prevention plan
TEAM	<i>The Environmental Assessment and Management</i>
THPO	Tribal Historic Preservation Officer
TMDL	total maximum daily load
TNCWS	transient non-community water system
TPQ	threshold planning quantity
TRI	Toxic Release Inventory
TRI-MEweb	TRI-Made Easy Web
TSCA	Toxic Substances Control Act
TSDF	treatment, storage, and disposal facility
µg	Microgram
U.S.C.	United States Code
UIC	underground injection controls
USACE	U.S. Army Corps of Engineers
USCG	U.S. Coast Guard
USDA	U.S. Department of Agriculture
USFWS	U.S. Fish and Wildlife Service
UST	underground storage tank
VIDA	Vessel Incidental Discharge Act
VOC	volatile organic compound
VSQG	very small quantity generator
WQS	water quality standard

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U.S. DEPARTMENT OF COMMERCE ENVIRONMENTAL COMPLIANCE
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INTRODUCTION**1-1 Scope and Applicability**

1-1.1 Scope. The *Environmental Compliance Management Manual* (ECMM) previously was part of the *Energy and Environmental Management Manual*, which has been reduced to focus on environmental compliance requirements. The ECMM summarizes environmental compliance requirements mandated by laws, regulations, executive orders, and Department of Commerce (Department) requirements (e.g., policies, guidance) pertaining to Department facilities within the United States and its territories.

For details on compliance requirements, readers are encouraged to read the regulatory citations provided in the applicable references. The ECMM focuses on the more common environmental compliance requirements applicable to Department facilities; therefore, the ECMM is not all-inclusive and may not address every possible concern or requirement related to a chapter's topic area.

1-1.2 Applicability. The Department is composed of staff offices under the Office of the Secretary (OS) and Operating Units (OUs), and their subordinate organizations. The ECMM applies to OUs and Department facilities. Provisions of the ECMM also may apply to contractor-operated facilities and operations, and tenants on Department property, as appropriate. Contracts, leases, and agreements should be reviewed carefully to determine who has the responsibility for environmental compliance and then assign responsibility. In the ECMM, the term "OU" also applies to the OS, Office of Space and Building Management (OSBM), because of OSBM's delegated responsibilities in the operation and maintenance of the Department's Herbert C. Hoover Building (HCHB). Based on facility operations, some environmental compliance requirements may apply, and some may not. The ECMM is not intended to create any right or benefit—substantive or procedural—enforceable at law by any party against the Department, its employees, or any person.

1-2 Environmental Compliance Management Manual Overview

1-2.1 Authority. Department Administrative Order (DAO) 217-16, Energy and Environmental Management, prescribes policies and responsibilities for implementing the Energy, Sustainability, and Environmental Program throughout the Department. The ECMM has been written as an extension of DAO 217-16 and is afforded the same status and authority as a DAO, as identified in DAO 200-0, Department of Commerce Handbooks and Manuals.

1-2.2 Chapter Content. The ECMM serves as a resource for the Department and its OUs responsible for facility environmental compliance requirements, such as federal, state, and local laws and regulations; executive orders; and Departmental policies and guidance. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders applicable to environmental compliance topics covered in the ECMM. Chapter 3, Environmental Compliance Program and Environmental Management Systems describes the Department's Environmental Compliance Program and associated Departmental policies on management of the program, as well as discusses environmental management systems (EMS). The other ECMM chapters focus on a specific environmental compliance topic area or environmental media (e.g., air, water, hazardous waste [HW], tanks) for which associated environmental compliance laws and regulations may apply.

Each chapter includes its associated:

- Scope and applicability
- References (e.g., laws, regulations, executive orders)
- Terms and definitions
- Regulatory compliance requirements
- Department and OU responsibilities
- Training requirements
- Reporting requirements.

The chapters are not meant to provide detailed compliance requirements; chapters are meant to provide a source to determine whether an operation or activity may be subject to regulatory environmental compliance requirements. For more detailed information, the reader should refer to the reference section in each chapter; other related chapters referenced within each chapter; Chapter 2, Authorities, which describes associated laws executive orders; and Appendix A, Useful Web Links, which provides links to websites with information on a topic. In addition to regulatory requirements, a chapter may provide best management practices associated with management of an environmental media.

1-2.3 Training Section. Depending on the operation and its associated activities, employees may be required to take federally mandated or state-mandated training. Each ECMM chapter lists federally mandated training and certifications required to perform or supervise a specific operation associated with that chapter. Chapter 12, Hazardous and Universal Waste Management, for example, provides HW training requirements for HW operators and supervisors. Appendix A, Useful Web Links, provides links to websites, such as the U.S. Environmental Protection Agency (EPA) and FedCenter, that provide information on available and upcoming training webinars and classroom training.

1-2.4 Bulletins. Interim policy changes—generally due to a change in a regulatory requirement—are disseminated through bulletins, with relevant changes incorporated into the ECMM. Bulletins are approved and signed out by the Director, Office of Facilities and Environmental Quality (OFEQ). Bulletins are disseminated by email to OU CSOs and OU environmental compliance managers for dissemination throughout their OU. In addition, bulletins are posted on the Department of Commerce Energy, Sustainability, and Environmental Compliance Community website. Refer to Appendix A, Useful Web Links, for the link.

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1-2.5 Technical Publications. The DAO authorizes technical publications to provide examples, approaches, and templates for the benefit of OUs. The Associate Director, Office of Sustainable Energy and Environmental Programs (OSEEP), is delegated the authority to sign into effect all such technical publications related to environmental programs as addressed within the ECMM. Technical publications are posted on the Department of Commerce Energy, Sustainability, and Environmental Compliance Community website. Refer to Appendix A, Useful Web Links, for the link.

1-3 Programs

1-3.1 Training Program. Through OSEEP, the Department holds training webinars with subject matter experts on relevant environmental compliance topics. Training is advertised through broadcast emails and is offered to all Department employees and on-site contractors. Registration takes place through the Commerce Learning Center (CLC) where the training briefs are posted, and training certificates are available to those who registered through CLC and attend the training.

1-3.2 Energy and Environmental Stewardship Awards Program. The Energy and Environmental Stewardship Awards Program was established in December 2006 to recognize outstanding achievements of Department employees for efforts that significantly contribute to or promote energy efficiency, sustainability, or environmental stewardship. The award winners are recognized at a formal awards ceremony held at the Department's HCHB in Washington, D.C.

1-3.2.1 Eligibility. All Department employees are eligible for consideration. Awards may recognize an individual or a team associated with a project or program, or they may recognize an employee for career achievements. Contractors, non-federal employees, and employees from other federal agencies may be nominated as part of a team, but the team must be led by and consist of Department employees, and the nomination form must be submitted and signed by Department employees. Another criterion for eligibility is the applicant (i.e., their facility) must be in compliance with environmental laws and regulations (e.g., no open notices of violation [NOVs]).

1-3.2.2 Award Categories. To facilitate the Department's ability to submit nominations to compete for higher-level (i.e., national) awards, the award categories are modeled after other current and comparable federal awards programs. Award categories may change annually and are dependent on Departmental and Presidential Administration priorities at the time.

1-3.2.3 Call for Nominations. The call for award nominations is disseminated with instructions and applicable forms through a memo from the OFEQ Director to OU CSOs. In general, the call for nominations is also broadcast to the entire Department after official announcement through the memo. Nominations are submitted to OSEEP.

1-3.2.4 Selection Process. The selection is made by a panel of intra-Departmental representatives who volunteer to review and rank each award submission based on specific criteria, and then generate a recommendation for winners and runners-up. Comparable to the award categories, the selection criteria are modeled after other comparable federal awards programs. Selection criteria are dependent on the category and therefore may differ by category. Examples of selection criteria include quantified savings, innovation (creativity), institutionalization/transferability, and environmental or other benefits. The award winner and runner-up recommendations are forwarded to the CSO for final approval before announcement.

1-3.2.5 Notifications. Award recipients are notified by email. Additionally, award recipients are announced in a Department-wide broadcast email and featured in OSEEP publications, such as its newsletter.

1-3.2.6 Schedule/Key Dates. Dates are approximate and are dependent on what day of the week Earth Day falls; see Table 1-1 for a sample Energy and Environmental Stewardship Awards schedule.

Table 1-1. Energy and Environmental Stewardship Awards: Schedule

Action	Date
Call for nominations	September 30
Nominations packages due	January 5
Announcement of award recipients	March 22
Awards ceremony	Held concurrent with the Department's Earth Day event, which if possible, is held on Earth Day (April 22), but not on a Friday, Monday, or weekend

1-3.3 Green Grant Program. The Green Grant Program was established in 2013 to promote and stimulate investment in environmental stewardship, sustainability, and energy, as well as employee support programs (i.e., childcare centers, fitness centers) within the Department, and to facilitate process and program improvements that lead to efficiencies and cost savings. Green Grants provide an opportunity for any OU or OS staff office to submit a project and compete for cost-sharing funds from the Department.

1-3.3.1 Funding. Funding for Green Grants is generated from the recycling of products (e.g., paper, plastic, glass) by the Department and deposited in the Department's centrally managed recycling account. This revenue is governed by the Consolidated Appropriations Act, which allows funding of specific items with funds generated from recycling products. The Act is linked to Congress's annual budget appropriation; therefore, the appropriation for a given year must be reviewed to ensure that Green Grants are allowable for funding in that year. The Green Grant program is also dependent on funding availability in the Department's recycling account, so may not be held annually.

1-3.3.2 Eligibility. All Department OU and OS staff offices are eligible for consideration for split funding provided that the OU or staff office submitting the project is prepared to and commits to funding at least 50% of the total project cost, and the project meets specific criteria. The funding must come directly from the OU and not from an ancillary, non-government organization running an on-site facility, such as a childcare facility or fitness center. Examples of environmental projects that could qualify for Green Grant funding include projects that:

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- Increase the quantity of material recycled or the amount of waste diverted from a landfill
- Proactively clean or restore a contaminated site not listed by the EPA as a Superfund site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Enhance the Department’s environmental compliance posture with federal or state laws or regulations
- Reduce or eliminate the production of a contaminant or HW stream through a process improvement.

In addition to the projects listed above, Green Grants may be used to fund projects associated with green procurement; energy and water conservation; green buildings; electronic stewardship; and employee quality-of-life improvements.

1-3.3.3 Call for Projects. The call for Green Grant projects is disseminated with instructions and applicable forms through a memo from the OFEQ Director to OU CSOs. Projects are submitted to OSEEP.

1-3.3.4 Selection Criteria and Process. The selection is made by a volunteer panel of intra-Departmental representatives who review and rank each submission based on specific selection criteria and generate a recommendation on which projects should be funded. The projects with the highest scores are funded, based on available funding. Examples of selection criteria include quantitative and qualitative benefits of a project if implemented; savings-to-investment ratio; technical approach; schedule; cost estimate; and the facility’s recycling program. Projects selected for funding by the panel are forwarded to the CSO for final approval.

1-3.3.5 Notifications. Green Grant recipients are notified by email. Additionally, recipients of Green Grants are announced during the Energy and Environmental Stewardship Awards ceremony, and they are featured in OSEEP publications, such as its newsletter.

1-3.3.6 Schedule/Key Dates. Dates are approximate and based on what day of the week the date falls; see Table 1-2 for a sample Green Grants schedule.

Table 1-2. Green Grants: Schedule

Action	Date
Call for projects	September 15
Project packages due	December 15
Green Grant recipient announcements	March 15

1-3.4 Sustainability, Energy, and Environmental Ambassador Recognition. In 2018, OSEEP launched a recognition program called “the Department of Commerce Sustainability, Energy, and Environmental (SEE) Ambassadors.” The SEE Ambassador distinction provides an opportunity to recognize an individual Department employee for outstanding performance in environmental stewardship. This recognition program differs from the Department’s Energy and Environmental Stewardship Awards, as it is a less formal way to recognize individual achievements. Individuals receive recognition from the OFEQ Director and receive a certificate honoring their commitment to sustainability, energy, and environmental performance.

1-3.4.1 Eligibility. All Department OU and OS employees are eligible. Contractor employees are ineligible. Only individuals will be recognized. Team nominations are not accepted.

1-3.4.2 Selection Criteria and Process. The nomination must clearly and concisely demonstrate the outstanding performance of a Department employee who has gone above and beyond typical day-to-day responsibilities to help achieve mission success and improve water conservation, energy efficiency, or environmental performance. This includes staff who may not otherwise receive such recognition through more formal Department or federal awards programs. The recognition is for performance during the current fiscal year. There is no formal review board to make selections and the recognition is non-competitive. If a nomination meets the criteria of demonstrating an individual’s exceptional performance, then that employee will be recognized.

1-3.4.3 Call for Nominations. The call for nominations is announced through a broadcast email to all of the Department. Nominations are submitted to OSEEP.

1-3.4.4 Notifications. In addition to being notified by email, recipients are featured in a Department-wide broadcast email and featured in OSEEP publications, such as its newsletter.

1-3.4.5 Schedule/Key Dates. Dates are approximate and based on what day of the week the date falls; see Table 1-3 for a sample SEE Ambassador recognition schedule.

Table 1-3. Sustainability, Energy, and Environmental Ambassador Recognition: Schedule

Action	Date
Call for nominations	August 1
Nomination packages due	August 31
SEE Ambassador recipient announcements	September 30

1-3.5 Newsletters. OSEEP publishes periodic newsletters with updates on major OSEEP events, including upcoming training webinars, Green Grants, Energy and Environmental Stewardship Awards, and SEE Ambassador Recognition. The newsletter also may contain informational pieces associated with environmental, sustainability, or energy topics.

1-3.6 Department of Commerce Energy, Sustainability, and Environmental Compliance Community website. To provide a central location to easily access up-to-date information and documents relevant to the Department’s sustainability, energy, and environmental compliance community, the Department maintains the members-only Energy, Sustainability, and Environmental Compliance Community website. The

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website is hosted on FedCenter, the Federal government's home for comprehensive environmental stewardship and compliance information. Refer to Appendix A, Useful Web Links, for the link to the website. Documents posted on the site include the ECMM; OSEEP DAOs; announcements, instructions, and forms associated with OSEEP-sponsored programs (e.g., awards and recognition programs and Green Grants); and data call instructions. The site also includes useful web links and a calendar of upcoming events, such as training webinars and data call deliverable dates.

1-4 Responsibilities

1-4.1 The Office of the Secretary

1-4.1.1 The Office of Sustainable Energy and Environmental Programs Shall:

- (a) Publish and maintain Department-wide policy and guidance on environmental compliance for Department facilities within the United States and its territories, including maintaining and updating the ECMM and applicable DAOs as needed, and developing and publishing bulletins and technical documents
- (b) Notify Department offices and OUs of changes to environmental compliance requirements (e.g., legislation, laws, regulations)
- (c) Monitor OU compliance with applicable federal and state regulations
- (d) Maintain an environmental compliance assessment and reporting system (ECARS), which includes federal and state environmental compliance requirements with environmental assessment capabilities for use by OUs
- (e) Provide technical support on environmental compliance, as needed
- (f) Administer and oversee the Energy and Environmental Stewardship Awards Program, the Green Grant Program, and the SEE Ambassador Recognition Program. This includes facilitating and organizing the Annual Energy and Environmental Stewardship Awards ceremony and the Department's Earth Day event held at HCHB
- (g) Provide training resources, including environmental compliance training, through webinars to the OUs and disseminate information on available training to OUs
- (h) Publish periodic newsletters
- (i) Coordinate OU responses and respond to federal and Department data calls, as applicable
- (j) Maintain and update information and documents on the Department of Commerce Energy, Sustainability, and Environmental Compliance Community website.

1-4.1.2 The Real Property, Energy, and Environmental Law Division provides environmental compliance legal counsel for the Department, as necessary.

1-4.1.3 The OSBM shall—as part of its responsibility to maintain the HCHB—share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority and follow guidance within the ECMM, as applicable.

1-4.1.4 The Office of Acquisition Management oversees green procurement policy and provides guidance in the *Commerce Acquisition Manual* (CAM).

1-4.1.5 The Office of Occupational Safety and Health oversees health and safety concerns associated with operations subject to environmental compliance and provides guidance in DAO 209-4, Occupational Safety and Health Program.

1-4.1.6 The Office of Financial Management (OFM) oversees financial management of the Department, including accounting for liabilities and reporting of contingencies.

1-4.1.7 The Office of Personal Property and Transportation Management (OPPTM) oversees disposal of electronic assets (e-waste) and provides guidance in the *Department Personal Property Management Manual*. In addition, the OPPTM oversees vehicle fleet policies and procedures for the Department.

1-4.1.8 The Office of Real Property Programs (ORPP) oversees real property for the Department, including tracking Department-wide real property holdings in the Department's federal real property management database and providing real property guidance in the *U.S. Department of Commerce Real Property Manual*.

1-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
- (b) Ensure that facilities are managed and operated in an environmentally sound manner
- (c) Ensure programming, budgeting, and allocation of funds to assure compliance with all applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
- (d) Ensure that personnel who conduct or supervise staff subject to environmental compliance regulations are trained and knowledgeable to conduct operations in an environmentally sound and safe manner; take regulatory mandated training as appropriate for their job function; and track and maintain training records in accordance with regulations
- (e) Encourage employees and contractors conducting operations that are subject to environmental compliance regulations or that could impact the environment to take the Department's environmental compliance webinars, as applicable

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- (f) Provide timely responses to Department OS data calls and inquiries; provide a primary point of contact for communication with OSEEP for coordination with these data calls and responses to inquiries
- (g) Collaborate and partner with OSEEP as applicable to maintain and improve the Department's environmental compliance posture
- (h) Provide advice and technical assistance to facilities on environmental compliance, including budgeting for compliance requirements; disseminate regulatory updates to sub-agencies and organizations
- (i) Maintain an ECARS in accordance with Chapter 4 of this Manual; include OU-wide information on facility operations that can impact the environment and may be subject to environmental regulations; document outside regulatory inspections and enforcement actions; and maintain an environmental assessment program to pro-actively assess the status of environmental compliance at OU facilities.

1-5 Reporting Requirements. Reporting requirements include environmental compliance metrics reportable to the Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA). Metrics may change and may be due quarterly, biannually, or annually, depending on the Department and CFO/ASA priorities and interest.

CHAPTER 2: AUTHORITIES

2-1 Scope

2-1.1 This chapter provides a list of laws and executive orders that may be applicable to the following chapters. Some laws and executive orders listed below may not be referenced in the related chapter and are provided because the executive order or regulation is overarching and applicable to most or all chapters or they are auxiliary laws associated with or that fall within the scope of another more predominant law.

2-2 Laws and Executive Orders

2-2.1 American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996. This Act states the policy of the United States to protect and preserve for American Indians their inherent rights of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and native Hawaiians. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites. The Act was amended in 1994.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.2 Anadromous Fish Conservation Act, 16 U.S.C. §§ 757a–f. This Act (Pub. L. 89-304) was passed to promote the conservation, development, and enhancement of the anadromous fishing resources of the nation.

Related Chapter: Chapter 17, Natural Resources Management

2-2.3 Antiquities Act of 1906, 16 U.S.C. §§ 431–433. This is the first law to establish that archeological sites on public lands are important public resources. It obligates federal agencies that manage the public lands to preserve for present and future generations the historic, scientific, commemorative, and cultural values of the archaeological and historic sites and structures on these lands.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.4 Archaeological Resources Protection Act (ARPA), 16 U.S.C. §§ 470aa–mm. This Act was enacted to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals (Section 2(4)(b)).

Related Chapter: Chapter 18, Cultural Resources Management

2-2.5 Bald Eagle Protection Act, 16 U.S.C. § 668. This Act (Pub. L. 86-70) establishes penalties for taking, possessing, selling, purchasing, bartering, offering to sell, transporting, exporting, or importing any bald eagles or golden eagles. The prohibitions also apply to any part, nest, or egg.

Related Chapter: Chapter 17, Natural Resources Management

2-2.6 Chief Financial Officers (CFO) Act of 1990. This Act (Pub. L. 101-576) as expanded by the Government Management and Reform Act of 1994 and the Federal Financial Management Improvement Act of 1996, requires annual, audited financial statements for the federal government. These statutes require the federal government to make financial management more effective; improve financial management systems; and provide accurate, complete, reliable, timely, and auditable information for managerial and congressional reporting. To produce auditable results in accordance with generally accepted accounting standards, the annual financial statement must accurately and consistently account for agency liabilities, including environmental liabilities.

Related Chapter: Chapter 4, Environmental Liabilities and Contingencies

2-2.7 Clean Air Act (CAA) Amendments of 1990, 42 U.S.C. §§ 7401–7671q. The purpose of this Act (Pub. L. 101-5490) is “to protect and enhance the quality of the Nation’s air resources so as to promote public health and welfare and the productive capacity of its population.” To achieve this goal, CAA established two strategies for setting standards: (1) National Ambient Air Quality Standards (NAAQS) for six criteria pollutants; and (2) National Emission Standards for Hazardous Air Pollutants (NESHAP).

Related Chapters: Chapter 6, Air Quality; Chapter 13, Toxic Substances Control Act (TSCA)

2-2.8 Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.* The purpose of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. The Act regulates direct discharges to the waters of the United States, as well as indirect discharges, such as discharges to wastewater treatment plants, also referred to as treatment works. To accomplish these goals, each state is required to establish Water Quality Standards (WQS) for its surface waters based on designated uses. Under CWA Section 303(d), each state is to submit to the U.S. Environmental Protection Agency (EPA) a list of surface waters that are not meeting their WQS. The CWA prohibits spills, leaks, or other discharges of pollutants into waters of the United States in quantities that may be harmful, which include discharges of pollutants that violate applicable WQS; or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. The CWA also provides for protection of surface waters from contamination by pesticides in wastewater and in land runoff and as amended by the Oil Pollution Act (OPA) of 1990, 33 U.S.C. § 2701 *et seq.*, which includes requirements for management of oil and hazardous substances (OHSs) to prevent discharges into the waters of the United States. In addition, Section 404 (33 U.S.C. § 1344) of the Act requires that all discharges of dredged and fill material in the waters of the United States, including wetlands, meet the requirements of EPA’s 404(b)(1) guidelines and obtain water quality certification from the state (33 U.S.C. § 1341)

unless exempted by Congress through implementation of Section 404(r). Section 402 (33 U.S.C. § 1342) authorizes the National Pollutant Discharge Elimination System (NPDES) permits.

Related Chapters: Chapter 7, Clean Water; Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response; Chapter 15, Pesticide Compliance; Chapter 17, Natural Resources Management

2-2.9 Coastal Barrier Resources Act of 1982, 16 U.S.C. § 3505. This Act (Pub. L. 97-348) restricts federal expenditure and financial assistance for the encouragement of the development of coastal barriers. The long-term goal is to prevent the damage to fish and wildlife and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts.

Related Chapter: Chapter 17, Natural Resources Management

2-2.10 Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451. Passed in 1972, this Act provided a formal structure to address the challenges of continued growth in coastal areas. The goals of this Act are to “preserve, protect, develop, enhance, and restore where possible, the coastal resources.” The Act requires federal agencies whose activities affect the coastal zone to be consistent with the enforceable policies of federal- and state-approved Coastal Zone Management Programs.

Related Chapter: Chapter 17, Natural Resources Management

2-2.11 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq. (commonly known as “Superfund”). This Act provides funding and enforcement authority for the cleanup of waste disposal sites and reporting of and responding to hazardous substance (HS) spills. CERCLA establishes a comprehensive response program for past hazardous waste (HW) facilities and the planning and response framework for HS releases.

Related Chapter: Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act (EPCRA)

2-2.12 Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11001 et seq. This Act—also known as Title III of the Superfund Amendments and Reauthorization Act (SARA)—was created to help communities plan for emergencies involving HSS. To that end, EPCRA encourages and supports emergency planning and provides timely and comprehensive information to the public about the hazards associated with chemicals present at facilities and toxic chemical releases. EPCRA requires industry and federal, state, and local governments to report hazardous and toxic chemical releases to the public when over a specific threshold.

Related Chapters: Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act (EPCRA); Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response

2-2.13 Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq. This Act, last amended in October 1988, provides for the protection of threatened and endangered species of fish, wildlife, and plants and their habitats. The Act requires federal agencies to ensure that no agency action is likely to jeopardize the continued existence of endangered or threatened species. Further, federal agencies must cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species (16 U.S.C. § 1531(e)).

Related Chapters: Chapter 15, Pesticide Compliance; Chapter 17, Natural Resources Management

2-2.14 Energy Independence and Security Act of 2007 (EISA 2007). The intent of this Act (Pub. L. 110-140) was to move the United States toward greater energy independence and security. Section 438 of the Act requires “the sponsor of any development or redevelopment project involving a federal facility with a footprint that exceeds 5,000 square feet to use site planning, design, construction, and maintenance strategies for the property to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow.”

Related Chapters: Chapter 6, Clean Air; Chapter 7, Clean Water

2-2.15 Energy Policy Act of 2005 (EPAct05), 42 USC § 13201 et seq. This Act amends numerous provisions of the U.S. Code, covering topics in the areas of energy and water conservation, alternative energy sources, reduction in fossil fuel use, and sustainable building design. Subtitle B of EPAct05 is the Underground Storage Tank Compliance Act of 2005 which was incorporated into Subtitle I of the Resource Conservation and Recovery Act (RCRA) as an amendment and significantly affected federal and state underground storage tank (UST) programs. The Underground Storage Tank Compliance Act of 2005 focuses on preventing releases and includes provisions regarding inspections, operator training, delivery prohibition, secondary containment, financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Related Chapters: Chapter 6, Air Quality; Chapter 11, Storage Tanks

2-2.16 Executive Order 11988, “Floodplain Management,” dated May 24, 1977. This executive order implements the National Environmental Policy Act (NEPA), the National Flood Insurance Act of 1968, and the Flood Disaster Protection Act of 1973. It requires each agency to 1) provide leadership and 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; 2) evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this order; 3) take floodplain management into account when formulating or evaluating any water and land use plans, and require land and water resources use appropriate to the degree of hazard involved.

Related Chapter: Chapter 17, Natural Resources Management

2-2.17 Executive Order 11990, “Protection of Wetlands,” dated May 24, 1977, and amended by Executive Order 12608. Under this executive order, each federal agency must provide leadership and take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds there is no practical alternative to such construction and the proposed action includes all practical measures to minimize harm to wetlands that may result from such use. In making this

finding, the head of the agency may take into account economic, environmental, and other pertinent factors (Section 2(a)). Each agency must also provide opportunity for early public review of any plans or proposals for new construction in wetlands (Section 2(b)).

Related Chapter: Chapter 17, Natural Resources Management

2-2.18 Executive Order 12088, “Federal Compliance with Pollution Standards,” dated October 13, 1978. This executive order initiated the policy that federally owned and operated facilities comply with applicable federal, state, and local pollution control standards. It makes the head of each executive agency responsible for ensuring that the agencies, facilities, programs, and activities the agency funds meet applicable federal, state, and local environmental requirements for correcting situations that are not in compliance with such requirements. Additionally, the executive order requires that each agency ensure that sufficient funds for environmental compliance are included in the agency budget. Environmental laws (e.g., CWA, CAA, Safe Drinking Water Act (SDWA)) now contain similar provisions requiring compliance by federal facilities.

Related Chapters: Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act (EPCRA); Chapter 6, Air Quality; Chapter 7, Clean Water; Chapter 8, Safe Drinking Water Act Compliance; Chapter 10, Used Oil Management; Chapter 11, Storage Tanks; Chapter 12, Hazardous and Universal Waste Management; Chapter 13, Toxic Substances Control Act (TSCA); Chapter 14, Solid Waste Management, Resource Recovery, and Recycling; Chapter 15, Pesticide Compliance

2-2.19 Executive Order 12962, “Recreational Fisheries,” dated June 7, 1995. This executive order mandates that federal agencies, to the extent permitted by law and where practicable, improve the quality, function, and sustainable productivity and distribution of U.S. aquatic resources for increased recreational fishing opportunities. It also established the National Recreational Fisheries Coordination Council.

Related Chapter: Chapter 17, Natural Resources Management

2-2.20 Executive Order 13006, “Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities,” dated May 26, 1966. This executive order states that the federal government shall utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in central business areas.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.21 Executive Order 13007, “Indian Sacred Sites,” dated May 24, 2006. This executive order addresses the accommodation of sacred sites. Each executive branch agency with statutory or administrative responsibility for the management of federal lands is required, to the extent practicable, permitted by law, and not clearly inconsistent with agency functions, to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners. They shall also avoid adversely affecting the physical integrity of the sacred sites. Where appropriate, agencies will maintain the confidentiality of sacred sites.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.22 Executive Order 13089, “Coral Reef Protection,” dated June 11, 1998. This executive order established the Coral Reef Task Force, to be co-chaired by the Department of Interior and the Department of Commerce through the National Oceanic and Atmospheric Administration (NOAA).

Related Chapter: Chapter 17, Natural Resources Management

2-2.23 Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” dated November 6, 2000. The intent of this executive order is to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.24 Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds,” dated January 17, 2001. This executive order directs executive departments and agencies to take certain actions to further implement the Migratory Bird Treaty Act. It requires that each federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations develop and implement, within two years, a memorandum of understanding with the Fish and Wildlife Service that shall promote the conservation of migratory bird populations.

Related Chapter: Chapter 17, Natural Resources Management

2-2.25 Executive Order 13287, “Preserve America,” dated March 3, 2003. This executive order states that it is the policy of the federal government to provide leadership in preserving America’s heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the federal government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.26 Executive Order 13751, “Safeguarding the Nation from the Impacts of Invasive Species,” dated December 8, 2016. This executive order amends Executive Order 13112 and directs federal agency actions to continue coordinated federal prevention and control efforts related to invasive species.

Related Chapter: Chapter 17, Natural Resources Management

2-2.27 Federal Facility Compliance Act of 1992 (FFCA). Congress amended Section 6001 of RCRA to clarify that the United States waives immunity related to fees and fines issued as part of the enforcement of solid and HW laws. This amended Act (Pub. L. 102-386) makes federal facilities subject to “all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature” under solid and HW laws. These penalties and fines can be levied by the EPA or by authorized states. Note that federal agents, employees, and officers are not liable for civil penalties; however, they potentially can be subject to criminal sanctions.

Related Chapters: Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 7, Clean Water; Chapter 11, Storage Tanks; Chapter 12, Hazardous and Universal Waste Management; Chapter 13, Toxic Substances Control Act (TSCA); Chapter 14, Solid Waste Management, Resource Recovery, and Recycling

2-2.28 Federal Hazardous and Solid Waste Amendments (HSWA). This Act (Pub. L. 98-616) is the 1984 amendment to RCRA that focused on waste minimization and phasing out land disposal of HW, as well as on corrective action for releases. Additional mandates of this law include increased enforcement authority for the EPA, more stringent HW management standards, and a comprehensive UST program.

Related Chapter: Chapter 12, Hazardous and Universal Waste Management

2-2.29 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 et seq. This Act deals with the sale, distribution, and use of pesticides and provides the principal means for preventing adverse effects on the environment from pesticides through product registration and applicator certification. The Act provides the EPA with the authority to oversee, among other things, the registration, distribution, sale, and use of pesticides. The Act applies to all types of pesticides, including insecticides, herbicides, fungicides, rodenticides, and antimicrobials.

Related Chapters: Chapter 15, Pesticide Compliance; Chapter 17, Natural Resources Management

2-2.30 Federal Water Pollution Control Act. This Act, commonly known as the Clean Water Act (CWA) (33 U.S.C. §§ 1251–1387, Pub. L. 100-4), governs the control of water pollution in the nation. The Act’s primary objective is to restore and maintain the chemical, physical, and biological integrity of the nation’s surface waters. Under the authority of the CWA, the EPA promulgates oil pollution prevention regulations.

Related Chapters: Chapter 7, Clean Water; Chapter 11, Storage Tanks

2-2.31 Fish and Wildlife Conservation Act, 16 U.S.C. § 2901. This Act (Pub. L. 96-366) encourages federal departments and agencies to use their statutory and administrative authority to the maximum extent possible to conserve and protect non-game fish and wildlife and their habitats.

Related Chapter: Chapter 17, Natural Resources Management

2-2.32 Fish and Wildlife Coordination Act, 16 U.S.C. § 661. This Act (16 U.S.C. § 666c, last amended July 1965), is the federal legislation that coordinates programs and activities regarding the conservation and rehabilitation of fish and wildlife in the United States. Unless provided for otherwise, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under federal permit or license, such department or agency first must consult with the U.S. Fish and Wildlife Service, U.S. Department of the Interior (DOI), and the head of the agency exercising administration over the wildlife resources of the particular state where the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources (16 U.S.C. § 662(a)).

Related Chapter: Chapter 17, Natural Resources Management

2-2.33 Forest Resources Conservation and Shortage Relief Act, 16 U.S.C. § 620. This Act provides for a 100% export ban on logs from federal lands west of the 100th meridian, except timber surplus to needs of timber manufacturing facilities in the United States, and a ban in 1995 on log exports from state and other public lands (excluding Indian land) west of the 100th meridian.

Related Chapter: Chapter 17, Natural Resources Management

2-2.34 International Convention for the Prevention of Pollution from Ships (MARPOL [Maritime Pollution]). Adoption: 1973 (Convention), 1978 (1978 Protocol), 1997 (Protocol—Annex VI); entry into force: October 2, 1983 (Annexes I and II). MARPOL is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. The Convention includes regulations aimed at preventing and minimizing pollution from ships—both accidental pollution and that from routine operations—and currently includes six technical annexes. Special Areas with strict controls on operational discharges are included in most annexes.

Related Chapter: Chapter 6, Air Quality, Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response

2-2.35 Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 et seq. This Act is the principal law governing marine fisheries management in U.S. federal waters.

Related Chapter: Chapter 17, Natural Resources Management

2-2.36 Marine Protection, Research and Sanctuaries Act (MPRSA), 33 U.S.C. § 1401 et seq. This Act, also known as the Ocean Dumping Act, generally prohibits (1) transportation of material from the United States for the purpose of ocean dumping; (2) transportation of material from anywhere for the purpose of ocean dumping by U.S. agencies or U.S.-flagged vessels; (3) dumping of material transported from outside the United States into the U.S. territorial sea. A permit is required to deviate from these prohibitions.

Under MPRSA, the standard for permit issuance is whether the dumping will “unreasonably degrade or endanger” human health, welfare, or the marine environment. EPA is charged with developing ocean dumping criteria to be used in evaluating permit applications. The MPRSA provisions administered by EPA are published in Title 33 of the U.S. Code. The MPRSA provisions that address marine sanctuaries are administered by NOAA and are published in Title 16 of the U.S. Code.

Related Chapter: Chapter 7, Clean Water

2-2.37 Migratory Bird Treaty Act, 16 U.S.C. § 703. This Act (16 U.S.C. §§ 703–711, last amended in December 1989), enforces international conventions for the protection of migratory birds and game animals to which the United States is a party. Unless permitted by regulations, it is unlawful at any time, by any means, or in any manner, to pursue; hunt; take; capture; kill; attempt to transport or cause to be transported; carry or cause to be carried; or receive for shipment, transportation, carriage, or export, any migratory bird; any part, nest, or egg of any such bird; or any product, whether or not manufactured, which consists, or is composed in whole or in part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions for the protection and conservation of migratory birds and game mammals between the United States and the Union of Soviet Socialist Republics, the United States and Mexico, and the United States and Japan (16 U.S.C. § 703). It is also unlawful to ship, transport, or carry, by any means whatever, from one state, territory, or district to or through another state, territory, or district, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the state, territory, or district in which it was captured, killed, or taken, or from which it was shipped, transported, or carried (16 U.S.C. § 705).

Related Chapter: Chapter 17, Natural Resources Management

2-2.38 The Montreal Protocol on Substances that Deplete the Ozone Layer. The presence of chlorofluorocarbons (CFCs), halons, other chlorinated hydrocarbons (e.g., carbon tetrachloride, methyl chloroform), and hydrochlorofluorocarbons (HCFCs) in the stratosphere is linked to the depletion of the earth’s ozone layer, which protects life and vegetation from damaging ultraviolet light. These materials are collectively referred to as ozone-depleting substances (ODS). In response to the threat these substances present to the environment, more than 185 nations—including the United States—have ratified an international agreement, known as the Montreal Protocol, limiting ODS production.

Related Chapter: Chapter 6, Air Quality

2-2.39 National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq. The purpose of this Act was to declare a national policy which will encourage productive and enjoyable harmony between humans and their environment. Additionally, it provides for the promotion of efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans. Under NEPA, the continuing policy of the federal government is to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans (42 U.S.C. § 4331(a)). It is the continuing responsibility of the federal government to use practicable means and resources to the end that the nation may preserve important historic, cultural, and natural aspects of its national heritage (42 U.S.C. § 4331(b)(4)).

Related Chapters: Chapter 16, The National Environmental Policy Act (NEPA); Chapter 17, Natural Resources Management; Chapter 18, Cultural Resources Management

2-2.40 National Historic Preservation Act (NHPA), 16 U.S.C. § 470 et seq. and 54 U.S.C. § 300101. Several of the historic preservation provisions that had been in 16 U.S.C. were moved to 54 U.S.C. by Public Law 113-287 on December 19, 2014. This Act is the primary federal law governing the preservation of cultural and historic resources in the United States. The law establishes a national preservation program and a system of procedural protections that encourage the identification and protection of cultural and historic resources of national, state, tribal, and local significance. NHPA established the National Register of Historic Places (National Register) and the Advisory Council on Historic Preservation. Section 110 of the law places specific stewardship responsibilities on federal agencies for historic properties under their jurisdiction or control. 54 U.S.C. directs federal agencies to notify the secretary of the interior when a federal construction project or federally licensed activity or program may cause irreparable loss or destruction of significant scientific, prehistoric, historical, or archaeological data. It also provides criteria for funding historical and archaeological protection for such projects.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.41 National Invasive Species Act of 1996, 16 U.S.C. § 4701. This Act is intended to prevent invasive species from entering inland waters through ballast water carried by ships.

Related Chapter: Chapter 17, Natural Resources Management

2-2.42 National Marine Mammal Protection Act (MMPA), 16 U.S.C. § 1361 et seq. This Act (16 U.S.C. §§ 1362–1407) states policy to prevent the extinction or depletion of marine mammals as a result of human activities. It further encourages the development of international arrangements for research on and conservation of all marine mammals. This Act is also sometimes referenced as MPRSA.

Related Chapter: Chapter 17, Natural Resources Management

2-2.43 National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 et seq. This Act authorizes the secretary of commerce to designate and protect areas of the marine environment that have special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Day-to-day management of national marine sanctuaries has been delegated by the secretary of commerce to the NOAA Office of National Marine Sanctuaries. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels, or unique habitats.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.44 Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 et seq. This Act (Pub. L. 101-601) describes the rights of Native American lineal descendants, Indian tribes, and Native Hawaiian organizations with respect to the treatment, repatriation, and disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, referred to collectively in the statute as “cultural items,” with which they can show a relationship of lineal descent or cultural affiliation. A major purpose of the statute is to provide greater protection for Native American burial sites and more careful control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on federal and tribal lands. The NAGPRA provides a process for museums and federal agencies to return certain Native American cultural items—human remains, funerary objects, sacred objects, or objects of cultural patrimony—to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. NAGPRA provides for Native

American tribes and individuals, or Native Hawaiian Organizations, to claim Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that were excavated or discovered on federal or tribal lands after the passage of NAGPRA.

Related Chapter: Chapter 18, Cultural Resources Management

2-2.45 Occupational Safety and Health Act (OSHA), 29 U.S.C. § 651 *et seq.* This Act establishes safety and health standards to ensure that every worker (including pesticide applicators) in the nation enjoys safe and healthful working conditions. Federal facilities must comply with OSHA.

Related Chapters: Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act (EPCRA); Chapter 12, Hazardous and Universal Waste Management; Chapter 13, Toxic Substances Control Act (TSCA); Chapter 15, Pesticide Compliance

2-2.46 Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701 *et seq.* Refer to the Clean Water Act (CWA).

Related Chapter: Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response

2-2.47 Outdoor Recreation—Federal/State Programs Act, 16 U.S.C. § 460 P-3. This law addresses the development of recreational resources. This includes the development of a nationwide outdoor recreation plan, classification of outdoor resources, and technical assistance from the secretary of the interior.

Related Chapter: Chapter 17, Natural Resources Management

2-2.48 Pollution Prevention Act of 1990, 42 U.S.C. § 13101 *et seq.* This Act was enacted to increase interest in source reduction or pollution prevention and encourage the adoption of cost-effective source reduction practices. The Act declared it to be 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.

Related Chapters: Chapter 12, Hazardous and Universal Waste Management; Chapter 14, Solid Waste Management, Source Recovery, and Recycling

2-2.49 Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.* This Act (Pub. L. 94-580) creates the framework for the proper management of hazardous and nonhazardous solid waste. The Act gives the EPA the authority to control HW from “cradle to grave.” RCRA also set forth a framework for the management of nonhazardous solid wastes. The 1986 amendments to RCRA enabled the EPA to address environmental problems that could result from underground tanks storing petroleum and other HSs.

2-2.49.1 RCRA Subtitle C, 42 U.S.C. § 6901 *et seq.* RCRA Subtitle C regulates the management of HW from cradle to grave, with the intent to protect human health and the environment. RCRA Subtitle C also regulates the management of used oil, which is not HW, with the intent to protect human health and the environment.

Related Chapters: Chapter 10, Used Oil Management; Chapter 12, Hazardous and Universal Waste Management

2-2.49.2 RCRA Subtitle D, 42 U.S.C. §§ 6941–6949a. RCRA Subtitle D (Pub. L. 98-616) governs the disposal of solid waste. Subtitle D establishes federal standards and requirements for state and regional authorities respecting solid waste disposal. The objectives of this subtitle are to assist in developing and encouraging environmentally sound methods for the disposal of solid waste and to maximize the use of valuable resources recoverable from solid waste.

Related Chapter: Chapter 14, Solid Waste Management, Resource Recovery, and Recycling

2-2.49.3 RCRA Subtitle I, 42 U.S.C. §§ 6991–6991i. RCRA Subtitle I (Pub. L. 99-49) established the standards and procedures for USTs. It required the EPA to issue standards on leak detection, record maintenance, release reporting, corrective actions, tank upgrading, and replacement.

Related Chapter: Chapter 11, Storage Tanks

2-2.50 Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f *et seq.* An amendment to the Public Health Service Act, the SDWA federalized the regulation of drinking water systems. Among other things, the SDWA requires the EPA to set national standards for levels of contaminants in drinking water that may have an adverse effect on human health and provides for the direct control of underground injection of fluids that could potentially affect groundwater supplies. The 1996 Amendments strengthened consumer right-to-know provisions, the multiple-barrier approach to protecting water quality, and Section 1447(a) provides that federal agencies: “1) owning or operating any facility in a wellhead protection area; 2) engaged in any activity at such facility resulting, or which may result, in the contamination of water supplies in any such area; 3) owning or operating any public water system (PWS); or 4) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water” shall be subject to and comply with all substantive and procedural federal, state, interstate, and local requirements to the same extent as any person.

Related Chapters: Chapter 7, Clean Water; Chapter 8, Safe Drinking Water Act Compliance

2-2.51 Solid Waste Disposal Act of 1965, as amended. This Act requires that federal facilities comply with all applicable federal, state, interstate, and local requirements concerning the disposal and management of solid wastes. These requirements include permitting, licensing, and reporting.

Related Chapter: Chapter 14, Solid Waste Management, Resource Recovery, and Recycling

2-2.52 Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601–2692, as amended. This Act addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, and lead-based paint. On June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act was signed into law and amended TSCA (Pub. L. 114-182).

Related Chapter: Chapter 13, Toxic Substances Control Act (TSCA)

2-2.53 Vessel Incidental Discharge Act (VIDA). Enacted on December 4, 2018, VIDA amended the CWA and repealed the NPDES Small Vessel General Permit (sVGP), issued on September 10, 2014, for the control of incidental discharges for vessels less than 79 feet in length. The Act also specifies that, except for ballast water, discharges incidental to the normal operation of small vessels and commercial fishing vessels of all sizes no longer require NPDES permit coverage. Any small vessel or commercial fishing vessel covered under the sVGP at the time of enactment of VIDA that discharges ballast water into waters of the United States must comply with the requirements of the vessel general permit for those ballast water discharges. Lastly, VIDA requires the EPA to develop performance standards for those discharges within two years of enactment and requires the U.S. Coast Guard (USCG) to develop implementation, compliance, and enforcement regulations within two years of EPA's promulgation of standards.

Related Chapter: Chapter 7, Clean Water

2-2.54 Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271–1287. This Act, last amended in May 1991, outlines the U.S. policy that certain selected rivers of the nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, must be preserved in free-flowing condition, and that they and their immediate environments must be protected for the benefit and enjoyment of present and future generations. Congress declared that the established national policy of dam and other construction at appropriate sections of the rivers of the United States be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and fulfill other vital national conservation purposes (16 U.S.C. § 1271). The purpose of this Act is to implement the declared policy of Congress by instituting a national wild and scenic rivers system, by designing the initial components of that system, and by prescribing the methods by which and standards to which additional components may be added to the system from time to time (16 U.S.C. § 1272).

Related Chapter: Chapter 17, Natural Resources Management

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**CHAPTER 3:
ENVIRONMENTAL COMPLIANCE PROGRAM AND
ENVIRONMENTAL MANAGEMENT SYSTEMS**

3-1 Scope

3-1.1 This chapter articulates the procedures for oversight, monitoring, assessment, and reporting to ensure a proactive approach toward environmental compliance at Department of Commerce (Department) facilities within the United States and its territories. The provisions of this chapter apply to Operating Units (OU) and Department facilities. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

3-1.2 Related Chapters. Related chapters include the following: Chapter 2, Authorities; Chapter 4, Environmental Liabilities and Contingencies; Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act (EPCRA); Chapter 6, Air Quality; Chapter 7, Clean Water; Chapter 8, Safe Drinking Water Act Compliance; Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response; Chapter 10, Used Oil Management; Chapter 11, Storage Tanks; Chapter 12, Hazardous and Universal Waste Management; Chapter 13, Toxic Substances Control Act (TSCA); Chapter 14, Solid Waste Management, Resource Recovery, and Recycling; Chapter 15, Pesticide Compliance; and Chapter 17, Natural Resources Management.

3-1.3 References

Department of Commerce *Compliance and Processes Tracking (CPTrack™) Application User's Manual*.

Executive Order (E.O.) 12088, "Federal Compliance with Pollution Control Standards," dated October 13, 1978, as amended.

Federal Facility Compliance Act of 1992 (FFCA) (Pub. L. 102-386).

International Organization for Standardization (ISO) 14001:2015, Environmental Management.

ISO 14004, Environmental Management Systems—General Guidelines on Implementation.

U.S. Environmental Protection Agency (EPA), Final Policy Statement, "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," dated April 11, 2000.

EPA, "Environmental Audit Program Design Guidelines for Federal Agencies," dated Spring 1997.

U.S. Army Corps of Engineers (USACE), *The Environmental Assessment and Management (TEAM) Guide*.

3-2 Terms and Definitions

3-2.1 Criminal Enforcement Action: See Enforcement Action (Section 3-2.3, below).

3-2.2 Designated Responsible Official. The designated responsible official (DRO) is the senior person with environmental compliance responsibility for a facility's operations. Refer to Section 3-3.4 for additional information on applicability and responsibilities.

3-2.3 Enforcement Action. An enforcement action is a formal, written notification by EPA or other authorized federal, state, interstate, regional, or local environmental regulatory agency of a violation of any applicable legal requirement. The enforcement action cites the relevant standard or criteria to be met and requests the facility take corrective action. Enforcement actions do not include notices of deficiencies to permit applications. Items found to be out of compliance with a legal requirement during a self-assessment or external assessment are not considered an enforcement action. One written notice, regardless of the number of individual violations, findings, or citations listed in it, counts as one enforcement action if all violations cited relate to a single environmental law (e.g., Clean Water Act [CWA], Clean Air Act [CAA], Resource Conservation and Recovery Act [RCRA], Safe Drinking Water Act [SDWA]). If the enforcement action cites violations of more than one environmental law, then it is considered to be multiple enforcement actions, one under each applicable environmental law. Enforcement actions may be either civil (administrative or judicial) or criminal. Many environmental statutes contain both civil and criminal penalties to address pollution violations. Refer to Appendix A, Useful Web Links, for a link to EPA's website, "Overview of the Enforcement Process at Federal Facilities."

3-2.3.1 Civil Enforcement Actions

- (a) Civil administrative actions include a notice of violation (NOV), notice of noncompliance, or a Superfund notice letter or Superfund order (either with or without penalties). Settlements in an administrative action include consent agreements/final orders or administrative orders on consent.
- (b) Civil judicial actions are formal lawsuits. They are filed in court against persons or entities that have failed to comply with statutory or regulatory requirements, comply with an administrative order, pay the costs for cleaning up a Superfund site, or commit to doing the cleanup work. Settlements in judicial actions are in the form of consent decrees or Federal Facility Compliance Agreements signed by all parties to the action and filed in the appropriate court. The EPA does not have civil judicial enforcement authority to address environmental violations by a federal facility; however, state and tribal regulators as well as citizen groups are not limited or prohibited from suing a federal agency in federal court.
- (c) Civil enforcement actions may result in (monetary) penalties and injunctive relief that requires a regulated entity to perform—or refrain from performing—some designated action, which will bring the entity into compliance with environmental laws.

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- (a) Criminal liability is triggered through some level of intent (a “knowing violation”) usually reserved for the most serious violations—those that are willful or knowingly committed.
- (b) Criminal enforcement actions may result in federal, state, or local fines imposed by a judge at the sentencing. In addition to criminal penalties, the defendant may be ordered to pay restitution to those affected by the violation or be incarcerated.

3-2.4 Environmental Compliance Assessment. An environmental compliance assessment is a formal, systematic, multimedia, objective, and documented on-site review of a facility’s operations and practices to evaluate the status of its environmental compliance. Environmental compliance assessments can be categorized as a self-assessment or external assessment.

3-2.5 Environmental Compliance Assessment and Reporting System. A typical environmental compliance assessment and reporting system (ECARS) is designed to maintain a database of all applicable federal and state regulations from which customized checklists are generated for use in facility assessments for environmental compliance. An ECARS also is designed to record and manage assessment findings, determine systemic issues through root cause analysis, and create corrective action plans. This chapter provides additional information on ECARS and associated requirements.

3-2.6 Environmental Aspect. Element of an organization’s activities, products, or services that interacts or can interact with the environment. An environmental aspect can cause one or more environmental impacts. A significant environmental aspect is one that has or can have one or more significant environmental impacts. Significant environmental aspects are determined by the organization applying one or more criteria (ISO 14001:2015).

3-2.7 Environmental Impact. Change to the environment, whether adverse or beneficial, wholly or partially resulting from an organization’s environmental aspects.

3-2.8 External Assessment. An external assessment is a review of environmental compliance conducted by anyone without direct oversight of a facility or its operations. This can be someone within the organization but at a level of oversight and responsibility higher than the immediate facility manager or operation program manager, such as a line office in the OU, the Department, or someone from outside of the Department, such as another federal agency or outside contractors. External assessments are sometimes referred to as a second-party or third-party audit.

3-2.9 Facility. A facility (sometimes referred to as a campus) may consist of one building or a complex of buildings, structures, and land within a contiguous property boundary and under the direct oversight by one organization, generally a facility manager. A facility may be occupied by more than one organization. Note that this is a general definition in the context of this Manual and environmental compliance at Department facilities. An environmental regulation (Code of Federal Regulations) may define a facility differently, depending on the applicable regulations (e.g., RCRA, EPCRA). If this is the case, the definition for “facility” will be provided in the applicable chapter.

3-2.10 Environmental Facility Survey. An environmental facility survey (sometimes referred to as a self-survey) is a set of questions intended to identify activities and components (e.g., operations, equipment) with potential environmental liability at a facility and their associated environmental compliance requirements and concerns.

3-2.11 Notice of Violation. *See* Enforcement Action.

3-2.12 Outside Inspection. Federal facilities and operations are subject to applicable legal requirements and operating permits and are subject at any time to an inspection by authorized federal, state, and local agencies, upon the presentation of proper credentials. An outside inspection is a compliance inspection conducted by an authorized federal, state, or local regulatory agency. Incidents of environmental noncompliance discovered during an outside inspection may result in a NOV, a monetary fine, or an enforcement action. Assistance visits by EPA, state, or local regulatory agencies are also considered outside inspections. An outside inspection is not considered an external environmental compliance assessment.

3-2.13 Self-Assessment. A self-assessment is an internal review of environmental compliance conducted by personnel from the facility subject to compliance with applicable federal, state, and local environmental laws and regulations, as well as executive orders. In essence, it is a facility conducting an assessment on itself. For example, a self-assessment of a facility would be conducted by the facility manager or program manager or his or her staff. To ensure objectivity and ultimately the credibility of the assessment, the personnel conducting the assessment should not be in a direct line of reporting to an assessed operation (EPA, “Environmental Audit Program Design Guidelines for Federal Agencies”). A self-assessment sometimes is referred to as an internal assessment or first-party audit.

3-2.14 Warning Letters. When EPA determines that a violation warrants only an informal notification, a warning letter may be issued to the facility. Generally, a warning letter affords the federal facility an opportunity to correct the identified violation and may avert the need for EPA to use formal enforcement activities.

3-3 Requirements

The goal of the Department’s Environmental Compliance Program is to be a good steward of the environment by proactively assessing its facilities and operations for compliance with applicable environmental requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance). Proactive management of Department facilities and operations avoids NOVs, monetary fines, and criminal penalties. Additionally, a proactive approach to environmental compliance promotes good community relationships through being a good neighbor and avoids bad publicity. All OUs shall take a proactive approach to environmental compliance.

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To facilitate a proactive approach to environmental compliance, the Department has partnered with USACE to use its CPTrack application as the Department's ECARS to provide the Department with a comprehensive approach to environmental compliance, which is available to OUs for use as their ECARS. CPTrack includes an environmental facility survey. Though OUs are not required to use CPTrack, the Department encourages OUs to use CPTrack to provide the Department with a unified approach to environmental compliance.

3-3.1 Environmental Compliance Program. OUs shall maintain an environmental compliance program to ensure compliance with all applicable environmental laws, regulations, executive orders, and policies for their facilities (e.g., E.O. 12088, "Federal Compliance with Pollution Control Standards" and FFCA, Pub. L. 102-386).

3-3.2 Environmental Facility Survey. OUs shall conduct an environmental facility survey for each facility that is owned by the federal government and under the OU's custody and control, is leased by the OU and the OU retains authority over facility operations, or the OU occupies a facility under an occupancy agreement (OA) with the General Services Administration (GSA) that includes delegated facility responsibilities. The environmental facility survey must be updated annually to incorporate any changed conditions and ensure the relevancy of data. The survey may be conducted using the Department's ECARS or an ECARS comparable to, and compatible with, all components of the Department's ECARS. The survey also should be the initial basis for characterizing the facility as Category I, II, or III (high risk, medium risk, or low or no risk, respectively) to determine the frequency and type of environmental compliance assessment(s) required at its facility. Risk characterization in this context refers to the probability of noncompliance with an environmental requirement based on factors listed in Section 3-3.5 below. The *CPTrack Application User's Manual* provides detailed information on the environmental facility survey feature in CPTrack.

3-3.3 Environmental Compliance Tracking. Each OU that has authority over operations for at least one facility, as described in Section 3-3.4, shall have a comprehensive environmental compliance tracking and assessment strategy that includes documentation, monitoring, quality control, reporting, tracking of compliance assessment findings, and tracking of outside compliance inspections and enforcement actions. This requirement can be met through use of the Department's ECARS (CPTrack) or an ECARS comparable to, and compatible with, all components of the Department's ECARS.

3-3.4 Designated Responsible Official. The DRO is responsible for ensuring day-to-day compliance with all applicable environmental laws, regulations, executive orders, and other related requirements imposed on their facility, operations, and their facility staff's activities. Each OU shall maintain a policy that defines each position in its OU that is responsible for being a DRO and that position's associated duties. There are several environmental laws and regulations that assign specific responsibilities to a responsible official (e.g., CAA); therefore, care should be taken before designating a DRO.

Department facilities shall be responsible for selecting the DRO for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an OU does not have authority over operations at a facility, then this paragraph does not apply. Each case is fact-specific; however, some indicators that an OU could have authority over operations at a facility include the following.

- The facility is owned by the federal government and is under the custody and control of the OU
- The OU uses the facility pursuant to a GSA OA and the OU has been delegated such responsibility by GSA or the OU has agreed to take on such responsibility
- The OU uses the facility pursuant to a lease and the OU has such responsibility pursuant to the terms of the lease
- The OU facility has an EPA identification (ID) number in the OU's name
- The OU facility ships hazardous waste (HW) from the facility under the OU's EPA ID number
- The OU facility holds registration certificates for underground storage tanks (USTs) or aboveground storage tanks at the facility in the OU's name
- The OU facility contracts for fuel deliveries for the facility under the OU's name
- The OU facility accepts or manages fuel deliveries for the facility under the OU's name and address
- The OU facility holds an environmental operating permit (e.g., CWA, CAA, SDWA) for the facility under the OU's name
- The OU facility reports under EPCRA for the facility under its name and address

3-3.5 Environmental Compliance Categories. OUs shall characterize each of its facilities as Category I (high risk), Category II (medium risk), or Category III (low or no risk). Each facility's category shall be re-evaluated at least annually, as well as during environmental compliance assessments, and the environmental facility survey updated as applicable. Factors to consider in determining category include, but are not limited to:

- Number and types of environmental permits and associated permit requirements
- Volume of and types of HW generated and stored
- Volume and types of hazardous materials (HMs) on-site
- Wastewater discharges (e.g., industrial, domestic)
- Number, size, and contents of aboveground and underground storage tanks
- Compliance record (e.g., frequency of NOVs; facilities operating under consent decrees, Federal Facility Compliance Agreements, or settlement agreements). Refer to Section 3-2.3 for definitions

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- Past releases to the environment requiring ongoing cleanup
- Activities with a potential for a hazardous release into the environment
- Presence of endangered or protected species in the area of the facility
- Size and age of the facility
- Real property status (e.g., owned, leased, OA with GSA, fully serviced, delegated authority)
- Physical characteristics and location (e.g., proximity and density of human population; the number of on-site employees; site characteristics that can make a location more susceptible to widespread environmental damage, such as close proximity to bodies of water, subsurface geology, and hydrology; local community interest and involvement)
- Scope and adequacy of its environmental management practices.

The above factors can be interrelated, and the category is dependent on the types, magnitude, and frequency of on-site operations (e.g., research or analytical laboratories, building maintenance, vehicle maintenance, on-site waste treatment, power plants, cooling towers), which drive environmental compliance requirements at a facility. Responses to questions in the environmental facility survey should be the initial basis for determining the category of each facility. The environmental liabilities inventory also can be used as a resource for determining the category.

Examples of facilities that would fall under Category I include facilities that:

- Have two or more environmental permits
- Are a large-quantity generator of HW
- Have had a release to the environment requiring cleanup that is still ongoing
- Operate a waste-disposal or waste-treatment process (e.g., landfill, potable water treatment process, wastewater treatment process, solid waste treatment process, incinerator, or waste to energy)
- Possess or operate on lands that have threatened and endangered species habitat, or have not yet conducted a threatened and endangered species survey on their Class I property (government-owned land)
- Store or handle regulated volumes of fuel, oil, or hazardous substances (HSs) (underground and aboveground storage tanks)
- Are subject to EPCRA reporting requirements
- Have had an NOV or monetary fine within the past five years
- Are susceptible to announced or unannounced regulatory inspections due to being located in a highly regulated or a high-visibility area or to the questionable compliance posture of the facility

Category III facilities generally are those at which only office and clerical activities take place, the only chemicals used are for office or janitorial use, and the organization resides in a leased space or GSA building and is not responsible for operation of the facility. Category II facilities would be those that do not fit under Category I or III.

The category for each facility and the rationale for the determination shall be documented within an ECARS.

3-3.6 Environmental Compliance Assessments. For each facility for which an OU has authority over operations, as described in Section 3-3.4, the OU shall document its assessment strategy for evaluating the facility for compliance with applicable environmental laws and regulations. In addition to providing an understanding of the current state of the facility's compliance, assessments should be used to determine what activities are necessary to remain in compliance with upcoming or anticipated environmental laws, regulations, and executive orders; identify and eliminate underlying environmental problems; identify systemic environmental issues; and evaluate the effectiveness of the facility's environmental management practices. This review can identify the root cause of compliance issues (e.g., insufficient resources or training), provide recommendations on how to achieve compliance, and recommend best management practices to enhance compliance.

Frequency, type, and scope of the assessment shall be based on the classification of a facility, with increased frequency and attention directed towards Category I facilities. Other factors that should be considered include the scope of the facility's environmental management program, as well as the level of a facility's environmental awareness. Additionally, available resources (e.g., budget, manpower, environmental expertise) may be a factor when developing a strategy.

At a minimum, each facility where an OU has authority over operations of the facility shall undergo an environmental compliance assessment at least once within every five-year assessment cycle. Category I facilities should undergo an external environmental compliance assessment at least once every five years and annual self-assessments in the interval years. For Category I facilities, where an external assessment cannot be conducted due to resource constraints, an internal assessment shall be conducted annually.

Increased assessment frequency or change in assessment type (self-assessment versus external assessment) may be required due to a facility's compliance posture, such as the number of enforcement actions, systemic environmental issues, or change in operations or mission. OUs shall document their rationale for scheduling and type of assessment (self-assessment versus external assessment) and provide such documentation to the Office of Sustainable Energy and Environmental Programs (OSEEP) for review, consistent with the process described in paragraph 3-3.5 above. If a scheduled assessment cannot be conducted, the reason (e.g., resource constraints such as funding or labor), shall be documented within the ECARS. OUs shall implement and use an ECARS and USACE's *The Environmental Assessment and Management (TEAM) Guide* and its associated state supplements, or a comparable listing of federal and state environmental compliance regulatory requirements, as the basis of environmental compliance assessments.

Environmental compliance assessments are tracked on a five-year fiscal year (October 1 to September 30) cycle. Before the start of a five-year cycle, OUs shall enter the category for each facility and five-year environmental compliance assessment schedule in the ECARS that identifies when and which facilities are scheduled to be evaluated during that five-year period and the type of environmental compliance assessment for each year (e.g., internal, external, none). By October 1 of each remaining year of the five-year cycle, annually update the schedule as appropriate within the ECARS to reflect any changes and provide the reason(s) for the change. In addition, if a scheduled environmental compliance assessment was not conducted, provide the reason. The *CPTrack Application User's Manual* provides detailed information on the scheduling feature in CPTrack.

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3-3.7 Environmental Compliance Assessment Documentation. All environmental compliance assessments (self-assessment and external assessment) shall rely upon an assessment checklist generated by an ECARS. The Department has a subscription to USACE's *TEAM Guide*; therefore, OUs should use this *TEAM Guide* as a basis for environmental compliance assessments. Documentation entered into an ECARS shall include the scope of the assessment, details of each finding, a root cause analysis, corrective action, timeline for completion, and the individual responsible. The description of the scope of the assessment shall include a list of all assessed environmental media and areas visited (e.g., buildings, operations), and whether or not there is a finding associated with the media or location. Additionally, the description of the scope of the assessment should list areas not included within the assessment. Photographs or other documentation should be retained where possible as proof of the finding and that corrective action has been taken and is adequate. Documentation shall be maintained for both self-assessments and external assessments for a period of two full assessment cycles or at least five years, whichever is greater. Documentation may need to be maintained for periods greater than nine years in the event of litigation against the Department or involving the facility. OUs shall use an ECARS to track the status through to completion of corrective actions addressing findings from all assessments. The *CPTrack Application User's Manual* provides detailed information on the compliance assessment feature in CPTTrack.

3-3.8 Quality Control. OUs shall ensure that a person knowledgeable on associated operations and environmental requirements verifies the adequacy of corrective actions, either by review of photographs and documentation or by site visit, before closing the finding.

3-3.9 Warning Letters. Department facilities shall report receipt of all warning letters to their OU headquarters and consult with their legal counsel regarding concerns or questions about the warning letter. Within five working days of receipt of warning letters, OUs shall notify and provide the Department's environmental compliance manager with a copy of all pertinent documentation issued by a federal, state, or local regulatory enforcement organization.

3-3.10 Outside Inspections and Enforcement Actions. Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), NOV, and penalty assessments to their OU headquarters and consult with their legal counsel regarding concerns or questions with inspections and if there is an enforcement action or NOV. OUs should also consult with their legal counsel on the payment of civil or administrative penalties levied by federal, state, or local enforcement agencies. OUs shall ensure that all incidents of an outside inspection and associated results are recorded and tracked until close-out within an ECARS as they occur. Incidents of environmental noncompliance under some laws may carry criminal penalties if it is determined that negligence is involved. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document within an ECARS and by email.

All noncompliance incidents shall be corrected immediately. Within three working days of receipt of documents for a significant noncompliance event (e.g., those resulting in a NOV, enforcement action, or monetary fine), OUs shall notify and provide the Department's environmental compliance program manager with a copy of all pertinent documentation (e.g., NOV, compliance agreement, administrative order, consent order) issued by a federal, state, or local regulatory enforcement organization.

3-3.11 Enforcement and Compliance History Online Database. A useful resource for determining whether a facility has had any enforcement action under the CAA, CWA, RCRA, or SDWA is EPA's Enforcement and Compliance History Online (ECHO) website, a searchable database that provides information on facility compliance with these regulations. Refer to Appendix A, Useful Web Links, for a link to this website.

3-3.12 Closed and Closing Facilities. Closed and closing facilities remain subject to applicable environmental compliance requirements and these facilities shall maintain a compliance program until final property transfer has occurred. Records may be required to be retained longer in the case of closed facilities where HW or HMs were stored for one year or longer or where known environmental contamination occurred. OUs should consult with their appropriate records retention official for further guidance regarding records retention.

3-4 Environmental Management System

An environmental management system (EMS) integrates environmental considerations into an organization's day-to-day activities by taking a comprehensive approach to identify, manage, monitor, and control the environmental aspects of their operations. Required by previous executive orders, EMS currently is not required by executive order or legislation but is an optimal approach for managing environmental programs at facilities or organizations with environmental concerns (e.g., environmental operations subject to environmental regulations or that could impact the environment). In general, the foundation of any EMS is ISO 14001, *Environmental Management Systems—Requirements with Guidance for Use* in concert with ISO 14004, *Environmental Management Systems—General Guidelines on Implementation*.

3-4.1 Facility-Level and Agency-Wide Environmental Management System. Depending on the level of the organization at which EMS is implemented (facility level or agency-wide/organizational), the components of ISO 14001 incorporated in an EMS may differ.

3-4.1.1 Facility-Level Environmental Management System. In general, a facility-level EMS is appropriate for a single facility, although one may cover a few facilities that have comparable operations and missions and are managed by the same entity (e.g., sub-agency, line office). Because a facility can more directly impact environmental compliance posture or adversely impact the environment (e.g., directly holds permits, handles HW or HMs, potential for spills, underground/aboveground storage tanks), a facility-level EMS should strive to integrate all components of ISO 14001—as applicable or appropriate—into the way it manages its environmental program.

3-4.1.2 Agency-Wide/Organizational Environmental Management System. An agency-wide EMS is appropriate at the organizational level (e.g., headquarters); therefore, it would not necessarily be appropriate to incorporate all elements of ISO 14001. Instead, it would serve as an umbrella under which its sub-organizations/facilities fall. An organizational EMS should consider those areas that address the OU's environmental and sustainability priorities and overall environmental management of their organization to support its mission. Examples of items that would be appropriate at the organizational level are the organization's environmental policy and leadership commitment to the environment and EMS; the organization's objectives and targets; environmental monitoring and reporting; allocation of resources; accountability; and management review to ensure visibility of environmental performance at upper management levels.

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3-4.2 ISO 14001 Overview. ISO 14001 is an international standard that provides a framework under which an organization can manage and operate its environmental program. It is a voluntary standard and designed to help organizations improve their environmental performance through more efficient use of resources and reduction of waste. It requires that an organization or facility consider all environmental concerns (e.g., environmental aspects, environmental impacts) that may be relevant to its operations, such as air pollution, water and sewage, waste management, soil contamination, climate change mitigation and adaptation, and resource use and efficiency. Based on a “plan-do-check-act” cycle with a continuous feedback loop, it is designed to incorporate continual improvement into an organization or facility’s environmental management structure. The framework is not meant to be prescriptive and allows an organization or facility to structure and document its EMS in a manner that matches the way the organization or facility operates.

3-4.3 EMS Certification. Though an EMS can be officially certified by an accredited agent as conforming with ISO 14001, many federal agencies and facilities choose not to do so. Instead of formally certifying conformance, the program can be assessed informally internally.

3-4.4 ISO 14001:2015 Contents. ISO 14001:2015 is composed of seven critical elements that address the major components of a well-run environmental management program, as well as associated annexes that (1) provide guidance on how to use the standard and (2) a comparison between ISO 14001:2015 and ISO 14001:2014. ISO standards are copyrighted; therefore, to get a copy of the full text of ISO 14001:2015 and its annexes, one must purchase it. Appendix A, Useful Web Links, provides the weblink for where a copy can be purchased. This link also provides the forward, introduction, scope, normative references, and terms and definitions, which do not need to be purchased. Appendix B provides a brief outline of the elements of an EMS under ISO 14001:2015.

3-5 Responsibilities

3-5.1 The Office of the Secretary

- (a) OSEEP shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance.
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance).
 - (iii) Monitor Department facilities’ compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance).
 - (iv) Provide technical support on environmental compliance, as needed.
 - (v) Fund an ECARS (e.g., CPTrack) and TEAM Guide, or comparable list of federal environmental compliance regulations for use by OUs and department facilities, provide training for ECARS users, and ensure updates to and distribute the associated users’ manuals (i.e., *CPTrack Application User’s Manual*).
 - (vi) Develop and report environmental compliance metrics as part of the Department’s annual metrics to the Department’s Chief Sustainability Officer through the Director of the Office of Facilities and Environmental Quality (OFEQ), on an annual basis or more frequently as required. Reporting requirements may vary from year to year.
 - (vii) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the GSA in accordance with its delegated authority, and follow guidance within this chapter, as applicable.

3-5.2 Operating Units Shall:

- (a) Ensure that OU staff act in an environmentally responsible manner in compliance with all applicable environmental laws, regulations, and executive orders.
- (b) Conduct an initial environmental facility survey and enter the survey information into an ECARS for each facility that is: owned by the federal government and under the OU’s custody and control; leased by the OU and for which the OU retains authority over facility operations; or occupied by the OU under an OA with GSA, along with delegated facility responsibilities.
- (c) By October 1 of each year, update the environmental facility survey data within the ECARS, as applicable—due to changes in facility conditions (e.g., changes in operations, equipment, new facilities, closed facilities)—to reflect current conditions, including adding new facilities or removing facilities that have been closed, transferred to another entity, or are no longer under the OU’s control.

3-5.3 Operating Units that Have Authority Over Operations for at Least One Facility Shall:

- (a) For those facilities that they have authority over operations, develop, document, implement, and periodically review an environmental compliance assessment strategy for facilities under its purview, occupancy, or operation per Section 3-3.6.
- (b) Implement, deploy, and maintain an ECARS to identify environmental elements associated with its facilities; conduct internal and external assessment as appropriate for facilities; assess, track, document, monitor, and report the status of environmental compliance within an ECARS; and routinely update information within an ECARS to ensure relevancy of data.
- (c) Determine facility category and document designation within an ECARS system per Section 3-3.5.
- (d) Enter and update compliance assessment schedules in an ECARS as described in Section 3-3.6.
- (e) Conduct environmental compliance assessments in accordance with its environmental compliance assessment schedule using the USACE’s *TEAM Guide* or equivalent and provide results of regulatory inspections consistent with the reporting software or tool used.

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- (f) Track status of actions taken to ensure timely closeout of findings of noncompliance.
- (g) Ensure timely reporting of significant noncompliance events (e.g., those resulting in a NOV, enforcement action, or monetary fine) as per Section 3-3.9.
- (h) Where appropriate, based on environmental aspects associated with their operations, implement an appropriate level EMS for the organization or facility.

3-6 Training

Personnel using CPTrack should be trained in the use of the application. CPTrack training can be scheduled through OSEEP. Personnel who conduct or supervise staff associated with operations that can impact environmental compliance shall be trained in accordance with applicable environmental compliance laws and regulations and should be trained to perform their job duties safely and in compliance with applicable laws, regulations, and policies. To enhance knowledge on relevant environmental compliance topics, OSEEP offers environmental compliance training webinars to the Department. All training records shall be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

3-7 Reporting Requirements**3-7.1 Reporting to the Office of the Secretary**

OUs shall report to OSEEP:

- (a) Status of environmental compliance at their facilities as part of Department annual metrics, as applicable, due in October of each year. Reporting requirements may vary from year to year.
- (b) Annual validation of the environmental facility survey data, including category level for each applicable facility and rationale for the determination per Section 3-3.5. The *CPTrack Application User's Manual* provides detailed information on the environmental facility survey feature in CPTrack.
- (c) By October 1 of each year, a five-year assessment schedule or annual update, as applicable, with an explanation for any changes or missed assessments. Refer to Section 3-5.3(d). The *CPTrack Application User's Manual* provides detailed information on the scheduling feature in CPTrack.
- (d) Significant noncompliance enforcement actions (e.g., those resulting in a NOV or monetary fine) and status of previous noncompliance events entered into the ECARS as per Section 3-3.9.

3-7.2 Reporting to External Agencies. None.

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**CHAPTER 4:
ENVIRONMENTAL LIABILITIES AND CONTINGENCIES**

4-1 Scope

4-1.1 This chapter is intended to assist environmental subject matter experts in the identification, inventory, and financial accounting of environmental liabilities and contingencies across the Department of Commerce (Department). Environmental liabilities or contingencies arise from a variety of sources regulated under applicable federal, state, and local environmental statutes, regulations, and ordinances, as well as “common law” (i.e., judge-made law) that can vary from state to state. It is important to realize that accounting guidance for environmental liabilities and contingencies is governed by guidance, pronouncements, or accounting standards issued by the Government Accountability Office, Office of Management and Budget (OMB) and the Federal Accounting Standards Advisory Board (FASAB).

The provisions of this chapter apply to all Department Operating Units (OUs) with facilities that may have an environmental liability or contingency. The chapter is intended to provide minimal background and appropriate references that may be consulted should additional detail be required. The references discuss the manner in which financial liabilities and contingencies must be reported and specify those financial activities that must be performed by Department financial professionals. The explanations and definitions of some technical terms within this chapter have been intentionally simplified to enhance basic understanding. It is important to note that common definitions used within the environmental field may not align with financial definitions. For full financial technical definitions and requirements, readers are directed to the references. Appendix C, Environmental Liabilities and Contingencies Guidance, provides additional information on the FASAB standards.

Nothing in this Manual should be construed as attempting to supersede Occupational Safety and Health Administration (OSHA)- or U.S. Environmental Protection Agency (EPA)-regulated workforce safety and exposure liabilities (e.g., asbestos, lead-based paint, mold, noise), as well as health and safety guidance published separately by the Office of Human Resources Management.

4-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 5, Compliance with the Emergency Planning and Community Right-to-Know Act (EPCRA); Chapter 6, Air Quality, Chapter 7, Clean Water; Chapter 8, Safe Drinking Water Act Compliance; Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response; Chapter 10, Used Oil Management; Chapter 11, Storage Tanks; Chapter 12, Hazardous and Universal Waste Management; Chapter 13, Toxic Substances Control Act (TSCA); Chapter 14, Solid Waste Management, Resource Recovery, and Recycling; and Chapter 15, Pesticide Compliance.

4-1.3 References

42 U.S.C. § 4321 *et seq.*, National Environmental Policy Act (NEPA).

42 U.S.C. § 6901 *et seq.*, Resource Conservation and Recovery Act (RCRA).

42 U.S.C. § 9601 *et seq.*, Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund. Chief Financial Officers Act of 1990, Pub. L. 101-576.

Department of Commerce, *Accounting Principles and Standards Handbook*.

Federal Accounting Standards Advisory Board (FASAB) *Handbook of Federal Accounting Standards and Other Pronouncements, as Amended*.

FASAB, Technical Bulletin 2006-1, Recognition and Measurement of Asbestos-related Cleanup Costs, September 28, 2006.

FASAB, Technical Release 2, Determining Probable and Reasonably Estimable for Environmental Liabilities in the Federal Government.

FASAB, Technical Release 10, Implementation Guidance on Asbestos Cleanup Costs Associated with Facilities, and Installed Equipment.

Government Management Reform Act of 1994, Pub. L. 103-356.

OMB Circular A-136, *Financial Reporting Requirements*.

OMB Circular A-11, *Preparation, Submission, and Execution of the Budget*.

Statement of Federal Financial Accounting Standard 5, Accounting for Liabilities of The Federal Government (SFFAS 5).

Statement of Federal Financial Accounting Standard 6, Accounting for Property, Plant, and Equipment (SFFAS 6).

4-2 Terms and Definitions

4-2.1 Cleanup Costs. The costs associated with hazardous waste (HW) removal, containment, or disposal. In some instances, the federal government incurs liabilities for cleaning up HW at sites of facilities it operates or has operated. Generally, cleanup cannot be done—or is not done—until permanent or temporary closure or shutdown of sites or facilities (See SFFAS 5). Note that the financial definition does not match the common environmental definition for cleanup. The definition is broad and includes decommissioning and disposal in addition to traditional cleanup (e.g., cleanup of a CERCLA site).

4-2.2 Contingency. A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to an entity. The uncertainty ultimately is resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm a gain (e.g., acquisition of an asset or reduction of a liability) or a loss (e.g., loss or impairment of an asset or the incurrence of a liability) (SFFAS 5).

When a loss contingency (i.e., contingent liability) exists, the likelihood that the future event or events will confirm the loss or the incurrence of a liability can range from probable to remote. The probability classifications are as follows.

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- (a) **Probable:** The future confirming event or events are more likely than not to occur, with the exception of pending or threatened litigation and unasserted claims. For pending or threatened litigation and unasserted claims, the future confirming event or events are likely to occur. [*Departmental note:* A liability is recorded in this case if measurable (reasonably estimable).]
- (b) **Reasonably Possible:** The chance of the future confirming event or events occurring is more than remote but less than probable. [*Departmental note:* A reasonably possible contingency is not a liability. Disclosures of reasonably possible contingencies *are* included in the Department’s notes to the financial statements—Commitments and Contingencies note.]
- (c) **Remote:** The chance of the future event or events occurring is slight. [*Departmental note:* A remote contingency is not a liability. Remote contingencies *are not* disclosed in the Department’s notes to the financial statements.]

Some examples of loss contingencies include collectability of receivables, pending or threatened litigation, and possible claims and assessments.

4-2.3 Hazardous Waste. Per SFFAS 6, a solid, liquid, or gaseous waste, or combination of these wastes, which because of its quantity concentration or physical, chemical, or infectious characteristics may:

- (d) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness
- (e) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Note that the financial definition does not match the common environmental definition for “hazardous waste,” and is not strictly limited to RCRA HW. The term “hazardous waste” includes, but is not limited to, residual materials designated as such by RCRA and by regulations of the EPA. HW also includes asbestos for purposes of proper accounting treatment. Hazardous substances (HSs) as defined under CERCLA generally also are HW.

4-2.4 Liability. A liability for federal accounting purposes is a probable future outflow or other sacrifice of resources as a result of past transactions or events. For pending or threatened litigation and unasserted claims, the future confirming event or events are likely to occur. To be recorded, a liability must be measurable. Measurability means that an item has a relevant attribute that can be quantified in monetary units with sufficient reliability to be reasonably estimable. Note that, in the environmental field, the term used usually is “environmental liability” (SFFAS 5).

4-2.5 Property, Plant, and Equipment. Property, plant, and equipment (PP&E) includes all property, facilities, infrastructure, plant, and equipment.

4-3 Requirements

The following sections provide general guidance on how to recognize environmental liabilities associated with various types of events and transactions. Appendix C expands upon information in this chapter, including expanded definitions and information on FASAB and SFFAS requirements.

4-3.1 Department of Commerce, Accounting Principles and Standards Handbook. The Department *Accounting Principles and Standards Handbook* (*Accounting Handbook*) provides specific accounting and related principles and standards against which financial management and accounting systems can be evaluated and improved. The *Accounting Handbook*, in Chapter 9, *Liabilities*, sets forth Departmental guidance on liabilities. See Appendix A, Useful Web Links, for a link to the *Accounting Handbook*.

4-3.2 Determining Environmental Liability

To be an environmental liability, the following three conditions must be met:

- (a) A past event or transaction has occurred
- (b) The future outflow (e.g., cash disbursement) or other sacrifice of resources (e.g., transfer of an asset) is probable
- (c) The future outflow or other sacrifice of resources is measurable (with sufficient reliability to be reasonably estimable).

Amounts classified as probable and measurable are recognized as liabilities in the Department’s integrated accounting systems and reported on the consolidated balance sheet.

In general, the steps associated with reporting environmental liabilities include:

- (a) Identification of environmental liabilities
- (b) Measurement
- (c) Recording and reporting.

Data from the evaluation is submitted to financial management personnel who convert the facility data into financial reporting data. An environmental or contingent liability is not based on the future availability of funds. Environmental and contingent liabilities meeting the requirements described in this chapter are properly recorded in the system of record and reported to all concerned parties as required.

4-3.3 Identification

- (a) Subject matter experts, such as operations and program managers and others knowledgeable of environmental compliance requirements, should be involved in the process of identifying and inventorying environmental liabilities.

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- (b) Information entered into the ECARS (e.g., *Compliance and Processes Tracking* [CPTrack™]) environmental facility survey and environmental assessments, and property inventories (e.g., BUILDER™ Sustainable Management System) can provide equipment inventories and can list facility operations that could have an associated environmental liability.
- (c) Other resources that can be used to determine whether an event occurred that might generate an environmental disposal or closure liability include conditions and requirements of operating licenses, permits, plans, or other environmental records to determine whether a potential environmental liability exists. Examples include:
- (i) Environmental baseline inspections
 - (ii) CERCLA/RCRA cleanup site records
 - (iii) Air emissions (e.g., from boilers)
 - (iv) Water discharges to publicly owned treatment works (POTW)
 - (v) Water discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) permit
 - (vi) Underground and aboveground storage tank operations inspection and/or audit reports.
- (d) Examples of activities or equipment that should be evaluated to determine environmental liabilities include:
- (i) Activity or equipment that requires a permit or registration such as storage tanks (underground and aboveground) (Chapter 11), for example permitted unit closure and post-closure costs)
 - (ii) Hazardous and universal waste storage areas (Chapter 12)
 - (iii) Industrial and stormwater source discharges (Chapter 7)
 - (iv) Polychlorinated biphenyl (PCB) and PCB-contaminated items and equipment including transformers (Chapter 3)
 - (v) Operations and equipment regulated under the Clean Air Act (CAA), such as stack discharges, paint booths, fume hoods, emergency generators, degreasing tanks/operations, and bag houses
 - (vi) Discharge or encroachment on wetlands or floodplains; and pesticide storage areas
 - (vii) Property, plant, and equipment decommissioning and disposal, including ships and vessels
 - (viii) Contaminated sites regulated under CERCLA or RCRA
- (e) Examples of financial obligations that may trigger an environmental liability include the following:
- (i) **Compliance Obligations.** Compliance obligations are related to compliant implementation of laws and regulations that apply to the manufacture, use, storage, disposal, and release of chemical substances and to other activities that adversely affect the environment.
 - (ii) **Remediation Obligations.** Remediation obligations (existing and future) are related to contaminated real property obligations to pay civil and criminal fines and penalties for statutory or regulatory noncompliance. The remediation obligation is distinctive because a facility may face remediation obligations due to contamination at inactive sites that are otherwise unregulated; at property formerly but not currently owned or used; at property an entity never owned or used, but to which its wastes were sent; and at property an entity acquired but did not contaminate (e.g., in “Superfund liability” scenarios). It is helpful to distinguish between remediation obligations for existing contamination and potential remediation obligations for future contamination.
 - (iii) **Obligations to Pay Civil Fines and Penalties for Statutory or Regulatory NonCompliance.** Facilities that are not in compliance with applicable requirements may be subject to civil fines or penalties for noncompliance and expenses for projects agreed to as part of a settlement for noncompliance. Such payments fulfill punitive and deterrent functions and are in addition to the costs of coming into compliance.
 - (iv) **Obligations to Compensate Private Parties for Personal Injury, Property Damage, and Economic Loss.** Under common law and some state and federal statutes, facilities may be obligated to pay for compensation of “damages” suffered by individuals, their property, and businesses due to use or release of toxic substances or other pollutants.
 - (v) **Obligations to Pay “Punitive Damages” for Grossly Negligent Conduct.** To supplement compensatory payments to those harmed by the actions of others, some laws allow the imposition of what are called “punitive damages” to punish and deter conduct viewed as showing a callous disregard for others. Unlike compensatory liability, the measure of punitive damages is not directly tied to the actual injuries sustained. Punitive damages often are many times greater than the costs of compensation; although rarely assessed, punitive damages in environmental litigation often exceed \$1 million.
 - (vi) **Obligations to Pay for Natural Resource Damages.** Established by state and federal statutes, notably Section 311 of the Clean Water Act (CWA), Section 107 of CERCLA, and Section 1006 of the Oil Pollution Act (OPA), this liability generally relates to injury, destruction, loss, or loss of use of natural resources that do not constitute private property. Rather, the resources must belong to or be controlled by federal, state, local, foreign, or tribal governments. Such resources include flora, fauna, land, air, and water resources. The liability can arise from accidental releases (e.g., during transport) as well as otherwise lawful releases to air, water, and soil.
- (f) If the results of the due diligence activities indicate that it is likely that contamination is present at a concentration that requires further study or future cleanup, the site shall then be classified as an environmental liability. If cleanup is warranted but the volume is not significant and cleanup can be accomplished under current routine operation and maintenance or infrastructure costs, then the site is not an environmental liability. Physical indicators of a possible release may include:
- (i) Stained soil
 - (ii) Solvent or petroleum odor
 - (iii) Scorched earth
 - (iv) Discolored vegetation

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- (v) Illegal dumps
 - (vi) Dead animals
 - (vii) Discolored water in a stream
 - (viii) Surface water sheen.
- (g) If a facility contains regulated materials (i.e., asbestos, lead-based paint) used in the construction or past renovation of the facility and these regulated materials become degraded and are released to the environment, then they may be considered contaminants requiring cleanup. If the abatement is improperly conducted and a release to the environment occurs, then the cleanup costs are an environmental liability. Refer to FASAB Technical Release Number 10, *Implementation Guidance on Asbestos Cleanup Costs Associated with Facilities, and Installed Equipment* and Technical Bulletin 2006-1, *Recognition and Measurement of Asbestos-Related Cleanup Costs*. Also refer to Appendix C for additional information.
- (h) Environmental liabilities for financial reporting should not be confused with environmental compliance costs. In general, environmental compliance and operation and maintenance activities are not considered environmental liabilities. Examples of activities that are not environmental liabilities include:
- (i) Permit requirements such as monitoring and reporting under RCRA, NPDES, or other permits
 - (ii) Indoor air quality corrective measures, with the exception of actions required as part of a cleanup
 - (iii) Radon mitigation
 - (iv) Water and sewage system maintenance and monitoring
 - (v) Routine HW disposal
 - (vi) Routine equipment maintenance (e.g., oil-water separators)
 - (vii) Short-term cleanup of spills and cleanup costs that are part of an ongoing operation (costs associated with the current financial reporting period or expensed for the year they occur are not recorded as an environmental liability, just as other costs of doing business)
 - (viii) Consumables—unused chemicals or fuel to be used or recycled
 - (ix) NEPA (the cost of an Environmental Impact Statement is not considered an environmental liability, because it is not directly attributable to cleanup)
 - (x) Underground/aboveground storage tank operation costs (e.g., installation of leak detectors, upgrading fill pipes, tank replacements, developing spill prevention control and countermeasure [SPCC] plans).

4-3.4 Probable Environmental Liability or Contingency

Except for pending or threatened litigation and unasserted claims (for which the future confirming event or events are likely to occur), a probability of occurrence exists when the future confirming event or events are *more likely than not* to occur. Various key factors (tests) must be considered in determining whether a future outflow of resources from a federal agency for environmental cleanup is probable. A detailed explanation of these factors can be found in FASAB Technical Release 2, *Determining Probable and Reasonably Estimable for Environmental Liabilities*. The factors are:

- (a) **Likely Contamination.** Are cleanup disposal, closure, or post-closure monitoring costs currently required either immediately or upon closure or disposal?
- (b) **Government Related and Legally Liable.** Are these costs either caused by the OU or is the OU otherwise related in such a way that it is legally liable for the cleanup, disposal, closure, or post-closure monitoring costs? Has legal liability been determined in consultation with legal counsel?
- (c) **Government-Acknowledged Financial Responsibility.** Does the OU have a financial responsibility for the cleanup, closure, or post-closure monitoring costs because it assumed financial responsibility?
- (d) **Monies Appropriated/Transaction Occurred.**
- (e) **No Known Remediation Technology Exists.** Do technologies exist to clean up, close, or monitor the affected site? If not, then only the costs of further study would meet the probable criteria.

4-3.5 Measurable (with Sufficient Reliability to be Reasonably Estimable). To be recorded as an environmental liability, the environmental costs must be reasonably estimable in current-year dollars. This means that supportable estimates can be prepared based on parametric models or cost comparisons that have adequate documentation of the assumptions made or an engineering estimate. FASAB Technical Release 2 lists three tests for determining whether a liability is reasonably estimable.

- (a) Completion of a remedial investigation/feasibility study (RI/FS) or other study (a RI/FS is a comprehensive environmental data collection and site characterization (RI) that evaluates alternative cleanup actions and recommends one (FS))
- (b) Experience with similar site or conditions
- (c) Availability of remediation technology

The analysis should consider all significant sites, with the information rolled into an entity-wide estimate. Cost estimates should be based on current technology. FASAB Technical Release 2 provides an illustration of the application of these tests and a discussion of each of the three tests. The discussion concludes with issues related to quantification of the estimate and guidance for active sites. It must be emphasized that every effort should be made to develop an estimate.

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4-3.6 Contingencies. An environmental contingency should be disclosed in the Department’s notes to the financial statements if any of the conditions for liability recognition (probable and measurable) are not met, but there is a “reasonable possibility” that a loss or additional loss will occur. A “reasonable possible” condition arises when the chance of the future confirming event or events occurring is more than remote but less than probable. Disclosure should include the nature of the contingency and an estimate of the possible liability, an estimate of the range of the possible liability, or a statement that such an estimate cannot be made. A remote contingency (the chance of the future event or events occurring is slight) is not disclosed in the Department’s notes to the financial statements.

4-3.7 Cost Estimates. If a potential environmental liability meets all three criteria—a past event has occurred, the environmental liability is probable or reasonably possible, and the environmental liability is reasonably estimable—then a cleanup cost estimate is initiated. Future costs cannot be known with certainty; therefore, estimating requires the exercise of judgment.

- (a) Liability cost estimates may be prepared at the OU or other organizational level.
- (b) Cost estimates shall consider the anticipated costs of the level of effort required for the cleanup (e.g., remove, contain, dispose of) in accordance with existing federal, state, and local requirements.
- (c) Cost estimates are subject to audit; therefore, adequate documentation (e.g., identifying data sources, estimating method, rationale used, assumptions) are very important to support an auditable financial statement. The project files must be maintained for five years. Documentation of management reviews also must be retained.
- (d) The preparation of cost estimates may involve the application of specialized tools, methods, accumulation and study of historical costs, and the conduct of technical analyses.
- (e) If an environmental liability has a liability status of *probable* or *reasonably possible*, then every effort should be made to develop a total cleanup cost estimate. If the total cleanup cost is not reasonably estimable at the time the reporting is due, then the portion of the cleanup cost that is reasonably estimable should be reported.
- (f) Cost estimates should be based on the application of professional environmental engineering knowledge using all relevant information and meaningful site comparisons.
- (g) Estimates shall be reproducible.
- (h) Cost estimates must be based on site-specific information, engineering estimates, or validated cost models. If a cost model is used for estimating costs, then the model must be accredited for estimating environmental cleanup costs. Cost data can be obtained from a variety of sources.
 - (i) Cost estimating guides or references (i.e., unit price books) can provide costs for a variety of construction activities, including those related to remedial actions. Some guides are specifically tailored to estimating costs for environmental remediation projects.
 - (ii) Quotes from cleanup vendors or construction contractors can provide costs that are more site-specific in nature than costs taken from standard guides and references. These quotes usually include contractor markups and are usually provided as a total cost. If possible, more than one vendor quote should be obtained. Quotes from multiple sources can be averaged, or the highest quote can be used in the cost estimate if the collected quotes seem to be at the low end of the industry range.
 - (iii) Professional judgment based on experience with similar projects.
 - (iv) Engineer design cost estimates or schedules.
 - (v) Cost estimating software or databases.
- (i) Environmental liability cost estimates shall include any cleanup activity or portion of an activity that has not yet been completed, such as:
 - (i) Studies, plans, designs, removal activities, cleanup activities, and cleanup operations (to include nonroutine operations and maintenance [O&M] costs of cleanup systems) necessary to comply with applicable legal and regulatory requirements, and the costs of contractors, engineers, and consultants
 - (ii) Machinery and equipment dedicated to a response action (removal or remedial) that do not have alternative uses, and their associated O&M costs would be an environmental liability cost element
 - (iii) Compensation and benefits of government personnel that devote significant time (> 0.25 full-time equivalent) to an environmental cleanup effort would be an environmental liability cost element
 - (iv) Long-term monitoring associated with a response action would be an environmental liability cost element.
- (j) Cost estimates shall be reviewed at least annually to account for inflation, or more often as needed to account for changes in requirements, laws, project scope, technology, or a change in the status or conditions of the site. Changes to the estimate must be documented in the detailed backup materials that support the cost estimate. The receipt of new facts or clarifying information that would affect a cost estimate may include the following.
 - (i) The type and extent of contamination at the site
 - (ii) The identification, number, and financial positions of potentially responsible parties
 - (iii) The allocation of costs among potentially responsible parties based on judgment, assessments, or consent decrees
 - (iv) Data regarding the remediation experience at other sites
 - (v) Results of site-specific environmental studies
 - (vi) Approval of a Record of Decision
 - (vii) Refinements of a remediation plan
 - (viii) The type of technology available to remediate
 - (ix) Unanticipated problems identified during remediation

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- (x) The type and duration of post-closure monitoring period
- (xi) Unanticipated problems identified during the post-closure period
- (xii) New regulations regarding the appropriate method of disposing of HW
- (xiii) New laws regarding the acceptable levels of contamination.

4-3.8 Liability for Cleanup of General Property Plant, and Equipment

- (a) The total cleanup costs shall be estimated when the PP&E is placed in service. The estimated cost shall be based on the current cleanup cost and shall be revised periodically to account for material changes such as changes in regulations, plan, and technology.
- (b) Recognition of the expense and accumulation of the cleanup liability shall begin on the date that the PP&E is placed in service, continue each period that operation continues, and be completed when the PP&E ceases operation.
- (c) Payments of cleanup costs shall be recognized as a reduction in the liability for cleanup costs.

4-4 Responsibilities

4-4.1 The Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority, and follow the guidance within this chapter, as applicable.
- (c) The Office of Financial Management (OFM) shall:
 - (i) Oversee financial management of the Department, including accounting for liabilities and reporting of contingencies
 - (ii) Maintain the Department's *Accounting Principles and Standards Handbook*, which sets forth the accounting principles and standards to be followed in the Department, and in the design and operations of accounting systems
 - (iii) Provide guidance to the Department's finance offices on the preparation of quarterly and annual financial statements (annual financial statements are audited) in accordance with the Chief Financial Officers Act of 1990 and the Government Management Reform Act of 1994
 - (iv) Collect data from the bureau finance offices, and prepare the Department's quarterly and annual financial report, which includes the financial statements and the notes to the financial statements.

4-4.2 Department Offices and Operating Units Shall:

- (a) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information that can be used as a resource for gathering information for reporting environmental liabilities and contingencies. The Department's ECARS is the CPTrack application
- (b) Ensure programming, budgeting, and allocation of funds associated with reporting environmental liabilities and contingencies
- (c) Conduct a financial assessment of environmental liabilities and contingencies, as well as remote liabilities and report information to OU finance offices and/or OFM for financial statements/notes to the financial statements per FASAB guidance, per the Department Accounting Handbook, and per their bureau finance office requirements
- (d) Maintain and keep a current environmental liabilities inventory and keep a record for at least a five-year cycle.

4-5 Training Requirements. None.

4-6 Reporting Requirements. Refer to the Responsibilities section above.

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COMPLIANCE WITH THE EMERGENCY PLANNING AND
COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)****5-1 Scope**

5-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; and Department of Commerce (Department) requirements (e.g., policies, guidance), as well as responsibilities applicable to the Emergency Planning and Community Right-to-Know Act (EPCRA) (41 U.S.C. § 11001 *et seq.*), and Title III of the Superfund Amendments and Reauthorization Act (SARA) at Department facilities within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

5-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response; and Chapter 12, Hazardous and Universal Waste Management.

5-1.3 References

29 Code of Federal Regulations (CFR) Part 1910.1200, Occupational Safety and Health Administration (OSHA) Hazard Communication Standard.

40 CFR Part 302, Designation, Reportable Quantities, and Notification.

40 CFR Part 355, Emergency Planning and Notification.

40 CFR Part 370, Hazardous Chemical Reporting: Community Right-to-Know.

40 CFR Part 372, Toxic Chemical Release Reporting: Community Right-to-Know.

42 U.S.C. § 9601 *et seq.*, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as “Superfund.”

42 U.S.C. § 11001 *et seq.*, Emergency Planning and Community Right-to-Know Act of 1986, also known as Title III of the Superfund Amendments and Reauthorization Act (SARA).

Department Administrative Order (DAO) 209-04, Occupational Safety and Health Program.

5-2 Terms and Definitions

5-2.1 Covered Facility. Any Department facility that meets one or more of the threshold reporting requirements under any regulation promulgated under EPCRA.

5-2.2 Extremely Hazardous Substance. An extremely hazardous substance (EHS) is any substance listed in Appendix A or B of 40 CFR Part 355. Appendix A, Useful Web Links, provides links to websites with Appendices A and B of 40 CFR Part 355.

5-2.3 Facility. The term “facility” is defined differently depending on EPCRA reporting requirements. Under EPCRA regulations, “facility” has the following definitions.

- The Tier I and Tier II reporting regulation defines “facility” as all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person). “Facility” includes manmade structures, as well as all-natural 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 370.66).
- The Emergency Planning regulation defines “facility” as all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person). “Facility” includes manmade structures, as well as all-natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft (40 CFR 355.61).
- The toxic release inventory (TRI) reporting regulation defines “facility” as 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). A facility may contain more than one establishment (40 CFR 372.3).

5-2.4 Hazardous Chemical (HC). A chemical that is a physical or health hazard as defined in either 29 CFR Part 1910.1200 or 40 CFR Part 370.

5-2.5 Hazardous Substance (HS). Any substance listed in Table 302.4 of 40 CFR Part 302. Appendix A, Useful Web Links, provides a link to a website with substances listed in Table 302.4 of 40 CFR Part 302.

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5-2.6 Persistent, Bioaccumulative, and Toxic Chemicals. Chemicals that are persistent in the environment, bioaccumulate in people or wildlife, and are toxic are called persistent, bioaccumulative, and toxic (PBT). The chemicals of special concern listed in 40 CFR 372.28 are PBT chemicals. As such, their assigned threshold levels for reporting under the TRI inventory requirements of 30 CFR 372 range from 0.1 grams to 100 pounds.

5-2.7 Release. Under EPCRA, the term “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 HC, EHS, toxic chemical, or CERCLA HS.

5-2.8 Reportable Quantity. The term “reportable quantity” (RQ) is defined differently depending upon the associated EPCRA reporting (CERCLA or EPCRA), as follows.

- (a) Emergency Planning
 - (i) For any CERCLA HS, RQ is the quantity established in Table 302.4 of 40 CFR Part 302.4, for such substance.
 - (ii) For any EHS under EPCRA, RQ means the quantity established in Appendices A and B of 40 CFR Part 355 for such substance.
 - (iii) Unless and until superseded by regulations establishing a RQ for any newly listed EPCRA EHS or CERCLA HS, a weight of 1 pound shall be the RQ.

Appendix A, Useful Web Links, provides a link to a website with RQs for CERCLA HS and EHS, including a link to EPA’s List of Lists, a Consolidated List of Chemicals Subject to EPCRA, CERCLA, and Section 112(r) of the Clean Air Act.

(b) Release Reporting

- (i) The quantity, as set forth in 40 CFR Part 302, that when released requires notification pursuant to 40 CFR Part 302.

5-2.9 Safety Data Sheet (SDS). Written or printed material concerning an HC that is prepared in accordance with 29 CFR 1910.1200(g).

5-2.10 Threshold Planning Quantity (TPQ). For a substance listed in Appendix A and Appendix B of 40 CFR Part 355, the quantity listed in the column “threshold planning quantity” for that substance (40 CFR 355.61, 370.66). Appendix A, Useful Web Links, provides a link to a website with TPQs.

5-2.11 Toxic Chemical. Any substance listed in 40 CFR Part 372.65.

5-3 Requirements

Department facilities are subject to EPCRA if the facility meets one or more of EPCRA’s threshold reporting requirements. The implementing regulations for EPCRA are found in 40 CFR Parts 302, 355, 370, and 372. Additionally, the CERCLA release reporting regulations at 40 CFR Part 302 identify CERCLA HSs and their RQs, referenced in the 40 CFR Part 355 regulations. Requirements are associated with the presence of:

- An EHS as defined under 40 CFR Part 302, Appendix A or B
- A release of an EHS or CERCLA HS defined by EPCRA § 304
- Certain quantities of a hazardous or toxic chemical as defined by EPCRA §§ 311–313; or facilities within certain Standard Industrial Classification (SIC) codes and with 10 or more full-time employees, as defined by EPCRA § 313.

5-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local EPCRA regulations. Some states have adopted right-to-know provisions that may include lower thresholds or state-developed reporting forms.

5-3.2 Designated Responsible Official. Department facilities shall be responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply.

An example of when a DRO would be applicable is if a Department facility reports under EPCRA under its OU name and address. The DRO signs all required EPCRA reporting forms, including Tier I or Tier II reports and Form R reports, as the validating official, or designates in writing some alternate validating official. Refer to Chapter 3 for further information on DROs.

5-3.3 Covered Facility. Each facility must determine whether it is an EPCRA-covered facility and include the following factors in this determination.

- (a) All Department activities within property boundaries, including contractor activities, are part of the EPCRA facility and are included in all reporting assessments.
- (b) If there is property within the property boundary that is leased to any entity outside the Department, including commercial entities (e.g., privatization efforts or temporary leases), and there is only a real estate interest with no other value gained other than the real estate value, then these activities shall not be reported by the Department facility. Tenants are independently responsible for meeting EPCRA reporting requirements unless otherwise specified in the host-tenant agreement. If the Department is the tenant, then reporting responsibility will be based on the terms of the agreement/lease. OUs shall ensure that interagency support agreements, as well as any other host-tenant agreements reflect the data-collection requirements of the tenants to the facility.

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- (c) Independent owners of contiguous or adjacent sites are individually responsible for complying with EPCRA requirements.
- (d) Private contract operations on Department facilities are to be accounted for in the Department facility's calculations.
- (e) The owner of geographically separated portions of a facility shall treat each establishment it operates as a separate facility.
- (f) Ships at sea (i.e., a water body that is not within the facility fence line) are not considered to be a facility and therefore are not subject to EPCRA. Material maintained under the ship's custody is not subject to any EPCRA reporting requirements. Any EHS, HC, or toxic chemical stored or used aboard a ship while in port does not become part of the shore facility's threshold calculations and is not reported by the shore facility even if reporting is triggered. The transfer of a toxic chemical to or from a ship is not considered to be manufacture, process, or other use of a toxic chemical, and therefore shall not be used by a facility to calculate threshold requirements.

If the toxic chemical has triggered the reporting requirement based on activities on shore at the facility, then the facility shall include transfers to ships as off-site transfers in the U.S. Environmental Protection Agency (EPA) Form 9350-1 and Form R release calculations. Where shore-based personnel perform maintenance or other activity on the ship and shore facility-owned materials are used, then the materials must be considered for purposes of EPCRA compliance efforts. Cognizant shore facilities shall account in their reporting requirements for hazardous materials (HMs) transferred to and from Department ships. Floating dry docks should be considered part of the shore facility and reported accordingly.

- (g) Department facilities shall not report actions of other federal agencies.

5-3.4 Classified Information. Prior to the submission of any reports to the State Emergency Response Commission (SERC), local emergency planning committee (LEPC) (or equivalent for its jurisdiction), non-Department fire departments, or EPA, Department facilities shall review the information to prevent the release of classified information. For cases in which information regarding the use of a substance is classified, the facility shall develop alternative procedures for protecting the facility and off-site personnel.

5-3.5 Documentation. Department facilities shall ensure that documentation (e.g., calculations for threshold and release estimates) is in place to support EPCRA reporting efforts and inquiries, including the decision not to report. Facilities shall maintain support documentation for a minimum of 5 years unless a cross governing regulation (e.g., Resource Conservation and Recovery Act [RCRA]) requires the facility to retain the records for a longer period. This documentation is required for all facilities subject to EPCRA and is not limited only to those facilities that must submit a report.

5-3.6 EPCRA Sections 302 and 303, Emergency Planning. Facilities that maintain EHS on-site in quantities greater than the corresponding TPQ shall fulfill the applicable pre-planning and reporting requirements as required by federal, state, and local regulations.

- (a) **Threshold.** Facilities shall calculate thresholds based on the maximum amount of an EHS stored and/or in use on the facility at any point in time during the calendar year. The facility may apply any of the exemptions available in 40 CFR Part 355 and should document where and when they are applied. The list of federal EHSs and their TPQs can be found at 40 CFR Part 355 Appendix A.
- (b) **Notification.** Each "covered facility" shall notify the SERC and the LEPC (or equivalent for its jurisdiction) as follows.
 - (i) A facility that has any EHS on-site in a quantity equal to or in excess of its applicable TPQ at any one time, shall provide a one-time notification to the SERC and LEPC (or equivalent for its jurisdiction) that the facility is subject to the emergency planning requirements of EPCRA. There is no specific federal format for the form; however, states or local authorities may have a required format.
 - (ii) If any information in the original notification is no longer current and requires updating, then the facility shall amend the original notification to the SERC and LEPC (or equivalent for its jurisdiction) to include the updated information within 30 days after the changes have occurred.
 - (iii) If a notification was not required because a TPQ for an EHS was not met or exceeded, and then becomes present in excess of its TPQ for the first time, or the EHS list is revised so the EHS at the facility exceeds the TPQ, then the facility shall submit the notification within 60 days of determining that reporting is required based on the new information to the SERC and LEPC (or equivalent for its jurisdiction).
- (c) **Participation in Local Emergency Planning.** A covered facility is required to provide any emergency planning information requested by the LEPC (or equivalent for its jurisdiction) to the extent practical. Each covered facility shall identify a facility representative to participate in the local emergency planning process as a facility emergency response coordinator.

5-3.7 EPCRA Section 304, Emergency Release Notification

- (a) **Threshold.** Facilities shall notify the appropriate state and local reporting officials in the event of releases of EHS (40 CFR Part 355) or HS (42 U.S.C. § 9601 *et seq.*) in quantities greater than their corresponding RQ. The RQs for EHS can be found in Appendix A and Appendix B of 40 CFR Part 355. The RQs for HS can be found in 40 CFR Part 302.4.
- (b) **Follow-Up Notifications**
 - (i) Verbal reporting of a release and follow-up written notification will be done as follows.
 - (A) A release (other than a federally permitted release or application of a pesticide) of a HS in excess of the RQ from a vessel, an offshore facility, or an onshore facility is reported to the National Response Center (NRC) immediately after the release is identified.
 - (B) If there is a release of a RQ of an EHS or CERCLA HS within any 24-hour period, an immediate oral notification shall be made, and as soon as practicable thereafter a written follow-up emergency notification (or notifications, as more information becomes available).
 - (C) The facility also shall notify its respective OU headquarters office of any RQ release within 24 hours of the release. The OU shall notify the Department environmental compliance program manager by email immediately of notification of the release.

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- (ii) Written notifications are required as follows.
 - (A) For releases of HSs that are continuous and stable in quantity and rate, written follow-up notifications shall be made according to 40 CFR Part 302.8.
 - (B) After the release of an EHS, the facility shall provide the written follow-up emergency notice (or notices, as more information becomes available) described under 40 CFR Part 355.40(b), as soon as practicable after the release.
- (c) **Exemptions.** Situations when reporting is not required for a release of an HS may be found in 40 CFR Part 302.6(c) and 302.6(d). Situations when reporting is not required for the release of an EHS may be found in 40 CFR Part 355.31.
- (d) **Other Reporting Responsibilities.** Fulfilling EPCRA Section 304 notification requirements does not relieve the facility of any notification requirements required under other environmental regulations. For example, a facility reporting a release of a CERCLA HS under EPCRA Section 304 also may have reporting responsibilities under CERCLA Section 103 (i.e., notification to the NRC).

5-3.8 EPCRA Section 311, Community-Right-to-Know. Facilities handling or storing HCs for which an SDS is required under the OSHA Hazard Communication Standard in excess of threshold levels must submit SDSs or an inventory to state and local officials and local fire departments.

- (a) **Threshold.** If the quantity of an HC is present at any one time in amounts equal to or greater than 10,000 pounds, it is reportable. If the HC is an EHS and the amount present at any one time is equal to or greater than 500 pounds or its TPQ, whichever is less, it is reportable. Thresholds shall be calculated using the entire facility. Applicable facilities must also report under EPCRA Section 312.
- (b) If a facility submits a list, it shall contain the following information:
 - (i) A list of the HCs for which an SDS is required under OSHA regulations, grouped by hazard category. Only include those HCs (either in mixtures or in the pure form) that meet or exceed threshold levels.
 - (ii) The HC listed under all applicable hazard categories
 - (iii) The chemical and common name of each HC as provided on the SDS.
- (c) **Requests.** If the SERC, LEPC (or equivalent for the jurisdiction), or local fire department with jurisdiction over the facility request an SDS that was not previously submitted, the facility shall submit the requested SDS within 30 days of receipt of the request.
- (d) **New and Revised Submissions.** Should a HC not previously reported become present in an amount equal to or greater than established thresholds or should significant new information concerning the HCs for which a submission was previously made become available, the facility shall provide a new or revised submission within 90 days after the discovery of this new information.

5-3.9 EPCRA Section 312, Community-Right-to-Know, Hazardous Chemical Inventory Reporting. Facilities handling or storing HCs for which an SDS is required under the OSHA Hazard Communication Standard in excess of threshold levels must annually submit required inventory forms. This is commonly referred to as the Tier I or Tier II report.

- (a) **Threshold.** If the quantity of an HC is present at any one time in amounts equal to or greater than 10,000 pounds, an inventory form must be submitted. If the HC is an EHS and the amount present at any one time is equal to or greater than 500 pounds or its TPQ, whichever is less, an inventory must be submitted. Thresholds shall be calculated using the entire facility.
- (b) **Reporting Requirements.** The EPA publishes Tier I and Tier II Inventory Forms that provide uniform formats for reporting the Tier I and Tier II information. A state or local format for reporting inventory information may be used if the state or local format contains at least the required Tier I information. The web link for EPA's Tier I and Tier II forms is available in Appendix A, Useful Web Links. Some states require electronic reporting (online or via diskettes) and electronic certification. Contact the state for the specific requirements in that state.
- (c) **Submission Deadline.** The annual submission is due on March 1 for the previous calendar year. Should the SERC, LEPC (or equivalent for its jurisdiction), or local fire department with jurisdiction over the facility requests a Tier II form not previously submitted, the facility shall submit the requested form within 30 days of receipt of the request.

5-3.10 EPCRA Section 313, Toxic Chemical Release Inventory. Facilities that manufacture, process, or otherwise use a toxic chemical in excess of applicable threshold quantities, and that have 10 or more employees, must complete and submit EPA Form R to the EPA and appropriate state authorities. The focus of this report is capturing information on actual releases to the environment due to manufacturing, use, or disposal actions.

- (a) **Threshold.** Facilities shall ensure that all thresholds are calculated using the entire facility. Articles containing toxic chemicals are not included in calculations of total toxic chemical present. Threshold levels for a facility that has 10 or more employees and that is manufacturing (including importing), processing, or otherwise using a toxic chemical are:
 - (i) The facility has manufactured or processed 25,000 pounds per year of toxic chemicals, except PBT chemicals.
 - (ii) The facility has otherwise used more than 10,000 pounds of toxic chemicals in other ways during the year, except for PBT chemicals.
 - (iii) The threshold levels identified for the chemicals of special concern (including lead) in 40 CFR Part 372.28 are exceeded.
 The manufacturing criteria must include all toxic chemicals (including PBT) created at the facility, regardless of whether they are created intentionally (e.g., as a product) or unintentionally (e.g., coincidentally manufactured as a byproduct of treatment or product of combustion).

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- (b) **Reporting.** All facilities shall determine whether they meet the reporting requirements for TRI reporting and, if so, shall submit EPA Form 9350-1 Form R for each reportable toxic chemical manufactured or otherwise used above the applicable threshold quantities.
 - (i) Department facilities shall use the EPA's reporting software to report Form R electronically to EPA. Department facilities shall not use the alternative threshold certification statement option, Form A.
 - (ii) The Form R shall cover not only the triggering activity but all non-exempt uses of the toxic chemical at the facility.
- (c) **EPA Form 9350-1 Form R Submissions**
 - (i) A separate and complete EPA Form 9350-1 Form R must be submitted electronically by the reporting facility to EPA and the state for each toxic chemical meeting threshold requirements. The EPA only will accept electronic submissions of this form using the web-based TRI-Made Easy Web (TRI-MEweb) reporting tool. Department facilities shall use TRI-MEweb to report this form to EPA. Facilities shall not use the alternative threshold certification statement option, EPA Form 9350-2 EPA TRI Form A.
 - (ii) Most states participate in TRI-MEweb and automatically receive the EPA Form 9350-1 Form R submission when it is submitted to the EPA. A separate submission to the state is not required in this situation. Where a state is not participating in TRI-MEweb, TRI-MEweb will generate electronic files to be sent via compact disc or other method specified by the state, accompanied by the required certification letter and signature.
 - (iii) Signatures: The DRO shall sign the EPA Form 9350-1 Form R report(s), unless the DRO delegates this authority, in writing, to a subordinate.
- (d) **Submission Deadline.** The annual submission deadline for the Form R is July 1 of each year and covers releases for the previous calendar year. Facilities are responsible for submitting EPA Form 9350 to the EPA and the state in advance of the reporting deadline.
- (e) **Corrections.** When necessary to correct a prior submittal, facilities shall submit revised EPA Form 9350-1 Form R report(s) to the EPA and the state (as necessary).
- (f) **Exemptions.** EPCRA Section 313 provides a number of exemptions that exempt toxic chemicals from both threshold and release calculations. Consult 40 CFR Part 372.38 for details.

5-3.11 Other General EPCRA Compliance Requirements

- (a) The SIC code for Department facilities is "9199." No other or additional SIC codes shall be reported. The North American Industry Classification System (NAICS) code for Department facilities is "921190." No other or additional NAICS codes shall be reported.
- (b) Department facilities shall cooperate fully with EPA personnel conducting EPCRA compliance reviews and inspections. EPCRA inspections and reviews by EPA may be part of other media-specific or multimedia inspections. Facilities should be prepared to provide, in a timely manner, information related to the calculation and preparation of all EPCRA reports. If information requested is not available or is questioned by EPA personnel, then facilities shall explain in writing and should reference Departmental guidance, as applicable.
- (c) Contracts providing for contractor performance shall include a requirement that the contractor provide the information needed by the facility to comply with EPCRA.

5-3.12 Fees. Department facilities shall not pay state and local right-to-know fees. Department facilities shall forward all state and local right-to-know fee invoices and reimbursement requests to their legal office for review.

5-3.13 Enforcement Actions, Fines, and Penalties

- (a) Federal facilities are required to comply with all provisions of EPCRA. EPA may issue a notice of noncompliance or violation of EPCRA and provide the facility written notification of the violation, and the facility must achieve compliance as soon as practicable. Federal agencies are not subject to the enforcement and penalty provisions of EPCRA Section 325, including the criminal enforcement provisions and financial penalties. Although under Section 326 of EPCRA, states and local governments have the authority to bring civil actions against violators of EPCRA, federal agencies are not subject to EPCRA's civil suit provisions.
- (b) Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

5-4 Responsibilities

5-4.1 The Office of the Secretary

- (a) Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.

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- (b) **The Office of Space and Building Management (OSBM)** shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share the responsibility for environmental compliance for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority, and follow guidance within this chapter, as applicable.
- (c) **The Office of Occupational Safety and Health** oversees health and safety concerns associated with operations subject to environmental compliance and provides guidance in DAO 209-4, Occupational Safety and Health Program.

5-4.2 Operating Units Shall:

- (a) Ensure OU facilities comply with applicable HS reporting requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., EPCRA Sections 302 and 303, 304, 311, 312, and 313); EPA implementing requirements and policies; and Department policy and guidance including those in this chapter.
- (b) Designate a DRO and ensure that the DRO has a “backup” staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., leases, memoranda of understanding) for the appropriate coverage of environmental responsibilities to support compliance with applicable EPCRA laws, regulations, policies, and guidance.
- (d) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information on operations that may be subject to EPCRA at its facilities (e.g., chemical storage, storage tanks, batteries), documents outside regulatory inspections and enforcement actions within an ECARS, and maintains an environmental assessment program to assess the status of compliance with EPCRA. The Department’s ECARS is the CPTrack™ application.
- (e) Ensure programming, budgeting, and allocation of funds for all applicable federal, state, and local laws, regulations, and policies (including Department policy and guidance) associated with EPCRA, including requesting resources to meet those requirements (e.g., inventories, reporting, release response) in budget submissions; and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on compliance with EPCRA requirements.
- (g) Ensure that facilities review all publicly available data to prevent sensitive or classified information from being released.
- (h) Honor public requests for EPCRA information in a timely and informative manner. Ensure the public affairs office is aware of the information and concurs on any such communication.
- (i) Support reduced EPCRA reporting and proper management of HMs, ensure that facilities establish and implement procedures to control, track, and reduce the variety and quantities of HMs in use, in storage or stock, or disposed of as hazardous waste (HW).
- (j) Develop and implement HM elimination or substitution processes for all systems and operations under their cognizance to support the reduction of EPCRA reporting.
- (k) Develop processes that ensure that the least hazardous, technically acceptable materials are used at the facility.
- (l) Compile and review facility information on the number of facilities meeting reporting requirements under all sections of EPCRA.

5-5 Training Requirements

5-5.1 All personnel who conduct or supervise staff with job functions associated with EPCRA compliance shall be trained in accordance with applicable environmental compliance laws and regulations. Additionally, personnel who conduct operations that can impact the environment or compliance with EPCRA laws and regulations should be trained to ensure knowledge of applicable laws and regulations and to perform job duties safely and knowledgeably. EPCRA managers shall have the appropriate, job-specific education, experience, and training to perform their assigned tasks.

5-5.2 All training records shall be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

5-6 Reporting Requirements

5-6.1 Reporting to the Office of the Secretary

OUs shall notify OSEEP immediately upon notification of a facility release of an EHS or HS, into any environmental media over a 24-hour period in an amount equal to or in excess of the RQ.

As part of the annual development of the Department’s Sustainability Plan for submittal to the White House Council on Environmental Quality (CEQ), provide information as required on EPCRA compliance and efforts to reduce acquisition, usage, and disposal of toxic substances and HCs.

5-6.2 Reporting to Federal, State, and Local Agencies

OUs shall ensure that facility information is reported to EPA, the state, SERC, LEPC (or equivalent), and local fire department as detailed in this chapter.

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**CHAPTER 6:
AIR QUALITY**

6-1 Scope

6-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; Department of Commerce (Department) requirements (e.g., policies, guidance); as well as responsibilities applicable to air quality at Department facilities within the United States and its territories. This chapter applies to air emissions from stationary and mobile sources (e.g., vehicles, ships, aircraft) owned or operated by the Department within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

This chapter does not include indoor air quality requirements or annual reporting requirements (e.g., greenhouse gases [GHGs], ozone-depleting substances [ODS]) mandated solely by executive order or other federal organizations—such as the Office of Management and Budget (OMB) or the White House Council on Environmental Quality (CEQ).

6-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; and Chapter 16, The National Environmental Policy Act (NEPA).

6-1.3 References

10 Code of Federal Regulations (CFR) Part 490, Alternative Fuel Transportation Program.

40 CFR Parts 50–98, 1039–1068, U.S. Environmental Protection Agency (EPA) Air Programs Regulations.

40 CFR Part 82, EPA Regulations on the Protection of Stratospheric Ozone.

40 CFR Part 98, Mandatory Reporting of Greenhouse Gases.

42 U.S.C. § 7401 *et seq.*, the Clean Air Act (CAA).

Department of Commerce *Commerce Acquisition Manual* (CAM), Chapter 1323.70.

Energy Independence and Security Act of 2007 (EISA 2007) (42 U.S.C. § 152).

Energy Policy Act of 2005 (EPAct05), Pub. L. 109-58.

Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).

The Montreal Protocol on Substances that Deplete the Ozone Layer.

6-2 Terms and Definitions.

6-2.1 Clean-Fuel Vehicle. Any vehicle in a class or category of vehicles that has been certified to meet the clean-fuel vehicle standards applicable under Title II of the CAA for that class or category.

6-2.2 Criteria Pollutants. The following are six common air pollutants for which CAA has established National Ambient Air Quality Standards (NAAQS): Ozone (O₃), carbon monoxide (CO), particulate matter regulated as PM₁₀ (10 microns or smaller) and PM_{2.5} (2.5 microns or smaller), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), and lead. EPA calls these pollutants “criteria” air pollutants because they are regulated by developing human health–based and or environmentally-based criteria (science-based guidelines) for setting permissible levels.

6-2.3 Federal Implementation Plan. A federal implementation plan (FIP) is a federally imposed air quality plan which supersedes a state implementation plan (SIP) when a state fails to develop an adequate plan to achieve and maintain the NAAQS.

6-2.4 Greenhouse Gas. GHG means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated GHGs as defined in 40 CFR Part 98.6.

6-2.5 Hazardous Air Pollutants. Air pollutants regulated under CAA Section 112(b) may present a threat of adverse human health effects or adverse environmental effects. Such pollutants include asbestos, beryllium, mercury, benzene, coke oven emissions, radionuclides, and vinyl chloride.

6-2.6 Major Source. A major source is any stationary source—or group of stationary sources located within a contiguous area and under common control—which emits or has the potential to emit air pollutants in excess of specified threshold levels. The threshold amounts vary according to the attainment classification of the area in which the source is located, the pollutants emitted, and the applicable section of the CAA. The term does not include motor vehicles or non-road vehicles subject to regulation under Title II of the CAA. Unless otherwise specified, the major source threshold is 100 tons per year.

6-2.7 National Ambient Air Quality Standards. NAAQS are air quality standards established by EPA that provide an adequate margin of safety in protecting the general health and welfare of the public from six criteria pollutants.

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6-2.8 National Emission Standards for Hazardous Air Pollutants. The National Emission Standards for Hazardous Air Pollutants (NESHAP) is a set of standards established for categories of stationary sources that emit one or more of the hazardous air pollutants listed under CAA section 112.

6-2.9 New Source Performance Standards. New Source Performance Standards (NSPS) are national emission standards that limit the amount of pollution allowed from new or modified sources. These standards are specific for each type of source, such as boilers or petroleum storage tanks.

6-2.10 Nonattainment Area. An area where the ambient pollutant concentrations do not meet (or contribute to ambient air quality in a nearby area that does not meet) the NAAQS for one or more of the criteria pollutants.

6-2.11 Ozone. Ozone is a gas composed of three atoms of oxygen (O₃). Ozone occurs both in the earth's upper atmosphere (stratosphere) and at ground level (troposphere). For air quality purposes, ground-level ozone is of concern. Ground-level ozone is not emitted directly into the air but is created by chemical reactions between oxides of nitrogen (NO_x) and volatile organic compounds (VOCs). This happens when pollutants emitted by cars, power plants, industrial boilers, refineries, chemical plants, and other sources chemically react in the presence of sunlight. Ozone at ground level is a harmful air pollutant because of its effects on people and the environment, and it is the main ingredient of "smog."

6-2.12 Ozone-Depleting Potential. The ozone-depleting potential of a chemical compound is the relative amount of degradation to the ozone layer it can cause on a mass per kilogram basis, with trichlorofluoromethane (R-11 or CFC-11) being fixed at an ozone depletion potential of 1.0.

6-2.13 Particulate Matter. Particulate matter is a criteria air pollutant that includes dust, soot, and other heterogeneous small, solid materials released into and transported by the air. PM₁₀ is that portion of the total suspended particulate matter with an aerodynamic diameter of 10 microns or less. PM_{2.5} is that portion of the particulate matter with an aerodynamic diameter of 2.5 microns or less.

6-2.14 Recovery. The removal and containment (or capture) of any ODS in any condition from a system without testing or processing.

6-2.15 State Implementation Plan. A SIP is an EPA-approved plan developed by each state to implement, maintain, and enforce the NAAQS and other CAA goals within that state. Although states have the primary responsibility for implementing the CAA, the EPA maintains strong oversight in this process.

6-2.16 Stationary Source. Any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, are located on one or more contiguous properties, are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term "stationary source" does not apply to transportation—including storage incidental to transportation—of any regulated substance or any other extremely hazardous substance (EHS).

6-2.17 Title V Operating Permit. A Title V operating permit is a federally enforceable document issued by the states (or in certain situations by EPA) to major sources and certain area sources of air pollution that defines emission standards, operational procedures, and all obligations of the source under the CAA.

6-2.18 Volatile Organic Compound. A VOC is any compound of carbon that participates in atmospheric photochemical reactions, excluding CO, CO₂, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, or otherwise specifically excluded in 40 CFR Part 51.100.

6-3 Requirements

6-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local air quality laws and regulations. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations. Depending upon where a facility is located, it may be subject to additional requirements from the state, based on whether it is located in a nonattainment area for the NAAQS. These additional requirements are in state or regional air-quality regulations.

6-3.2 Designated Responsible Official. Department facilities shall be responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an OU does not have authority over operations at a facility, then this paragraph does not apply.

An indicator that the designation of a DRO is appropriate is if the facility holds a permit required under the CAA under its name. The DRO is required to certify permit applications as to their truth, accuracy, and completeness after making a reasonable inquiry and certify ongoing compliance with all permit requirements. The DRO assumes responsibility for the accuracy and completeness of permit applications and under the CAA could be subject to criminal sanctions if the application is deficient.

Chapter 3 provides further information on DROs and applicability.

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6-3.3 General Conformity Rule. Section 176(c) of the CAA prohibits federal agencies from engaging in, supporting, providing financial assistance for, licensing, permitting, or approving any activity that does not conform to an applicable SIP or FIP. EPA issued criteria and procedures for determining conformity, found in 40 CFR Part 93, Subpart B. Federal agencies must determine that a federal action conforms to the SIP or FIP before proceeding with the action. Conformity analysis typically is done as part of a National Environmental Policy Act (NEPA) analysis and documentation for the planned action.

6-3.4 Permits. Permits related to emissions from sources of air pollutants may include, but are not limited to, requirements for emissions monitoring, installation of air pollution control equipment, air emissions inventories, maintenance, record keeping, and reporting. States have the authority to require and issue air emissions permits for sources of air emissions based on parameters such as source size, location, and age; existing source emission control devices; and substances emitted. Examples of common permits include the following.

6-3.4.1 Preconstruction Permits. Typically, only applicable to stationary sources of air emissions, these permits are required before construction of a new source of air emissions depending on the location, size, and potential emissions of the proposed new source. Typically, states issue these permits. Appendix A, Useful Web Links provides a link that provides information on state air quality programs and 40 CFR Part 52 has state implementation plans, with a subpart for each state. Where EPA is the permit issuer, refer to 40 CFR Part 51, Subpart I.

6-3.4.2 Operating Permits. Typically, only applicable to stationary sources of air emissions, these permits are required before starting operation of a new source or continuing operation of an existing source. Whether an operating permit is required is based on the source size, location, emission control devices, and substances emitted. At the federal and state level, in addition to source-specific operating permits, there also are Title V operating permits. The requirement for a Title V permit applies to stationary sources of air pollution that exceed the major stationary source emission thresholds, as well as a limited number of non-major sources, which are specifically identified under 40 CFR Part 70. Refer to 40 CFR Parts 70 and 71 for information on Title V permits and applicability, as well as the EPA permitting website (see Appendix A, Useful Web Links, for the link).

6-3.5 Source-Specific Emissions. In addition to permits, both the EPA and the state counterparts issue regulations curtailing emissions based on the source category or type of activity. These also may be referred to as NSPS or NESHAP. Examples of sources for which emissions and operating requirements have been established, even if a permit is not required, include but are not limited to:

- Internal combustion engines
- Removal of asbestos during renovation/demolition
- Surface coating
- Fuel distribution
- Steam generators
- Turbines
- Storage vessels for petroleum liquids
- Industrial boilers
- Stationary reciprocating internal combustion engines.

Refer to 40 CFR Part 60 for NSPS and 40 CFR Part 63 for NESHAP regulations.

6-3.6 Accidental Releases and Risk Management Plans. Owners and operators of stationary sources that manufacture, process, use, handle, or store in excess of the threshold amounts of EPA-regulated substances identified in 40 CFR Part 68.130, have a general duty to identify hazards from releases of such substances and to design and maintain a safe facility to prevent releases and minimize the consequences of any accidental releases. Appendix A, Useful Web Links, provides a list of substances and thresholds. Facilities that exceed the threshold limits for a regulated substance contained in a covered process must develop, submit, maintain, and comply with the contents of a risk management plan, as required by 40 CFR Part 68.

6-3.7 Vehicles, Equipment, and Vessels

6-3.7.1 Procurement. Department facilities in charge of procuring commercial vehicles, equipment, and vessels shall ensure that these comply with applicable federal and state standards and regulations in effect at the location where the equipment will be placed into service.

6-3.7.2 Tampering with Emission Controls. Department personnel shall not remove or render inoperative any device or element of design which is installed in a government motor vehicle or engine to comply with air quality regulations.

6-3.7.3 Fuel Standards. Department facilities shall comply with regulatory requirements for composition of fuels used in all motor vehicles, equipment, and vessels.

6-3.7.4 Vehicle Inspection and Maintenance. Vehicles located in ozone nonattainment areas with a marginal or higher classification or in CO moderate or serious nonattainment areas are subject to emissions testing and periodic inspections of the vehicle's pollution-control equipment. Department facilities in these areas must demonstrate compliance with state inspection and maintenance programs for all motor vehicles operated at a facility even if the vehicle is not registered in that state, as long as the state's program is not discriminatory toward federal agencies or federally owned or federal employee-owned vehicles. This requirement applies to all employee, contractor, and federally owned/leased vehicles operated more than 60 days per year on the site. Facilities are authorized to develop inspection and maintenance procedures for their fleet vehicles as a part of normal preventive maintenance programs. Appendix A, Useful Web Links provides the link to the EPA list of nonattainment areas for criteria pollutants (Green Book).

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- (a) Per CAA Title II, Part C, federal facilities with a covered vehicle fleet (i.e., 10 or more centrally-fueled vehicles) in a covered area must ensure at least 70% of all new light-duty fleet vehicles acquired are clean-fuel vehicles. For heavy-duty trucks above 8,500 pounds and up to 26,000 pounds gross vehicle weight rating, that percentage shall be at least 50%.
- (b) EISA and EPA05 require federal agencies to purchase alternative fuel vehicles as 75% of new domestic federal vehicle acquisitions in Metropolitan Statistical Areas, reduce GHG emissions, optimize fleet size, increase zero-emission vehicles or plug-in hybrid acquisitions, and properly report fleet data.
- (c) CAA Section 246(g) mandates that any federal facility that dispenses clean alternative fuels (as defined by EPA) to federal fleet vehicles must offer the fuel for sale to the public during reasonable business hours, subject to national security concerns and the commercial availability of such fuels in the vicinity of the facility.

6-3.8 Ozone-Depleting Substances. ODS include any chemical listed as a Class I or Class II substance in Section 602 of the CAA. In the United States, ODS are categorized as Class I, such as chlorofluorocarbons (CFCs), or Class II (hydrochlorofluorocarbons, or HCFCs). Class I substances are listed in 40 CFR Part 82, Subpart A, Appendix A (40 CFR 82.152) and have a greater ozone-depleting potential. These have been completely phased out in the United States, except for exemptions allowed under the Montreal Protocol. Class II substances are listed in 40 CFR Part 82, Subpart A, Appendix B (40 CFR 82.152) and are transitional substitutes for many Class I substances.

6-3.8.1 Recovery and Recycling Equipment. Only EPA-approved recovery and recycling equipment will be used when repairing, servicing, maintaining, or disposing of appliances and in industrial process refrigeration and air conditioning.

6-3.8.2 Ozone-Depleting Substance Releases. It is unlawful to knowingly release any Class I or Class II ODS refrigerant or halon into the atmosphere during the service, repair, or disposal of appliances, industrial process refrigeration and air conditioning equipment, and halon-containing equipment.

6-3.8.3 Procurement of Non-Ozone Depleting Substances. In accordance with 42 U.S.C. § 7671k and 76711, agency procurement practices must maximize substitution of alternatives to ozone-depleting substances, identified under EPA's Significant New Alternatives Policy (SNAP) program. Appendix A, Useful Web Links, provides a link to EPA's SNAP program. The Department's ODS procurement policy is specified in the Chapter for Green Procurement, CAM Chapter 1323.70.

6-3.8.4 Conservation Practices. Facilities shall implement conservation practices to the extent practical for all ODS applications, including performing regular system leak checks, improving supply management, and recycling and reclaiming Class I and Class II ODS.

6-3.8.5 Review of Department Practices. Department facilities shall review and modify all operational, training, and testing practices to reduce and eliminate emissions of ODS to the maximum extent possible. Refer to Section 6.5 for training and certification requirements.

6-3.8.6 Protection of Stratospheric Ozone. Requirements include but are not limited to federal procurement, labeling of products using ODS, record keeping, servicing of motor vehicle air conditioners, recycling and emissions reduction, and halon emissions reduction, as specified in the EPA Regulations on the Protection of Stratospheric Ozone (40 CFR Part 82).

6-3.8.7 Specific Marine Vessel Restrictions. No HCFC-containing system or equipment is permitted to be installed on ships constructed on or after January 1, 2020 and no new installation is permitted on or after that date on existing ships. When servicing or decommissioning systems or equipment containing ODS the gases shall be duly collected in a controlled manner and, if not to be reused onboard, shall be landed to appropriate reception facilities for banking or destruction. (MARPOL Annex VI, Regulation 12)

6-3.8 Greenhouse Gases. Pursuant to 42 U.S.C. § 17143, Government Efficiency Reports, agencies are instructed to track and report on GHG emissions and reductions. Typically, this information is collected annually or biannually through CEQ/OMB data calls.

6-3.9 Emission Reduction Credits. Sections 110(a)(2)(A) and 172(c)(6) of the CAA authorize states, or their local air quality districts, to establish, by regulation, a trading system for emission reduction credits (ERCs). ERCs are created when equipment that emits pollutants is removed from service or emissions from equipment remaining in service are reduced, provided that the emission reductions would not otherwise be required by the CAA or a current SIP, and the owner applies under the air quality district's regulations for credit for the reduction. If a facility is a major air source and considering ERCs as a management option, confer with legal counsel for appropriate actions.

6-3.10 Enforcement Actions, Fines, and Penalties. Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs), and penalty assessments to their OU headquarters, and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

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6-4 Responsibilities

6-4.1 Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes of environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority, and follow guidance within this chapter, as applicable.
- (c) The Office of Acquisition Management oversees green procurement policy and provides guidance in the CAM.

6-4.2 Operating Units Shall:

- (a) Ensure OU facilities comply with applicable environmental compliance requirements mandated by laws, regulations, executive orders (e.g., NESHAP, NAAQS, NSPS), and Department requirements (e.g., policies and guidance) including those in this chapter (e.g., CAM), as well as EPA implementing requirements.
- (b) Designate a DRO and ensure that the DRO has a "backup" staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable air quality laws, regulations, policies, and guidance.
- (d) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information on air quality operations at its facilities (e.g., boiler, chillers, generators), documents outside regulatory inspections and enforcement actions, and maintains an environmental assessment program to assess the status of air quality law compliance. The Department's ECARS is the CPTTrack™ application.
- (e) Ensure programming, budgeting, and allocation of funds associated with environmental compliance for air quality, including requesting resources to meet those requirements (e.g., operating permits, air emissions inventories, equipment maintenance, and personnel training/certification) in budget submissions, and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on air quality environmental compliance requirements.
- (g) Provide engineering, contracting, and legal assistance, upon request, to facilities.

6-5 Training and Certification

Personnel who conduct operations or supervise staff associated with air quality shall be trained in accordance with applicable environmental compliance laws and regulations. Additionally, personnel who conduct operations that can impact the environment or compliance with air quality laws and regulations should be trained to perform their job duties safely and in compliance with applicable laws, regulations, and policies.

Personnel involved in the maintenance of equipment containing Class I or Class II ODS shall be trained and certified according to the federal or state regulations applicable to the maintenance being performed.

All training records must be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

6-6 Reporting Requirements

6-6.1 Reporting to the Office of the Secretary

No environmental compliance requirements.

6-6.2 Reporting to Federal, State, and Local Agencies

Most CAA programs are administered by the states, and reporting requirements therefore vary by state. Facilities should check with their state for specific reporting requirements. In general, all permitted sources will comply with reporting requirements outlined in their permits.

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**CHAPTER 7:
CLEAN WATER**

7-1 Scope

7-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; Department of Commerce (Department) requirements (e.g., policies and guidance); as well as responsibilities applicable to the control and prevention of surface and groundwater pollution at Department facilities within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be relevant to this chapter. Regulatory requirements may change frequently in this area. For further guidance, refer to the EPA and applicable state regulatory agency documents and websites for compliance requirements. This chapter does not cover wastewater or stormwater requirements covered solely under an executive order or other federal organizations—such reporting requirements of the Office of Management and Budget (OMB) or the White House Council on Environmental Quality (CEQ).

7-1.2 Related Chapters include Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 8, Safe Drinking Water Act; Chapter 9, Oil and Hazardous Substances Spill Preparedness and Response; Chapter 10, Used Oil Management; and Chapter 12, Hazardous and Universal Waste.

7-1.3 References

40 Code of Federal Regulations (CFR) 122, U.S. Environmental Protection Agency (EPA) Administered Permit Programs: National Pollutant Discharge Elimination System (NPDES) Program.

40 CFR Part 403, General Pretreatment Standards and Effluent Limits for Point Source Categories.

33 U.S.C. § 1342, National Pollution Discharge Elimination System.

42 U.S.C. § 300f *et seq.*, Safe Drinking Water Act (SDWA).

Clean Water Act (CWA), Section 402, National Pollution Discharge Elimination System.

Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. § 152).

EPA's Stormwater Management for Federal Facilities under EISA § 438.

Executive Order (E.O.) 13508, "Chesapeake Bay Protection and Restoration," dated May 12, 2009.

Federal Water Pollution Control Act, as amended by the CWA of 1977 (33 U.S.C. § 1251 *et seq.*).

Vessel Incidental Discharge Act (VIDA), which amends the CWA by adding Section 312(p): Uniform National Standards for Discharges Incidental to Normal Operation of Vessels.

7-2 Terms and Definitions

7-2.1 Best Management Practice. Best management practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements; operating procedures; and practices to control plant-site runoff, spillage or leaks, sludge or waste disposal; or drainage from raw material storage (40 CFR 122.2).

7-2.2 Construction General Permit. Each state (or the EPA, in the case of states that are not authorized) issues one or more NPDES construction general permits (per 40 CFR 122). These permits essentially are umbrella permits that cover all stormwater discharges associated with construction activity in a given state for a designated period, usually five years. Operators of individual construction sites apply for coverage under this permit. General permits are written such that operators obtain coverage by notifying the permitting authority of the need for it, and then complying with the substantive and procedural requirements of the general permit.

7-2.3 Contiguous Zone. The "entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone" (33 U.S.C. § 1362).

7-2.4 Direct Discharge. A discharge of a pollutant directly into the waters of the United States.

7-2.5 Discharge. This includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of any pollutant. It excludes certain cases defined under the CWA Section 402.

7-2.6 Discharge of a Pollutant. Defined by 40 CFR Part 122.2 as:

- (a) Any addition of a "pollutant" or combination of pollutants to "waters of the United States" from any "point source"
- (b) Any addition of a pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person, which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

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7-2.7 Domestic Discharge. Any wastewater discharge produced by ordinary living uses, including liquid waste containing animal or vegetable matter in suspension or solution, and the water-borne waste from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes of human origin.

7-2.8 Federally Owned Treatment Works. A federally owned treatment works (FOTW) is a facility that is owned and operated by a department, agency, or instrumentality of the federal government, treating wastewater—a majority of which is domestic sewage—prior to discharge in accordance with a permit issued under 33 U.S.C. § 1342 (42 U.S.C. § 6939e(d)). A treatment works owned by the Department would be considered an FOTW.

7-2.9 Indirect Discharge. A nondomestic discharge introducing “pollutants” to a publicly owned treatment works (POTW) or an FOTW.

7-2.10 Individual Construction Permit. Each state (or the EPA, in the case of states that are not authorized) may issue individual NPDES construction permits. These permits are specifically written for a single construction project.

7-2.11 Injection Well. An injection well is any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed, the depth of which is greater than its largest surface dimension used to inject fluids into the subsurface. An injection well also may be any dug hole with a depth that is greater than the largest surface dimension. Also included are improved sinkholes or subsurface fluid-distribution systems. Under the SDWA, a septic system leach field also may be a Class V injection well.

7-2.12 Land Application. Use and/or disposal of treated wastewater, sewage sludge, industrial sludge, or septage (septic tank sludge) by application upon or incorporation into the soil with no resulting discharge to surface waters.

7-2.13 Municipal Separate Storm Sewer System. A municipal separate storm sewer system (MS4) means all separate storm sewers that are defined as “large,” “medium,” or “small” municipal separate storm sewer systems, as defined or as designated by the administrator. See also the definitions for “large municipal separate storm sewer,” “major municipal separate storm sewer,” “medium municipal separate storm sewer,” and “small municipal separate storm sewer” (40 CFR 122.26(b)(18); 122.26(b)(19)).

7-2.14 National Pollutant Discharge Elimination System Permit. A NPDES permit is a permit granted by the EPA to a direct discharger that permits wastewater discharge to a watercourse in accordance with the conditions of the permit (40 CFR 403.3(n)). The NPDES programs are either EPA or state programs. State programs must be approved and authorized by the EPA.

7-2.15 National Pretreatment Standard. The National Pretreatment Standard is any regulation containing pollutant discharge limits promulgated by the EPA (40 CFR 403.3(l)).

7-2.16 Non-Point Source Pollution. This is defined as water pollution originating from diffuse, non-discrete sources. Non-point source water pollution generally results from land runoff, percolation, atmospheric deposition, hydrologic modification, or precipitation.

7-2.17 Point Source. Any discernible, confined, and discrete conveyance, including—but not limited to—any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff (40 CFR 122.2).

7-2.18 Pollutant. Pollutants mean dredged spoil; solid waste; incinerator residue; filter backwash; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 *et seq.*)); heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (1) Sewage from vessels
- (2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well that is used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

Note that radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976) (40 CFR 122.2).

7-2.19 Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW (40 CFR 403.3(s)).

7-2.20 Publicly Owned Treatment Works. A POTW is owned by a state or municipality (as defined by Section 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works (40 CFR 403.3).

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7-2.21 Publicly Owned Treatment Works Treatment Plant. A POTW Treatment Plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

7-2.22 Stormwater. Stormwater runoff, snow melt runoff, and surface runoff and drainage (40 CFR 122.26(b)(13)).

7-2.23 Stormwater Pollution Prevention Plan. A stormwater pollution prevention plan (SWPPP) is a fundamental requirement of stormwater permits that:

- (a) Identifies all potential sources of pollution which reasonably may be expected to affect the quality of stormwater discharges from a construction site
- (b) Describes practices to be used to reduce pollutants in stormwater discharges from the construction site
- (c) Helps ensure compliance with the terms and conditions of the permit.

However, SWPPP requirements vary from state to state.

7-2.24 Territorial Seas

- (a) With respect to the United States, “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters and extending seaward a distance of three miles (33 U.S.C. § 1362).
- (b) With respect to any foreign country, “territorial seas” means the waters within the belt adjacent to the country’s coast, and the breadth and baseline of the country’s waters recognized by the United States.

7-2.25 Territorial Sea Baseline. The delimitation of the shoreward extent of the territorial seas of the United States drawn according to the Convention on the Territorial Sea and the Contiguous Zone (15 U.S.T. 1606), as recognized by the United States.

7-2.26 Total Maximum Daily Load. The total maximum daily load (TMDL) is the amount of a specific pollutant that a water body can receive and assimilate, and still meet water quality standards. A TMDL consists of the sum of waste load allocations from point sources, load allocations from non-point sources, and a margin of safety.

7-2.27 Treatment Works. Any domestic or industrial wastewater treatment devices or systems, regardless of ownership (including federal facilities, such as FOTWs), used in the storage, treatment, recycling, and reclamation of domestic and industrial wastewater (including land dedicated for the disposal of associated sludge).

7-2.28 Vessel. The term “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the waters of the United States (33 CFR 159.3).

7-2.29 Waters of the United States. The phrase “Waters of the United States” means (33 CFR 328 and 40 CFR 120.2):

- (a) Jurisdictional waters. For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (b) of this section, the term “waters of the United States” The territorial seas, and waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide;
 - (2) Tributaries;
 - (3) Lakes and ponds, and impoundments of jurisdictional waters; and
 - (4) Adjacent wetlands.
- (b) Non-jurisdictional waters. The following are not “waters of the United States”:
 - (1) Waters or water features that are not identified in paragraph (a)(1), (2), (3), or (4) of this section;
 - (2) Groundwater, including groundwater drained through subsurface drainage systems;
 - (3) Ephemeral features, including ephemeral streams, swales, gullies, rills, and pools;
 - (4) Diffuse stormwater run-off and directional sheet flow over upland;
 - (5) Ditches that are not waters identified in paragraph (a)(1) or (2) of this section, and those portions of ditches constructed in waters identified in paragraph (a)(4) of this section that do not satisfy the conditions of paragraph (c)(1) of this section;
 - (6) Prior converted cropland;
 - (7) Artificially irrigated areas, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease;

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- (8) Artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in upland or in non-jurisdictional waters, so long as those artificial lakes and ponds are not impoundments of jurisdictional waters that meet the conditions of paragraph (c)(6) of this section;
- (9) Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel;
- (10) Stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff;
- (11) Groundwater recharge, water reuse, and wastewater recycling structures, including detention, retention, and infiltration basins and ponds, constructed or excavated in upland or in non-jurisdictional waters; and
- (12) Waste treatment systems.

(c) Definitions. In this section, the following definitions apply:

- (1) Adjacent wetlands. The term adjacent wetlands means wetlands that: (i) Abut, meaning to touch at least at one point or side of, a water identified in paragraph (a)(1), (2), or (3) of this section; (ii) Are inundated by flooding from a water identified in paragraph (a)(1), (2), or (3) of this section in a typical year; (iii) Are physically separated from a water identified in paragraph (a)(1), (2), or (3) of this section only by a natural berm, bank, dune, or similar natural feature; or (iv) Are physically separated from a water identified in paragraph (a)(1), (2), or (3) of this section only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the water identified in paragraph (a)(1), (2), or (3) of this section in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature. An adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, as long as the structure allows for a direct hydrologic surface connection through or over that structure in a typical year.
- (2) Ditch. The term ditch means a constructed or excavated channel used to convey water.
- (3) Ephemeral. The term ephemeral means surface water flowing or pooling only in direct response to precipitation (e.g., rain or snow fall).
- (4) High tide line. The term high tide line means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.
- (5) Intermittent. The term intermittent means surface water flowing continuously during certain times of the year and more than in direct response to precipitation (e.g., seasonally when the groundwater table is elevated or when snowpack melts).
- (6) Lakes and ponds, and impoundments of jurisdictional waters. The term lakes and ponds, and impoundments of jurisdictional waters means standing bodies of open water that contribute surface water flow to a water identified in paragraph (a)(1) of this section in a typical year either directly or through one or more waters identified in paragraph (a)(2), (3), or (4) of this section. A lake, pond, or impoundment of a jurisdictional water does not lose its jurisdictional status if it contributes surface water flow to a downstream jurisdictional water in a typical year through a channelized non-jurisdictional surface water feature, through a culvert, dike, spillway, or similar artificial feature, or through a debris pile, boulder field, or similar natural feature. A lake or pond, or impoundment of a jurisdictional water is also jurisdictional if it is inundated by flooding from a water identified in paragraph (a)(1), (2), or (3) of this section in a typical year.
- (7) Ordinary high water mark. The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- (8) Perennial. The term perennial means surface water flowing continuously year-round.
- (9) Prior converted cropland. The term prior converted cropland means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered prior converted cropland for purposes of the Clean Water Act when the area is abandoned and has reverted to wetlands, as defined in paragraph (c)(16) of this section. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

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- (10) Snowpack. The term snowpack means layers of snow that accumulate over extended periods of time in certain geographic regions or at high elevation (e.g., in northern climes or mountainous regions).
- (11) Tidal waters and waters subject to the ebb and flow of the tide. The terms tidal waters and waters subject to the ebb and flow of the tide mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.
- (12) Tributary. The term tributary means a river, stream, or similar naturally occurring surface water channel that contributes surface water flow to a water identified in paragraph (a)(1) of this section in a typical year either directly or through one or more waters identified in paragraph (a)(2), (3), or (4) of this section. A tributary must be perennial or intermittent in a typical year. The alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to satisfy the flow conditions of this definition. A tributary does not lose its jurisdictional status if it contributes surface water flow to a downstream jurisdictional water in a typical year through a channelized non-jurisdictional surface water feature, through a subterranean river, through a culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, or similar natural feature. The term tributary includes a ditch that either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland as long as the ditch satisfies the flow conditions of this definition.
- (13) Typical year. The term typical year means when precipitation and other climatic variables are within the normal periodic range (e.g., seasonally, annually) for the geographic area of the applicable aquatic resource based on a rolling thirty-year period.
- (14) Upland. The term upland means any land area that under normal circumstances does not satisfy all three wetland factors (i.e., hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (c)(16) of this section, and does not lie below the ordinary high water mark or the high tide line of a jurisdictional water.
- (15) Waste treatment system. The term waste treatment system includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).
- (16) Wetlands. The term wetlands means 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 typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

7-2.30 Water Quality Standard. Water quality standards (WQS) are provisions of state, territorial, authorized tribal, or federal law approved by EPA that describe the desired condition of a water body and the means by which that condition will be protected or achieved. WQS water bodies can be used for purposes such as recreation (e.g., swimming and boating), scenic enjoyment, and fishing, and are the home to many aquatic organisms. WQS form a legal basis for controlling pollutants entering the waters of the United States.

7-3 Requirements

7-3.1 State and Local Requirements. Department facilities shall comply with all applicable state, regional, and local wastewater and stormwater regulations. Note that state, regional, and local regulations and guidance may be more stringent than federal laws and regulations.

7-3.2 Designated Responsible Official. Department facilities shall be responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or equivalent. It generally is better to appoint the DRO from staff at the lowest level in the hierarchy that still has the authority to submit or sign permit applications and sign reports required by regulatory permits, as that person will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to a position any lower than the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply.

An example of a situation in which a DRO is required for a facility is when a facility discharges stormwater or wastewater (direct or indirect discharge) regulated under CWA permits. The DRO reviews and signs applications for permits, and obtains, renews, and pays for all new and recurring permits. Chapter 3 of this Manual provides further information on DROs and applicability.

7-3.3 Wastewater Discharges to the Environment. Department facilities shall ensure that facilities do not discharge pollutants into the environment in excess of any federal, state, or local limits established by regulation or permit. Potential pollutants include but are not limited to domestic sewage, chemicals/hazardous materials (HMs), boiler water blowdown, cooling tower blowdown, oils, hazardous waste (HW), and low-level radioactive substances.

7-3.4 Wastewater Discharges to a Treatment Works. Department facilities shall ensure that they do not discharge pollutants into a treatment works (FOTW or POTW) in excess of any federal (National Pretreatment Standard) or state pretreatment standard, or local limits established by regulation or the receiving treatment works. Potential pollutants include but are not limited to domestic sewage, industrial wastewater, chemicals/HMs, boiler water blowdown, oils, HW, water from draining swimming pools, cooling tower blowdown, and low-level radioactive substances.

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7-3.5 Permits. To accomplish the goals of the CWA, each state is required to establish WQS for its surface waters based on designated uses. Under CWA Section 303(d), each state is to submit to the EPA a list of surface waters that are not meeting their WQS. For these “impaired” water bodies, each state shall develop a TMDL, which is the amount of pollutants that can be assimilated by a body of water without exceeding the WQS. Based on the developed TMDLs, the states or the EPA limit discharge of pollutants to a level sufficient to ensure compliance with state WQS. Direct discharges of pollutants—also known as point source pollution—to the waters of the United States are regulated by NPDES permits issued by EPA or under state NPDES programs approved by the EPA. This includes discharges of stormwater from an MS4, industrial areas, and construction sites greater than or equal to one acre. Indirect industrial discharges of effluent to POTWs are subject to pretreatment standards promulgated by the EPA, state, or local regulatory agencies.

The requirement to obtain a permit—as well as permit requirements—may be case-specific, dependent on the affected surface water or groundwater quality of the location, source (e.g., point source or nonpoint source), associated operations of the discharge (e.g., industrial or domestic), final disposition (ground, POTW, FOTW), and volume of discharge. Permit requirements may include development and implementation of a SWPPP, sampling and monitoring, record keeping, and regulatory reporting. When applicable, Department facilities shall obtain and submit a Notice of Intent (NOI) to comply with NPDES permits from the appropriate regulatory authority. Appendix A, Useful Web Links, provides links to EPA’s NPDES website.

7-3.5.1 NPDES Point Source Individual Permit. An individual NPDES permit is required for point sources of effluent that discharge directly to the environment. The need for a permit is based on multiple factors, including, but not limited to, the water quality of the receiving water and the type and amount of pollutant being discharged. Examples of sources that may require a source-specific NPDES permit include but are not limited to oil/water separators, sewage lagoons, and septic systems.

7-3.5.2 NPDES General Permits. A NPDES general permit is written to cover multiple dischargers with similar operations and types of discharges based on the permit writer’s professional knowledge of those types of activities and discharges. Coverage under a general permit usually is obtained through the submission of a NOI to the regulatory authority after the general permit is issued. Although the EPA has issued general permits in the following areas, states with NPDES permitting authority may offer general permits for a wider range of discharges.

7-3.5.2.1 Stormwater Discharges from Construction Activities. Construction General Permits and Individual Construction permits address discharges from construction activities that disturb one or more acres, and discharges from smaller sites that are part of a larger common plan of development or sale.

7-3.5.2.2 Stormwater Discharges from Industrial Activities. The 11 categories of regulated industrial activities addressed by this general permit are:

- Category I: Facilities subject to federal stormwater effluent discharge standards at 40 CFR Parts 405–471
- Category II: Heavy manufacturing (e.g., paper mills, chemical plants, petroleum refineries, steel mills, foundries)
- Category III: Coal and mineral mining and oil and gas exploration and processing
- Category IV: HW treatment, storage, and disposal facilities (TSDFs)
- Category V: Landfills, land application sites, and open dumps with industrial wastes
- Category VI: Metal scrapyards, salvage yards, automobile junkyards, and battery reclaimers
- Category VII: Steam electric power generating plants
- Category VIII: Transportation facilities that have vehicle maintenance, equipment cleaning, or airport deicing operations
- Category IX: Treatment works for domestic sewage, with a design flow of 1 million gallons a day or more
- Category X: Construction sites that disturb 5 acres or more (permitted separately)
- Category XI: Light manufacturing (e.g., food processing, printing, publishing, electronic and other electrical equipment manufacturing, public warehousing, storage).

7-3.5.2.3 Vessel General Permit. The Vessel General Permit provides for NPDES permit coverage for incidental discharges into waters of the United States from commercial vessels that are greater than 79 feet in length and for ballast water from commercial vessels of all sizes. On December 4, 2018, VIDA was enacted, requiring EPA to develop performance standards for vessel incidental discharges within two years of enactment, and requiring the U.S. Coast Guard (USCG) to develop implementation, compliance, and enforcement regulations within two years of EPA’s promulgation of standards.

7-3.5.2.4 Small Vessel General Permit. The Small Vessel General Permit (sVGP) addresses the control of incidental discharges for vessels that are less than 79 feet in length. VIDA, enacted December 4, 2018, repealed the sVGP issued on September 10, 2014, for the control of incidental discharges for vessels less than 79 feet in length (i.e., small vessels). That permit is no longer in effect. The VIDA legislation also specifies that, except for ballast water, discharges incidental to the normal operation of small vessels and commercial fishing vessels of all sizes no longer require NPDES permit coverage. However, any small vessel covered under the sVGP at the time of enactment of VIDA that discharges ballast water into waters of the United States must comply with the requirements of the vessel general permit for those ballast water discharges.

7-3.5.2.5 Pesticide General Permit. The Pesticide General Permit addresses discharges of biological pesticides and chemical pesticides that leave a residue into waters of the United States.

7-3.6 Underground Injection Controls. Discharges to groundwater must meet applicable requirements of the SDWA, state and local implementing requirements, and applicable permit conditions. All owners or operators of Class I and Class V wells and all applicants for underground injection control permits shall comply with applicable provisions of 40 CFR Parts 144, 146, 147, and 148. Septic systems may be considered Class V underground injection wells. New large-capacity cesspools were banned nationwide as of April 5, 2000. Chapter 8 provides information on requirements of the SDWA.

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7-3.7 Federal Facility Stormwater Management. Under EISA Section 438, federal agencies are required to reduce stormwater runoff from federal development and redevelopment projects to protect water resources. Federal agencies can comply using a variety of stormwater management practices often referred to as “green infrastructure” or “low-impact development” practices, including for example, reducing impervious surfaces, using vegetative practices, porous pavements, cisterns, and green roofs. These practices retain rainfall on site through infiltration, evaporation/transpiration, and reuse. Department facilities undergoing new construction or major renovation with a footprint exceeding 5,000 square feet shall incorporate the requirements of EISA Section 438.

- (a) All other Department facilities shall incorporate stormwater management where practical and cost-effective.
- (b) In addition to federal, state, and local stormwater regulations there may be regional stormwater management regulations applicable to the facility. One example of a regional authority is the Chesapeake Bay Program, which is a consortium of regulatory agencies focused on improving the water quality of the Chesapeake Bay through the management of wastewater and stormwater discharges into the Chesapeake Bay. See EISA (42 U.S.C. § 152); and 40 CFR Part 122, EPA Administered Permit Programs: NPDES Program for more detailed guidance.

7-3.8 Stormwater Charges. Stormwater charges imposed at the state or local level on federal facilities may present complex questions regarding whether they are classified as a “fee” or a “tax” and should be referred to legal counsel, as necessary.

7-3.9 Enforcement Actions, Fines, and Penalties. The CWA has no waiver of sovereign immunity for fines and penalties. This includes EPA-imposed penalties, state-imposed penalties, local penalties, or any penalties sought by citizens in a citizen’s suit. Fines and penalties under CWA § 309(c) can be for a “negligent violation,” “knowing violation” or “knowing endangerment” and can include significant fines or imprisonment. EPA’s “Clean Water Act and Federal Facilities” website provides further information on fines and penalties associated with CWA violations. Appendix A, Useful Web Links, provides a link to the EPA website. Because the Department cannot pay penalties, it also cannot undertake Supplemental Environmental Projects in lieu of environmental penalties.

Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. The OU shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

7-4 Responsibilities

7-4.1 The Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iii) Monitor Department facilities’ compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority, and follow guidance within this chapter, as applicable.

7-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance) including those included in this chapter (e.g., where applicable, applying for a CWA permit and complying with all permit conditions).
- (b) Designate a DRO and ensure that the DRO has a “backup” staff member with the required knowledge of facility processes to review and sign applications for permits, and obtain, renew, and pay for all new and recurring permits.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable clean water laws, regulations, policies, and guidance.
- (c) Maintain an ECARS that includes OU-wide information on operations that can affect stormwater and wastewater discharges at its facilities, document outside regulatory inspections and enforcement actions within an ECARS, and maintain an environmental assessment program to assess the status of CWA compliance in accordance with Chapter 3 of this Manual. The Department’s ECARS is the CTrack™ application.
- (d) Ensure programming, budgeting, and allocation of funds for all applicable federal, state, and local laws, regulations, and policies (including Department policy and guidance) associated with wastewater and stormwater management, including requesting resources to meet those requirements (e.g., permit applications, permit monitoring and sampling, SWPPPs, stormwater controls and associated operations and maintenance, training) in budget submissions and assist their facilities in determining and estimating resource requirements.
- (e) Provide advice and technical assistance to facilities on wastewater and stormwater management and compliance requirements, such as in identifying applicable effluent standards, appropriate control technologies, and BMPs; development of SWPPPs; design reviews; and permit reviews. Ensure that facilities implement reasonable, cost-effective BMPs to control stormwater at all sites.

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All personnel who conduct or supervise staff associated with water quality (e.g., wastewater and stormwater) shall be trained in accordance with applicable environmental compliance laws and regulations.

Personnel involved in operations that could result in pollution of surface water or groundwater must receive specific comprehensive training in water pollution prevention required by the CWA, implementing regulations, and site-specific permits.

Wastewater treatment plant operators shall receive training and certification required by the applicable state and local water-quality regulations.

All training records shall be retained in accordance with federal, state, and local regulations—whichever is the most stringent.

7-6 Reporting Requirements

7-6.1 Reporting to the Office of the Secretary. OUs shall report to OSEEP on attainment of EISA Section 438 stormwater goals as required to meet external data calls.

7-6.2 Reporting to Federal, State, and Local Agencies. OUs shall ensure that facilities report to federal, state, and local agencies in accordance with the CWA permit requirements.

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SAFE DRINKING WATER ACT COMPLIANCE

8-1 Scope

8-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; and Department of Commerce (Department) requirements (e.g., policies, guidance); as well as responsibilities applicable to safe drinking water at Department facilities within the United States and its territories. This chapter does not cover water conservation requirements covered only under an executive order or reporting requirements by another federal agency—such as the Office of Management and Budget (OMB) or the White House Council on Environmental Quality (CEQ). Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

8-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; and Chapter 7, Clean Water.

8-1.3 References

40 Code of Federal Regulations (CFR) Part 141, National Primary Drinking Water Regulations.

40 CFR Parts 144–147, Underground Injection Control (UIC) Program.

42 U.S.C. § 300f *et seq.*, Safe Drinking Water Act (SDWA).

8-2 Terms and Definitions

8-2.1 Backflow Preventer. An approved device, assembly, or piping arrangement (e.g., air gap) used to prevent backflow into a drinking water system.

8-2.2 Community Water System. A community water system (CWS) is a public water system (PWS) that serves at least 15 service connections used by year-round residents, or regularly serves at least 25 year-round residents.

8-2.3 Consecutive System. A PWS that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

8-2.4 Cross-Connection. Any physical arrangement whereby a water supply system is connected—directly or indirectly—with any other sewer, drain, plumbing fixture, or other device which contains or may contain contaminated water.

8-2.5 Disinfectant. A disinfectant is any oxidant including—but not limited to—chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process for the purpose of killing or inactivating pathogenic microorganisms.

8-2.6 Disinfection Byproducts. Disinfection byproducts are compounds formed from the reaction of a disinfectant with organic and inorganic compounds in the source water during the disinfection process.

8-2.7 Groundwater. Water below the land surface in a zone of saturation.

8-2.8 Injection Well. A “well” into which “fluids” are being injected.

8-2.9 Non-Community Water System. A non-community water system (NCWS) is a PWS that is not a CWS. A NCWS is either a transient non-community water system (TNCWS) or a non-transient non-community water system (NTNCWS).

8-2.10 Non-Transient, Non-Community Water System. A PWS that is not a CWS and that regularly serves at least 25 of the same persons more than 6 months per year.

8-2.11 Public Water System. A PWS is a system for the provision to the public of water for human consumption through pipes or (after August 5, 1998) other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A PWS is either a CWS or a NCWS (40 CFR 141.2). Figure 8-1 helps a facility determine what type of system it operates.

8-2.12 Service Connection. As used in the definition of PWS, a service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if (40 CFR 141.2):

- (a) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, cooking, or other similar uses)

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- (b) The state determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking
- (c) The state determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable National Primary Drinking Water Regulations.

8-2.13 Surface Water. All water that is open to the atmosphere and subject to surface runoff.

8-2.14 Transient, Non-Community Water System. A TNCWS that does not regularly serve at least 25 of the same persons over 6 months per year.

8-2.15 Underground Injection. Underground injection or well injection means the subsurface emplacement of fluids through a bored, drilled, or driven well or through a dug well where the depth of the dug well is greater than the largest surface dimension.

8-2.16 Well. A bored, drilled, or driven shaft having a depth that is greater than the largest surface dimension; or a dug hole having a depth that is greater than the largest surface dimension; an improved sinkhole; or a subsurface fluid distribution system.

8-3 Requirements

8-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local drinking water laws and regulations. Note that state and local regulations and guidance may be more stringent than federal laws and regulations.

8-3.2 Designated Responsible Official. Department facilities shall be responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply.

An example of when a Department facility would designate a DRO is if the facility is operating a PWS under the SDWA. Chapter 3 provides further details on DROs and applicability.

8-3.3 General. Regulatory requirements for water systems vary depending upon the type of water system under consideration. A water system initially is classified as a PWS or a non-PWS. Federal, state, and local regulatory requirements generally apply to a PWS and are not applicable to non-PWS. Regulatory requirements for each PWS depend on the classification of the system (i.e., primary, consecutive); CWS or NCWS; TNCWS; or NTNCWS; and the type of source water used (e.g., groundwater, surface water, or groundwater under the direct influence of surface water). To determine the type of water system currently being operated, refer to Terms and Definitions in Section 8-2 and Figure 8-1. In general, states are responsible for implementation of SDWA programs.

8-3.4 Consecutive Systems. Consecutive systems generally are not subject to the requirements of the National Primary Drinking Water Regulations if they satisfy all four of the following criteria specified in 40 CFR Part 141.3:

- (a) Consist only of distribution and storage facilities (and do not have any collection and treatment facilities)
- (b) Obtain all their water from—but are not owned or operated by—a PWS to which the regulations apply
- (c) Do not sell water to any persons
- (d) Are not carriers that convey passengers in interstate commerce.

8-3.5 Water System Monitoring. Facilities that own and operate a consecutive system subject to full or partial exemption from regulatory monitoring requirements can find guidance on systems requirements under 40 CFR Part 141.3 or 141.29, and in their state-specific regulations.

Department-owned and operated PWS shall, at a minimum, accomplish the monitoring required in 40 CFR Part 141 according to the size and types of PWS operated. This monitoring is required regardless of variance or exemptions from regulatory monitoring requirements and determined by the type of drinking water system and the regulatory authority—federal or state. For example, some drinking water regulations apply to systems supplied by source water, others for systems supplied by groundwater. Requirements can change frequently. Refer to the federal and state regulatory agency for compliance requirements for a specific situation.

Department facilities shall use laboratories certified by the U.S. Environmental Protection Agency (EPA) or the state for analysis of all PWS SDWA compliance samples. Facilities shall collect water samples at points that represent the quality of water in the distribution system as defined by the applicable regulations. Monitored parameters include, but are not limited to:

- (a) Microorganisms (e.g., total coliforms, cryptosporidium, turbidity)
- (b) Disinfectants and disinfection byproducts
- (c) Organics
- (d) Inorganics (e.g., lead, copper, asbestos, fluorides)
- (e) Radionuclides.

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See 40 CFR Part 141 and contact the appropriate state regulator to determine monitoring requirements for a specific situation. Additionally, the EPA's Drinking Water Contaminants—Standards and Regulations website lists regulated contaminants. Appendix A, Useful Web Links, provides the link.

Figure 8-1. Water System Classification Flowchart^{1,2}

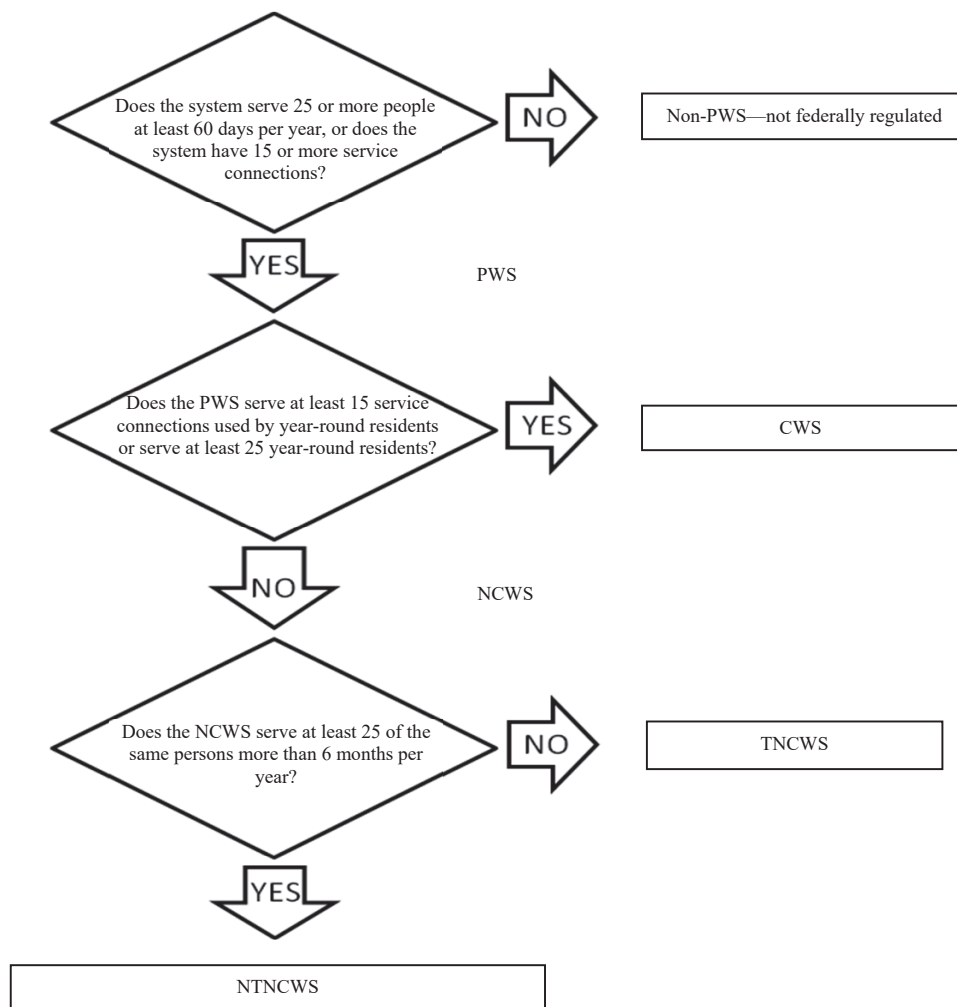


Figure 8-1 Notes

1. In accordance with federal laws. State and local laws may be more stringent.
2. Does not address regulatory requirements of consecutive water systems. This is determined independently by each state.

8-3.6 Underground Injection. There are five classes of UIC wells. The broadest category is Class V, which includes stormwater drainage wells, aquifer remediation wells, and some septic systems. Regulations related to underground injection are found in 40 CFR Parts 144–147, Underground Injection Control Program. Septic system leachate fields may use underground injection.

The SDWA requires each state to have an UIC program to ensure that underground injection does not endanger underground sources of drinking water. All underground injection systems shall be permitted or authorized by rule. Under these requirements, facilities must implement a program that includes establishing and maintaining an underground injection well inventory and procedures for proper well closure. Chapter 7, Clean Water, provides information on permit requirements.

8-3.7 Wellhead Protection. Department facilities that receive drinking water from wells shall take measures to minimize contamination. These facilities shall establish a wellhead protection program that meets applicable state and local wellhead protection requirements.

8-3.8 Cross-Connection and Backflow Prevention. Cross-connection control programs are meant to prevent non-potable water from mixing with potable water and entering the drinking water system. Cross-connection control programs are implemented by state and local drinking water authorities, and typically involve these authorities periodically surveying drinking water systems for potential sources of cross-connection. Cross-connection control programs apply to building interior domestic plumbing systems, fire protection plumbing systems, and exterior water distribution systems. If an inappropriate cross-connection is found, then state and local authorities identify actions necessary to prevent cross-connection. One potential action may be the installation of a backflow preventer.

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Backflow prevention programs—overseen by state and local authorities—help ensure compliance with primary and secondary drinking water standards by establishing policies, procedures, and instructions for installing, repairing, maintaining, inspecting, and testing backflow preventers. Department facilities shall certify all backflow preventers as required by the state or local regulatory agency. Facilities shall also promptly repair or replace defective backflow preventers.

8-3.9 Sanitary Surveys. A sanitary survey is an on-site review of the water sources, facilities, equipment, operation, and maintenance of a PWS for the purpose of evaluating the adequacy of such sources, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water. States may require drinking water treatment plants or a PWS experiencing compliance problems—particularly with microbial pathogens—to perform a sanitary survey. If a survey is required, then work with the state regulatory agency to determine survey requirements.

8-3.10 Record Keeping. In the absence of more stringent federal, state, or local record keeping requirements, facilities should maintain records as follows:

- (a) Bacteriological results: 5 years
- (b) Chemical results: 10 years
- (c) Lead and copper testing results: 12 years
- (d) Actions taken to correct violations: 3 years after acting on the particular violation involved
- (e) Sanitary survey reports: 10 years
- (f) Variance or exemption records: 5 years following the expiration of such variance or exemption
- (g) Water treatment plant and distribution system operating records: 5 years
- (h) Cross-connection and backflow preventer inspection and maintenance records: 5 years
- (i) Consumer confidence reports: 5 years.

8-3.11 Exemption from Permitting. Department facilities that qualify for exemption from PWS permitting shall apply, in writing, to the regulatory agency with SDWA primacy for an exemption.

8-3.12 Operation and Maintenance. Facilities that own or operate water systems (public and non-public, permitted and non-permitted) shall develop and implement an operation and maintenance program applicable to the system. Minimum requirements of the program are to meet the requirements of 40 CFR Part 141; in particular, 40 CFR Part 141.63(d)(3) related to coliforms, and include the proper implementation and documentation of:

- (a) Emergency and preventive maintenance
- (b) System disinfection after maintenance work is performed
- (c) Scheduled flushing of the system
- (d) Reduction of water quality problems (as needed)
- (e) Implementation and documentation of a valve exercise and maintenance program
- (f) Proper operation and maintenance of storage tanks
- (g) Maintenance of current water distribution maps
- (h) Documentation of location and dates of water line breakage
- (i) Documentation of emergency operations procedures required as a result of events such as earthquakes, hurricanes, chemical releases, and terrorist activities, including response roles and responsibilities and contingency plans for providing potable water to the facility.

8-3.13 Consumer Confidence Report. A consumer confidence report (CCR) is an annual report required from the drinking water supplier, if it is a CWS, that provides water quality information. The report must contain certain mandatory information and be delivered to customers annually by July 1. Facilities shall ensure they receive and review the CCR from their drinking water supplier and post it in a public location.

8-3.14 Consumptive Use Permits. A consumptive use permit regulates the withdrawal of groundwater, surface water, or any mixture of the two. In coordination with technical staff at the OU and legal counsel, Department facilities that currently—or plan in the future—to withdraw groundwater or surface water for the purposes of treatment and distribution for any purpose shall consult with state and local regulators to determine potential permit requirements and water use restrictions.

8-3.15 Enforcement Actions, Fines, and Penalties. The 1996 amendments to the SDWA waived sovereign immunity for the payment of fines and penalties imposed by federal, state, or local agencies for violations (42 U.S.C. § 300j-6). In addition, EPA may assess administrative penalties for violations.

Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

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MANAGEMENT MANUAL**8-4 Responsibilities****8-4.1 Office of the Secretary**

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority, and follow guidance within this chapter, as applicable.

8-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with all applicable safe drinking water compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance) including those in this chapter (e.g., cross-connection and backflow prevention, wellhead protection, drinking water monitoring).
- (b) Designate a DRO and ensure the DRO has a "back-up" staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable safe drinking water laws, regulations, policies, and guidance.
- (d) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information on drinking water operations at its facilities, documents outside regulatory inspections and enforcement actions within an ECARS, and maintains an environmental assessment program to assess the status of compliance with drinking water laws and regulations. The Department's ECARS is the CTrack™ application.
- (e) Ensure programming, budgeting, and allocation of funds associated with environmental compliance for drinking water, including requesting resources to meet those requirements (e.g., drinking water sampling, cross-connection, backflow prevention) in budget submissions, and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on drinking water environmental compliance.
- (g) Provide engineering, contracting, and legal assistance, upon request, to facilities.

8-5 Training

8-5.1 General. Personnel who conduct or supervise staff associated with SDWA compliance shall be trained in accordance with applicable environmental compliance laws and regulations.

8-5.2 Operations. Personnel who conduct or supervise operations that can impact the environment or compliance with drinking water laws (e.g., SDWA) and regulations should be trained to perform their job duties safely and in compliance with all applicable laws, regulations, and policies.

8-5.3 Water Treatment and Distribution System Operators. Facilities operating water treatment and distribution systems shall ensure the water treatment and distribution system operators are trained and certified per applicable federal, state, and local regulations.

8-5.4 Training Records. All training records shall be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

8-6 Reporting Requirements

8-6.1 Reporting to the Office of the Secretary. None.

8-6.2 Reporting to External Federal, State, and Local Agencies. The owner or operator of a PWS that fails to comply with SDWA standards shall notify persons served by the system in accordance with requirements of the regulatory authority.

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**CHAPTER 9:
OIL AND HAZARDOUS SUBSTANCE SPILL PREPAREDNESS AND RESPONSE**

9-1 Scope

9-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; and Department of Commerce (Department) requirements (e.g., policies and guidance); as well as responsibilities applicable to oil and hazardous substance (OHS) spill preparedness and response at Department facilities and vessels within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

9-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 5, Compliance with the Emergency Planning and the Community Right-to-Know Act (EPCRA); Chapter 7, Clean Water; Chapter 10, Used Oil Management; and Chapter 12, Hazardous and Universal Waste Management.

9-1.3 References

33 Code of Federal Regulations (CFR) Part 154, Facilities Transferring Oil or Hazardous Materials in Bulk.

33 CFR Part 156, Oil or Hazardous Materials Transfer Operations.

40 CFR Part 110, Discharge of Oil.

40 CFR Part 112, Oil Pollution Prevention.

40 CFR Part 117, Determination of Reportable Quantities (RQ) for Hazardous Substances.

40 CFR Part 300, National Oil and Hazardous Substances Pollution Contingency Plan.

40 CFR Part 302, Designation, Reportable Quantities, and Notification.

61 Federal Register 28642, The National Response Team's (NRT's) Integrated Contingency Plan (ICP) Guidance, June 5, 1996.

Clean Water Act (CWA), 33 U.S.C. § 1251 as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701 *et seq.*

Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11001 *et seq.*

U.S. Environmental Protection Agency (EPA) Overview of the Spill Prevention Control and Countermeasure (SPCC) Regulation website—see Appendix A for link.

EPA Facility Response Plan (FRP) Overview website—see Appendix A for link.

EPA Fact Sheet: Is My Facility a “Qualified Facility” Under the SPCC Rule?—see Appendix A for link.

Regulation 37 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).

9-2 Terms and Definitions

9-2.1 Discharge. Discharge includes any spilling, substantial threat of spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil or an actual or substantial threat of any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes the following regulated under CWA Section 311.

- (a) Discharges in compliance with a permit are allowed under the CWA
- (b) Discharges resulting from circumstances identified, reviewed, and made a part of the public record with respect to an issued permit under the CWA, and subject to a condition in the permit
- (c) Continuous or anticipated intermittent discharges from a point source, identified in a permit application under the CWA and caused by events occurring within the scope of a relevant operating or treatment system.

9-2.2 Facility. In relation to SPCC plan requirements, a facility is any mobile or fixed, onshore or offshore building, property, parcel, lease, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and oil waste treatment, or in which oil is used, as described in 40 CFR Part 112, Appendix A. The boundaries of a facility depend on several site-specific factors, including but not limited to the ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site. Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities. Only this definition governs whether a facility is subject to 40 CFR Part 112 (40 CFR 112.2).

9-2.3 Hazardous Substance

- (a) Any substance so designated by the CWA
- (b) Any element, compound, mixture, solution, or substance so designated by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- (c) Any solid waste having the characteristics identified under or listed pursuant to the Solid Waste Disposal Act (but not including any waste suspended by an Act of Congress)

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- (d) Any hazardous air pollutant listed under the Clean Air Act (CAA)
- (e) Any imminently hazardous chemical (HC) substance or mixture upon which the EPA has regulated under the Toxic Substances Control Act (TSCA)
- (f) The term does not include:
 - (i) Petroleum, crude oil, or any refined product (such as gasoline, diesel, or fuel oil) or synthetic oil, not otherwise specifically listed or designated as a hazardous substance (HS) under CERCLA, CWA, or the Safe Drinking Water Act (SDWA)
 - (ii) Natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas)
 - (iii) Sewage or sewage and water mix, aqueous film-forming foam, or other substances not specifically designated by the laws cited above.

9-2.4 National Response Center. The National Response Center (NRC, phone: 800-424-8802) is the single federal notification point (outside the Department chain of command) for emergency spill response. The NRC is responsible for notifying the predesignated federal on-scene coordinator of reported OHS pollution incidents. The 24-hour OHS spill notification center is located at U.S. Coast Guard (USCG) headquarters in Washington, D.C.

9-2.5 National Response Team. The NRT is an organization of 15 federal departments and agencies responsible for coordinating emergency preparedness and response to OHS incidents. The EPA chairs the NRT and the USCG serves as vice chair.

9.26 Navigable Waters. Navigable waters means waters of the United States, including the territorial seas, as defined in 40 CFR § 120.2. Refer to Chapter 7, Clean Water, Section 7-2.29.

9-2.7 Non-Transportation-Related Facility. Related to the SPCC rule, a facility that stores, processes, refines, uses, or consumes oil.

9-2.8 Oil. Oil of any kind or in any form, including but not limited to fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil (40 CFR 112.2).

9-2.9 Public Vessel. A vessel owned (or bareboat chartered) and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce (33 CFR 138.20(b)).

9-2.10 Release. A release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, including an actual or substantial threat of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, into the environment, of any HS (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any HS or pollutant or contaminant). The term "release" excludes:

- (a) Any spilling or leaking that results in exposure to persons solely within a workplace
- (b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine
- (c) Spilling or leaking of source, byproduct, or special nuclear material from a nuclear incident subject to the jurisdiction of the Nuclear Regulatory Commission, or any spilling or leaking of source, byproduct, or special nuclear material from any processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978
- (d) The normal application of fertilizer or insecticides, herbicides, rodenticides, fungicides, biocides, and other pesticide products whose registration and use are managed by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

9-2.11 Release, Federally Permitted. A release of HS in compliance with federal law including the CWA; the CAA; the Solid Waste Disposal Act; the Marine Protection, Research, and Sanctuaries Act (MPRSA); and the Atomic Energy Act is deemed federally permitted.

9-2.12 Reportable Quantity. An RQ is a release of a CERCLA- or EPCRA-listed HS or extremely hazardous substance (EHS) exceeding the threshold planning quantity (TPQ) for that substance. Any HS or EHS releases that equal or exceed these TPQs must be reported to federal, state, and local authorities immediately upon discovery. See 40 CFR Part 117 and 40 CFR Part 302.

9-2.13 Responsible Party. The person or persons who have caused, or could potentially cause, a HS release or oil discharge, including the following categories.

- (a) Vessels: Any person owning, operating, or bareboat chartering a vessel, other than a public vessel
- (b) Onshore facilities (other than a pipeline): Any person owning or operating the facility, except where possession and right to use the property has been transferred to another person by lease, assignment, or permit
- (c) Offshore facilities (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. § 1501 *et seq.*): The lessee or permit holder of the area in which the facility is located or the holder of a right of use or easement granted under applicable state law.

9-2.14 Sheen. A sheen is an iridescent appearance on the surface of the water.

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9-2.15 Significant and Substantial Harm. As related to the FRP, an EPA regional administrator (RA) determines if a facility could, because of its location, cause significant and substantial harm to the environment by discharging oil into or on the navigable waters and adjoining shorelines. This is determined by factors similar to the substantial harm criteria, as well as:

- (a) Age of tanks
- (b) Type of transfer operations
- (c) Oil storage capacity
- (d) Lack of secondary containment
- (e) Proximity to fish, wildlife, and sensitive environments or drinking water intakes
- (f) Spill history and frequency of past discharges
- (g) Other information, including local impacts on public health.

9-2.16 Spill. Throughout this chapter, the term “spill” is used to include both releases of HSS and discharges of oil.

9-2.17 Spill of National Significance. A spill of national significance is one that, due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or due to the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge. National response to a spill of this magnitude is inferred and governed by NRT’s ICP Guidance.

9-2.18 Substantial Harm. Related to the FRP rule, a facility may pose “substantial harm” if the facility:

- (a) Has a total oil storage capacity greater than or equal to 42,000 gallons and it transfers oil over water to or from vessels
- (b) Has a total oil storage capacity greater than or equal to 1 million gallons and meets one of the following conditions:
 - (i) Does not have sufficient secondary containment for each aboveground storage area
 - (ii) Is located at a distance such that a discharge from the facility could cause “injury” to fish, wildlife, and sensitive environments
 - (iii) Is located at a distance such that a discharge from the facility would shut down a public drinking water intake
 - (iv) Has had, within the past five years, a reportable discharge greater than or equal to 10,000 gallons
 - (v) If the facility does not meet the criteria (either under [a] or [b]), then the facility is not subject to the FRP rule via self-identification.

9-2.19 United States. The United States is comprised of the 50 states, District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, U.S. Virgin Islands, and any other territory or possession over which the United States has jurisdiction.

9-2.20 Vessel. Every type of watercraft or other artificial conveyance used, or capable of being used, as a means of transportation upon the navigable waters of the United States (33 CFR 138.20(b)).

9-3 Requirements

OHS planning, training, exercises, reporting, and response are governed by various federal regulations with specific regulatory applicability dependent on various factors. The EPA, U.S. Department of Transportation (DOT), and USCG all regulate portions of OHS preparedness and response. The EPA is the lead federal response agency for oil spills occurring in inland waters. The USCG is the lead response agency for spills in coastal waters and deepwater ports. Operating Units (OUs) should carefully evaluate their facilities and vessels for applicability to ensure they meet all regulatory requirements.

9-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local OHS spill preparedness and response laws and regulations. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations. Department facilities shall review the requirements for the state and region in which they are located. State programs requiring OHS spill prevention, preparedness, and response vary widely. All states require notification of state and local authorities of OHS spills over designated threshold quantities. Certain states—coastal states in particular—have stringent requirements for vessel and facility spill response plans and prevention measures that exceed federal standards. Facilities are subject to state and local facility prevention and response planning requirements; however, public vessels may be exempt from most of these requirements.

9-3.2 Designated Responsible Official. Department facilities shall be responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an OU does not have authority over operations at a facility, then this paragraph does not apply.

An example of when a DRO designation would apply is if a Department facility or vessel operations require a spill plan or the conducting of or participation in spill response exercises. Chapter 3 provides further information on DROs and applicability.

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9-3.3 Spill Contingency and Response Planning. As required by federal, state, and local regulations, Department facilities shall put measures in place to prevent OHS spills into the environment and develop, implement, and maintain spill contingency and response plans to combat releases of HS and discharges of oil to the environment. Depending on a facility's location, size, and the nature of its operations (i.e., storage tanks, fuel dispensing, vessels), a facility or vessel may come under the jurisdiction of multiple federal, state, and local contingency planning regulations.

For land operations, requirements are dependent on conditions associated with the potential for a harmful discharge into navigable water, including the total amount of petroleum, oil, and lubricants (both new and used) stored; land operations on site; storage location; and type and size of storage containers. Note that these parameters and considerations are subject to change whenever 40 CFR undergoes revision.

Required plans may include the SPCC plan, FRP, and Shipboard Oil Pollution Emergency Plan (SOPEP). Plans must be updated per the applicable regulations and submitted to the appropriate regulatory agency.

9-3.3.1 Spill Prevention, Control, and Countermeasure Plan

(a) **Applicability.**

- (i) If a facility does not qualify as either a Tier I or Tier II qualified facility, then it must follow the requirements of 40 CFR Part 112.7 and Subparts B or C of the rule and have the SPCC plan certified by a professional engineer (PE). Note that some states do not allow self-certification. Consult with the state to ensure that SPCC plan certification is not limited to PEs.
- (ii) Refer to Table 9-1, EPA's SPCC Applicability Flowchart for non-transportation related facilities with total is 10,000 gallons or less. EPA's Fact Sheet, "Is My Facility a 'Qualified Facility' under the SPCC Rule?" provides additional information on applicability. See Appendix A, Useful Web Links, for website link. The owner or operator of a qualified facility can self-certify the facility's SPCC plan.

(b) **Content.** Although each SPCC plan is specific to a facility, there are certain elements that shall be described in every plan including:

- (i) Operating procedures at the facility to prevent oil spills
- (ii) Control measures (such as secondary containment, inspections, testing) installed to prevent oil spills from entering navigable waters or adjoining shorelines
- (iii) Countermeasures to contain, clean up, and mitigate the effects of an oil spill that has impacted navigable waters or adjoining shorelines.

Table 9-1 provides criteria for Tier I and Tier II facilities.

Table 9-1. EPA's Qualified Facility Applicability Flowchart

If the facility's total aboveground oil storage capacity is 10,000 gallons or less . . .		
And . . .	And the facility has . . .	Then the facility is a:
In the three years before the SPCC plan is certified, the facility has had no discharges to navigable waters or adjoining shorelines as described below. <ul style="list-style-type: none"> • A single discharge of oil greater than 1,000 gallons • Two discharges of oil each greater than 42 gallons within any 12-month period 	No individual aboveground oil containers greater than 5,000 gallons	Tier I Qualified Facility: Complete and self-certify plan template (Appendix G to 40 CFR Part 112) in lieu of a full PE-certified plan or other self-certified SPCC plan.
	Any individual aboveground oil container greater than 5,000 gallons	Tier II Qualified Facility: Prepare a self-certified plan in accordance with all applicable requirements of 40 CFR Part 112.7 and Subparts B or C of the rule, in lieu of a PE-certified plan.

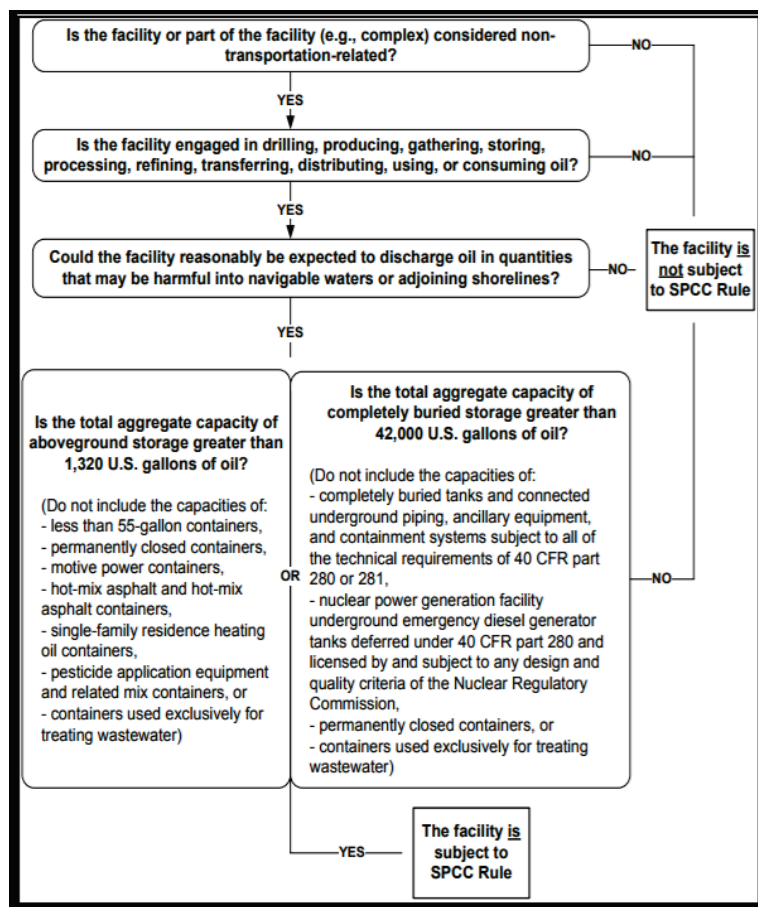
- (c) Refer to 40 CFR Part 112 and EPA's website, "Overview of the Spill Prevention Control and Countermeasure Regulation," for further information on applicability and requirements of the SPCC rule. Appendix A, Useful Web Links, provides the link to the EPA website.

9-3.3.2 Facility Response Plan

- (a) **Applicability.** Facilities that could reasonably be expected to cause "substantial harm" to the environment by discharging oil into or on navigable waters are required to prepare and submit an FRP. Facilities that could cause "significant and substantial harm" are required to have their plan approved by an EPA RA. Section 9-2, Terms and Definitions provides definitions for "substantial harm" and "significant and substantial harm." Facilities may be identified as posing substantial harm either through a self-identification process or by the determination of an RA. For more information on self-selection, see 40 CFR Part 112.20.
- (b) **Approvals.** Facilities that pose significant and substantial harm must have their plans reviewed and approved by the EPA. Once the certification form and FRP are submitted to the region, the RA reviews them and determines whether the facility should be classified as a significant and substantial harm facility. If the RA determines that the facility could cause significant and substantial harm, then the FRP requires approval by the RA.
- (c) Refer to 40 CFR Part 112.20 and 40 CFR Part 112.21 for FRP requirements, as well as the EPA "Facility Response Plan Overview" website (see Appendix A, Useful Web Links, for link) for further information on applicability and requirements.

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Figure 9-1. EPA's Spill Prevention, Control, and Countermeasure Rule Applicability Flowchart



9-3.3.3 Shipboard Oil Pollution Emergency Plan. Certain vessels are required to develop, maintain, and implement a SOPEP. The plan shall be prepared and maintained in accordance with Regulation 37 of Annex I of MARPOL 73/78. States have no authority over SOPEPs.

- (a) **Applicability.** Every oil tanker with gross tonnage of 150 and above and every ship other than an oil tanker with gross tonnage of 400 and above shall prepare and carry on board a SOPEP.
- (b) **Contents.** The plan shall be written in accordance with international maritime organization regulations. The SOPEP contains:
 - (i) An action plan with instructions for the oil pollution prevention team, consisting of a list of duties the crewmembers have to fulfill in case of an oil spill
 - (ii) General information about the ship
 - (iii) Procedures to contain the discharge of the oil into the sea in accordance with MARPOL regulations
 - (iv) Drawings of fuel/oil lines
 - (v) Location of SOPEP boxes.

9-3.4 Integrated Contingency Plan. A facility subject to a number of federal regulations for emergency response planning may opt to develop an ICP per the NRT's ICP Guidance. The guidance was intended for facilities that wanted to integrate response plan requirements found in various EPA, DOT, USCG, and Occupational Safety and Health Administration (OSHA) regulations. ICPs also may be used in locations that have facilities that share response resources. Consultation with regulators regarding acceptance of such an arrangement shall be conducted prior to combining plans into one. An ICP is not a suitable solution for all cases and does not address state emergency planning requirements. The added complexity and potential cost of maintenance should be considered when determining appropriateness of this option. The ICP is not an additional plan. An example of when an ICP should be implemented is after a spill of national significance, which requires extraordinary coordination among federal, state, and local resources to contain and clean up the discharge.

9-3.5 Oil and Hazardous Substance Spills. Requirements are found in 40 CFR Part 110, Discharge of Oil, also known as the "sheen rule" and 40 CFR Part 112, Oil Pollution Prevention. The Discharge of Oil regulation provides the framework for determining whether an oil discharge to inland and coastal waters or adjoining shorelines should be reported to the NRC. The Oil Pollution Prevention regulation, part of which is commonly referred to as the "SPCC rule," identifies certain types of discharges from regulated facilities that also need to be reported to EPA. Spills of HSS are regulated under EPCRA (see Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act [EPCRA]).

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Any person in charge of vessels or facilities that discharge oil in a quantity that must be reported under an applicable regulation shall follow the reporting requirements of the applicable regulation. Facilities and vessels shall notify their respective OU headquarters of any RQ release within 24 hours of the release. The OU shall notify the OSEEP environmental compliance program manager immediately upon notification of the release.

State and local jurisdictions may impose reporting requirements that differ from federal requirements. Facilities and vessels must be cognizant of the reporting thresholds for the state and local area. This may be particularly true for oil spills that do not reach or threaten to reach navigable waterways.

9-3.5.1 Discharge of Oil Regulation

- (a) Under this regulation, reporting oil discharges may not necessarily depend on the specific amount of oil discharged. In particular, the regulation requires the person in charge of a facility or vessel responsible for discharging oil that may be “harmful to the public health or welfare” to report the spill. Spills to navigable waters or adjoining shorelines determined as discharges of oil in quantities that may be harmful to public health or the environment include those that:
 - (i) Cause a sheen or discoloration on the surface of a body of water; if the source is unknown, reports of oil sheens should not speculate as to cause or source and should clearly indicate that a responsible party cannot be identified from information then currently available
 - (ii) Violate applicable water quality standards
 - (iii) Cause a sludge or emulsion to be deposited beneath the surface of the water or on adjoining shorelines.
- (b) A facility or vessel should report discharges to the NRC at 800-424-8802 or 202-426-2675. If reporting directly to NRC is not practicable, reports also can be made to the EPA regional office or the USCG Marine Safety Office in the area where the incident occurred.
- (c) Any person in charge of a vessel or an onshore or offshore facility must notify NRC immediately after he or she has knowledge of the discharge.

9-3.5.2 Spill Prevention Control and Countermeasure Rule

- (a) Any facility subject to the SPCC rule shall comply with the reporting requirements found in 40 CFR Part 112.4.
- (b) Reportable spills are those of:
 - (i) More than 1,000 U.S. gallons of oil in a single discharge to navigable waters or adjoining shorelines
 - (ii) More than 42 U.S. gallons of oil in each of two discharges to navigable waters or adjoining shorelines occurring within any 12-month period.

When determining the applicability of this SPCC reporting requirement, the gallon amounts specified (either 1,000 or 42) refer to the amount of oil that actually reaches navigable waters or adjoining shorelines, not the total amount of oil spilled.
- (c) Facilities that are regulated under the SPCC rule and have a reportable discharge per the SPCC rule must report the spill to both the NRC and the EPA RA.

9-3.5.3 Exemptions. Some exemptions to reporting requirements may apply based on specific circumstances, such as:

- (a) Discharges of oil from a properly functioning vessel engine are not deemed to be harmful, therefore they do not need to be reported under the Discharge of Oil regulation. However, oil accumulated in a vessel’s bilge is not exempt.
- (b) The EPA administrator may permit the discharge of oil on a case-by-case basis in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.
- (c) National Pollutant Discharge Elimination System (NPDES)-permitted releases, including some discharges in compliance with a permit under Section 402 of the CWA.

9-3.5.4 Spills of Hazardous or Extremely Hazardous Substances. Reporting requirements for HS and EHS are covered under Chapter 5, Compliance with the Emergency Planning and the Community Right-to-Know Act (EPCRA).

9-3.6 Oil and Hazardous Substance Spill Response. All spill response shall be coordinated with required regulatory authorities and conducted in compliance with all applicable federal, state, and local regulations, including safety and site-specific FRPs, as applicable. Membership in oil spill cooperatives potentially exposes the Department to the risk of significant liability. Accordingly, Department facilities considering membership in an oil spill cooperative shall forward a request to participate to their OU headquarters via their chain of command.

9-3.7 Oil Transfer Operations. The transfer of petroleum-based substances on Department property or to Department vessels shall be done in a manner that is compliant with federal regulations issued by the EPA, 40 CFR Part 112, and USCG, 33 CFR Parts 154 and 156.

9-3.8 Enforcement Actions, Fines, and Penalties. Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

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9-4 Responsibilities

9-4.1 The Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority, and follow guidance within this chapter, as applicable.

9-4.2 Operating Units Shall:

- (a) Ensure that OU facilities and vessels (owned or leased) comply with all applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance), including those in this chapter. These include complying with EPA's SPCC and FRP rules; USCG regulations; and MARPOL.
- (b) Designate a DRO and ensure that the DRO has a "back-up" staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable OHS spill prevention and response laws, regulations, policies, and guidance.
- (d) Maintain an ECARS that includes OU-wide information on operations at its facilities that can impact applicability and compliance requirements associated with OHS spill response and planning, such as tanks and vessels; document outside regulatory inspections and enforcement actions; and maintain an environmental assessment program to assess the status of OHS spill planning and response compliance in accordance with Chapter 4 of this Manual. The Department's ECARS is the CPTrack™ application.
- (e) Ensure programming, budgeting, and allocation of funds for all applicable federal, state, and local laws, regulations, and policies (including Department policy and guidance) associated with OHS spill planning and response, including requesting resources to meet those requirements (e.g., SPCC plan development, maintenance, and requirements for implementation such as tank testing, tank operator, inspections, spill response exercises) in budget submissions, and assisting their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on spill planning and response compliance requirements.

9-5 Training

All personnel who conduct or supervise staff associated with OHS spill planning and response shall be trained in accordance with applicable laws and regulations, including proper spill prevention and response measures. In addition, personnel who conduct operations that can impact the environment or compliance with OHS spill planning and response laws and regulations should be trained to ensure knowledge of applicable environmental compliance laws and regulations and to perform the job safely and knowledgeably.

9-5.1 Exercises and Training. Spill response training and spill response exercises must be done according to the contents of any facility-specific contingency and spill response plans and in accordance with all applicable federal, state, and local regulations. Spill response training should incorporate information necessary to ensure the safety of facility personnel.

9-5.2 Managers. Facility managers and vessel commanding officers will ensure that assigned personnel have the requisite training to perform response duties while maintaining safety as the number one priority.

9-5.3 Training Records. All training records must be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies and guidance), whichever is the most stringent.

9-6 Reporting Requirements

9-6.1 Reporting to the Office of the Secretary. The OU shall notify the Department environmental compliance program manager immediately upon notification of a RQ release at a facility or from a vessel.

9-6.2 Reporting to Federal, State, and Local Agencies. Department facilities shall report OHS releases as required by federal, state, and local regulations and as described in the facility's specific spill plan. Also refer to Section 9-3.5, Oil and Hazardous Substance Spills, for reporting requirements.

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MANAGEMENT MANUAL**CHAPTER 10:
USED OIL MANAGEMENT****10-1 Scope**

10-1.1 This chapter identifies federal environmental compliance requirements mandated by laws, regulations, and executive orders; and Department of Commerce (Department) requirements (e.g., policies and guidance), as well as responsibilities applicable to the storage, management, and disposal of used oil. Requirements apply to Department facilities within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

10-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 6, Air Quality; Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response; and Chapter 12, Hazardous and Universal Waste Management.

10-1.3 References

40 Code of Federal Regulations (CFR) Part 279, Standards for the Management of Used Oil.

10-2 Terms and Definitions

10-2.1 Off-Specification Used Oil. Used oil burned for energy recovery and any fuel produced from used oil that exceeds the following allowable limits (40 CFR 279):

- (a) Arsenic: 5 parts per million (ppm) maximum
- (b) Cadmium: 2 ppm maximum
- (c) Chromium: 10 ppm maximum
- (d) Lead: 100 ppm maximum
- (e) Flash point: 100 °F minimum
- (f) Total halogens: 4,000 ppm maximum.

10-2.2 Pollution Prevention. Pollution prevention is source reduction and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials or energy; protection of natural resources by conservation; reduction/elimination of use of hazardous materials (HMs); and recycling/reuse of materials.

10-2.3 Processing. In relation to used oil, “processing” means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil-derived products. Processing includes but is not limited to blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation, and re-refining (40 CFR 279.1).

10-2.4 Reclaimed. A material is reclaimed if it is processed to recover a usable product, or if it is regenerated.

10-2.5 Recycled. A material is recycled if it is used, reused, or reclaimed.

10-2.6 Used Oil. Used oil is any oil that has been refined from crude oil, or any synthetic oil that has been used and because of such use is contaminated by physical or chemical impurities (40 CFR 279.1).

10-2.7 Used Oil Generator. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation (40 CFR 279.1).

10-2.8 Used Oil Fuel Marketer. Any person who conducts either of the following activities (40 CFR 279.1):

- (a) Directs a shipment of off-specification used oil from their facility to a used oil burner
- (b) First claims that used oil that is to be burned for energy recovery meets used oil fuel specifications.

10-3 Requirements

The categorization “used oil” was created by the U.S. Environmental Protection Agency (EPA) to avoid having to automatically manage oil generated from the maintenance of oil-containing equipment as hazardous waste (HW) and is federally regulated under 40 CFR Part 279. On board vessels, it is considered a good management practice to manage used oil according to 40 CFR Part 279, but it is not required. Once offloaded, the shore facility shall manage the used oil generated by the vessel according to 40 CFR Part 279 and applicable state regulations. While on board vessels, all wastes generated and materials used are subject to U.S. Coast Guard (USCG) regulations (33 CFR and 46 CFR) and not EPA regulations.

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10-3.1 State and Local Requirements. In addition to federal laws and regulations, Operating Units (OUs) shall comply with all applicable state and local regulations. Note that state and local regulations and guidance may be more stringent than federal laws and regulations. Department facilities shall review the requirements for the state and region in which they are located.

10-3.2 Designated Responsible Official. Department facilities shall be responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an OU does not have authority over operations at a facility, then this paragraph does not apply.

An example of when a DRO would be required is a facility with maintenance operations that generate used oil as a waste stream. Chapter 3 provides further information on DROs and applicability.

10-3.3 Used Oil Recycling. It is Department policy to maximize the segregation, recycling, and reuse of used oils, and to comply with 40 CFR Part 279. If recycling of used oil is not feasible for economic reasons, the lube oil may be burned as a fuel or fuel supplement, provided appropriate chemical and economic analyses are made to determine suitability of burning as well as compliance with air pollution control requirements (Chapter 6) and HW regulations (Chapter 12). In addition, prior to burning, used oil must meet requirements in this chapter's reference. If used oil cannot be recycled because it is contaminated, it likely will have to be managed as HW (Chapter 12).

10-3.4 Used Oil Marketing. If sending used oil offsite to a used oil burner, a facility may be acting as a used oil marketer even if they are not selling the used oil. Department facilities sending used oil offsite to a used oil burner shall make the determination if they are operating as both a Used Oil Generator and a Used Oil Marketer. If the facility meets both definitions, they must comply with the regulatory requirements for both classifications as detailed in 40 CFR Part 279.

10-3.5 Used Oil Fuels Burned for Energy Recovery. If burning used oil for energy recovery or considering doing so, follow requirements under 40 CFR Part 279, as well as consulting with your state.

10-3.6 Used Oil Transportation. Used oil shall be transported by transporters who have an EPA identification number. An exception is if the used oil generator is transporting the used oil themselves (without a USEPA identification number) to an approved collection center provided they meet the requirements of 40 CFR Part 279.24.

10-3.7 Prohibited Uses of Used Oil. Used oil must not be used for environmentally unacceptable purposes such as weed control, insect control, road surfacing, dust control, or open pit burning.

10-3.8 Enforcement Actions, Fines, and Penalties. Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs) and penalty assessments to their OUs and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

10-4 Responsibilities

10-4.1 The Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority and follow guidance within this chapter, as applicable.

10-4.2 Operating Units Shall:

- (a) Ensure facilities comply with all applicable used oil requirements mandated by laws and regulations, executive orders, and Department requirements (e.g., policies and guidance) including those in this chapter (e.g., oil pollution and used oil fuels for energy recovery).
- (b) Designate a DRO and ensure that the DRO has a "back-up" staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases, etc.) for the appropriate coverage of environmental responsibilities to support compliance with applicable used oil management laws, regulations, policies, and guidance.

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- (d) Maintain an ECARS that includes OU-wide information on operations at its facilities that can impact applicability and compliance requirements associated with used oil management, such as recycling receipts; document outside regulatory inspections and enforcement actions; and maintain an environmental assessment program to assess the status of oil and hazardous substance (OHS) spill planning and response compliance in accordance with Chapter 3 of this Manual. The Department's ECARS is CTrack™.
- (e) Ensure programming, budgeting, and allocation of funds for all applicable federal, state, and local laws, regulations, and policies (including Department policy and guidance) associated with used oil management, including requesting resources to meet those requirements (e.g., collection, segregation, re-refining, and disposal of used lubricating oil and used contaminated fuels) in budget submissions and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on used oil management compliance requirements.
- (g) Encourage facilities to establish and maintain an effective program for the recycling and/or re-use of used oil.
- (h) Ensure that facilities include oil water/waste oil management information in the facility pollution prevention plans or equivalent state-required plan as needed.

10-5 Training

Personnel who conduct or supervise staff associated with used oil management shall be trained in accordance with applicable environmental compliance laws and regulations.

Personnel who conduct or supervise staff associated with operations that can impact the environment and/or compliance with oil management laws and regulations should be properly trained to perform their job duties, including proper spill prevention and response measures, safely and in compliance with all applicable laws, regulations, and policies.

Training records shall be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies and guidance), whichever is the most stringent.

10-6 Reporting Requirements. None.

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MANAGEMENT MANUAL**CHAPTER 11:
STORAGE TANKS****11-1 Scope**

11-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; Department of Commerce (Department) requirements (e.g., policies, guidance); as well as responsibilities applicable to underground storage tanks (USTs) and aboveground storage tanks (ASTs) at Department facilities within the United States and its territories. It includes those containing petroleum products or hazardous substances (HSs) but excludes those containing hazardous waste (HW). Refer to Chapter 12, Hazardous and Universal Waste Management. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

11-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 5, Compliance with the Emergency Planning and Community Right-to-Know Act (EPCRA); Chapter 7, Clean Water; Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response; Chapter 10, Used Oil Management; and Chapter 12, Hazardous and Universal Waste Management.

11-1.3 References

40 Code of Federal Regulations (CFR) Part 112, Oil Pollution Prevention.

40 CFR Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks.

11-2 Terms and Definitions

11-2.1 Aboveground Storage Tanks. The term “aboveground storage tanks” is used to describe oil and hazardous substance (OHS) bulk storage containers or storage tanks not clearly identified as USTs and normally placed on or above the surface of the ground which are also regulated under 40 CFR Part 112. For purposes of this chapter, containers in vaults, bunkered tanks, and partially buried tanks are considered aboveground storage tanks or aboveground storage containers.

11-2.2 Bulk Storage Container. A bulk storage container is any container used to store oil. These containers are used for purposes including but not limited to the storage of oil prior to use, while being used, or prior to further distribution in commerce. Oil-filled electrical, operating, and manufacturing equipment are not considered bulk storage containers.

11-2.3 Bunkered Tank. A bunkered tank is a container constructed or placed in the ground by cutting the earth and covering the container in a manner that breaks the surrounding natural grade, or a container that lies above grade and is covered with earth, sand, gravel, asphalt, or other material. A bunkered tank is considered an aboveground storage container for purposes of 40 CFR Part 112.

11-2.4 Excluded Underground Storage Tanks. USTs are not required to meet the requirements found in 40 CFR Part 280 and include:

- (a) Any UST system holding HW listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such HW and other regulated substances. Tanks holding HW are regulated under 40 CFR, Subpart I. Refer to Chapter 12, Hazardous and Universal Waste Management.
- (b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act (CWA).
- (c) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
- (d) Any UST system with a capacity of 110 gallons or less.
- (e) Any UST system that contains a de minimis concentration of a regulated substance.
- (f) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

Also see the definitions for “Underground Storage Tank” and “Partially Excluded USTs” provided below.

11-2.5 Extremely Hazardous Substance. Extremely hazardous substances (EHSs) are all substances listed in Appendices A and B of 40 CFR Part 355 (40 CFR 355.61, 40 CFR 370.66).

11-2.6 Hazardous Substance. As defined by the U.S. Environmental Protection Agency (EPA), a HS is any substance listed in 40 CFR Part 302.4. From an Occupational Health and Safety Administration (OSHA) perspective, any substance requiring a safety data sheet (SDS) could be considered hazardous.

11-2.7 Hazardous Waste. HW includes any solid waste identified as a characteristic or listed HW in 40 CFR Part 261.3.

11-2.8 Motive Power Container. A motive power container is any onboard bulk storage container used primarily to power the movement of a motor vehicle or ancillary onboard oil-filled operational equipment. An onboard bulk storage container which is used to store or transfer oil for further distribution is not a motive power container. The definition of motive power container does not include oil drilling or workover equipment, including rigs.

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11-2.9 Oil. Oil of any type or in any form, including, but not limited to fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

11-2.10 Oil-Filled Operational Equipment. Equipment that includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device. Oil-filled operational equipment is not considered a bulk storage container, and it does not include oil-filled manufacturing equipment (flow-through process). Examples of oil-filled operational equipment include, but are not limited to, hydraulic systems, lubricating systems (for example, those for pumps, compressors, and other rotating equipment, including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil solely to enable the operation of the device.

11-2.11 Operator. An operator is any person in control of or having responsibility for the daily operation of the UST system.

11-2.12 Partially Buried Tank. A partially buried tank is any storage container that is partially inserted or constructed in the ground but is not entirely below grade, and is not completely covered with earth, sand, gravel, asphalt, or other material. A partially buried tank is considered an aboveground storage container for purposes of 40 CFR Part 112.

11-2.13 Partially Excluded Underground Storage Tanks. For the purposes of 40 CFR Part 280, the following USTs are exempt from Subparts B, C, D, E, G, J, and K.

- (a) Wastewater treatment tank systems not covered in the definition of excluded USTs
- (b) Aboveground storage tanks associated with:
 - (i) Airport hydrant fuel distribution systems regulated under 40 CFR Part 280, Subpart K
 - (ii) UST systems with field-constructed tanks regulated under 40 CFR Part 280, Subpart K.
- (c) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*)
- (d) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR Part 50.

11-2.14 Petroleum Oil. Petroleum oil is petroleum in any form, including but not limited to crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.

11-2.15 Regulated Substance. A regulated substance is any HS or EHS regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPCRA respectively, excluding any substances regulated as HW under the Resource Conservation and Recovery Act (RCRA) Subtitle C, and petroleum substances including crude oil, motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. Some states exclude certain types of petroleum products and therefore facilities should refer to their respective state regulations.

11-2.16 Release. For a UST, a release is any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a UST into groundwater, surface water, or subsurface soils (40 CFR 280.12).

11-2.17 Underground Storage Tanks. As defined in 40 CFR Part 280, the term “underground storage tank” means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. The regulations exempt the following:

- (a) Farm or residential tanks with capacity of 1,100 gallons or less, used for storing motor fuel for non-commercial purposes
- (b) Tanks used for storing heating oil for consumptive use on the premises where stored
- (c) Septic tanks
- (d) Pipeline facility (including gathering lines) regulated under 49 U.S.C. § 601; or which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. § 601, and which is determined by the secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline
- (e) Surface impoundments, pits, ponds, or lagoons
- (f) Stormwater or wastewater collection systems
- (g) Flow-through process tanks
- (h) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations
- (i) Storage tanks situated in an underground area (e.g., basement, cellar, mine, drift, shaft, tunnel) if the storage tank is situated upon or above the surface of the floor.

The term “underground storage tank” shall not include any pipes connected to any tank described above in paragraphs 11-2.17. Also see the definitions for “Excluded Underground Storage Tanks” and “Partially Excluded Underground Storage Tanks.” The above UST definition is from the federal regulations. State laws and regulations occasionally define UST systems differently.

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11-3 Requirements

11-3.1 State and Local Requirements. Department facilities shall comply with applicable state and local storage tank laws and regulations. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations.

11-3.2 Designated Responsible Official. Department facilities shall be responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply.

Examples of when a facility would require a DRO are if:

- (a) The facility holds registration certificates for storage tanks in the OU's name.
- (b) The facility contracts for fuel deliveries under the OU's name.
- (c) The facility manages or accepts fuel deliveries under the OU's name and address.

Chapter 3 provides further information on DROs and applicability.

11-3.3 General Operation and Maintenance Requirements

- (a) Department facilities with storage tanks shall monitor transfer operations to ensure that spilling or overflowing does not occur and install and maintain overfill protection equipment to prevent releases.
- (b) Department facilities shall maintain and inspect corrosion protection measures, including coatings and cathodic protection systems, as needed. Cathodic protection systems must be tested according to applicable federal, state, and local laws and regulations.
- (c) Department facilities shall install storage tank systems and make repairs to existing storage tank systems according to applicable federal, state, and local requirements.
- (d) Department facilities shall conduct temporary or permanent closure of storage tanks in a manner ensuring protection of soil, surface water, and groundwater. In addition, such closures shall be conducted according to applicable federal, state, and local regulations.
- (e) Department facilities shall maintain written records demonstrating compliance with operational requirements.
- (f) Department facilities shall operate, monitor, and test release detection systems according to applicable federal, state, and local laws and regulations.
- (g) Department facilities shall determine whether a spill prevention control and countermeasure (SPCC) plan is required. If so, the facility shall ensure that a plan is in place that complies with EPA SPCC regulations (40 CFR Part 112). SPCC plan requirements are covered in greater detail in Chapter 9 of this Manual.

11-3.4 Aboveground Storage Tanks

- (a) **SPCC Plans.** As required by 40 CFR Part 112, Department facilities that meet the following criteria shall develop and implement an SPCC plan detailing requirements for the operation and management of their ASTs, where the aggregate aboveground storage capacity of the facility is more than 1,320 gallons. The aggregate aboveground storage capacity excludes the capacity of:
 - (i) Containers with less than a 55-gallon capacity
 - (ii) A container that is "permanently closed"
 - (iii) A "motive power container"
 - (iv) Hot-mix asphalt or any hot-mix asphalt container
 - (v) A container for heating oil used solely at a single-family residence
 - (vi) Pesticide application equipment and related mix containers.
- (b) **Release Reporting, Investigation, and Confirmation.** Department facilities shall report releases of petroleum, EHS, or HS from ASTs as described in Chapter 9. Facilities shall immediately investigate suspected releases from ASTs by reviewing storage records, conducting integrity testing, or performing a subsurface investigation. If regulated substances are found in adjacent properties not known to have been previously contaminated, then facilities shall conduct a release investigation of suspect ASTs in accordance with EPA or respective state regulations.
- (c) **Out-of-Service ASTs and Closure.** Department facilities shall conduct permanent closure of ASTs per applicable state or local regulations.
- (d) ASTs not regulated by 40 CFR Part 112 must be installed, operated, managed, and documented in accordance with applicable state environmental regulations.

11-3.5 Underground Storage Tanks

- (a) **Corrosion Protection.** Department facilities shall ensure that all UST systems have corrosion protection. These systems shall meet applicable federal and state regulations and be installed per nationally recognized standards. Underground piping that conveys regulated substances must be properly designed and constructed to ensure protection from corrosion.
- (b) **Spill/Overfill Prevention Equipment.** Department facilities shall ensure that all UST systems have spill/overfill prevention equipment.

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- (c) **Release Detection, Testing, and Inspections.** UST systems must comply with requirements of 40 CFR Part 280. Requirements include automatic leak detection on pressurized piping and some types of suction piping; tightness testing and monitoring; and records retention. These systems must meet applicable federal and state regulations and be installed per nationally recognized standards. Requirements must be dependent on the size, age, and contents of the tank.
- (d) **Release Reporting, Investigation and Confirmation**
 - (i) Department facilities shall report releases and suspected releases from USTs to the EPA or state agency within 24 hours of discovery. The facility shall report HS releases into surface waters from USTs as described in Chapter 9.
 - (ii) Department facilities shall immediately investigate suspected releases from USTs by conducting integrity testing or performing a subsurface investigation. If regulated substances are found in adjacent properties, then the EPA or state agency can require a facility to conduct a release investigation of suspect storage tanks.
- (e) **Release Response and Corrective Action for Underground Storage Tanks**
 - (i) If a release from a UST is detected, then the facility shall stop any further releases from the UST and mitigate fire, explosion, and vapor hazards by preventing any further release through the emptying of the UST system. The facility shall take steps to prevent further migration of any aboveground or exposed below-ground releases. If the source of an underground release is unknown, then the facility shall conduct subsurface sampling to determine the source, investigate the possible presence of free product, and recover free product as soon as practicable. UST releases into surface waters require facilities to take the response actions as described in Chapter 9 or in Chapter 12, as appropriate, in addition to the requirements described in this section.
 - (ii) After a release is initially reported, actions shall be taken according to federal, state, and local regulations. These may include an initial abatement report, initial site characterization report, free product recovery report, and contamination cleanup.
- (f) **Out-of-Service Underground Storage Tanks Systems and Closure**
 - (i) Department facilities shall maintain corrosion protection systems during temporary closure of a UST system even if the system is empty, and it shall continue to operate release detection systems unless the system is emptied.
 - (ii) All UST system closure activities shall be done according to applicable federal and state regulations.
 - (iii) Department facilities shall retain permanent closure, site assessment, site characterization, and corrective action records for at least 50 years to protect the Department from potential liability.

11-3.6 Enforcement Actions, Fines, and Penalties. Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document within a typical environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

11-4 Responsibilities

11-4.1 Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority and follow guidance within this chapter, as applicable.

11-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with applicable UST and AST requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance) including those in this chapter (e.g., 40 CFR Part 112, Oil Pollution Prevention; 40 CFR Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks).
- (b) Designate a DRO and ensure that the DRO has a "backup" staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable storage tank laws, regulations, policies, and guidance.
- (d) Maintain an ECARS in accordance with Chapter 3 of this manual that includes OU-wide information on storage tank operations at its facilities (e.g., underground and aboveground storage tanks), documents outside regulatory inspections and enforcement actions within an ECARS, and maintains an environmental assessment program to assess the status of storage tank compliance. The Department's ECARS is the CPTrack™ application.

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- (e) Ensure programming, budgeting, and allocation of funds associated with environmental compliance for storage, including requesting resources to meet those requirements (e.g., assignment and training of operational and management personnel; storage tank corrective actions; replacement, repair, or closure of storage tanks; leak detection; operation; routine maintenance and testing of equipment and facilities) in budget submissions and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on storage tank compliance requirements.

11-5 Training

Personnel who conduct operations or supervise staff associated with storage tank operations and management shall be trained in accordance with applicable environmental compliance laws and regulations. Additionally, personnel who conduct operations that can impact the environment or compliance with storage tank laws and regulations should be trained to perform their job duties safely and in compliance with applicable laws, regulations, and policies. Training requirements include:

- (a) Operators of ASTs shall be trained in accordance with 40 CFR Part 112
- (b) Operators of USTs shall meet the training requirements in 40 CFR Part 280 as appropriate for a Class A, Class B, or Class C operator.

All training records shall be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

11-6 Reporting Requirements

11-6.1 Reporting to the Office of the Secretary. None.

11-6.2 Reporting to Federal, State, and Local Regulatory Agencies. Facilities shall report the installation, operation, closure, or leak from any storage tank in accordance with applicable federal, state, and local regulations.

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**CHAPTER 12:
HAZARDOUS AND UNIVERSAL WASTE MANAGEMENT**

12-1 Scope

12-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; and Department of Commerce (Department) requirements (e.g., policies, guidance); as well as responsibilities applicable to the management of hazardous waste (HW) and universal waste at Department facilities within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

12-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 11, Storage Tanks; and Chapter 14, Solid Waste Management, Resource Recovery, and Recycling.

12-1.3 References

29 Code of Federal Regulations (CFR) Part 1910.1200, OSHA Occupational Safety and Health Standards, Subpart Z, Toxic and Hazardous Substances, Hazard Communications.

29 CFR Part 1910.120, Hazardous Waste Operations and Emergency Response.

29 CFR Part 1910.132, General Requirements, Personal Protective Equipment - General requirements.

40 CFR Parts 260–279, U.S. Environmental Protection Agency (EPA) Hazardous Waste Management Regulations.

49 CFR Part 172, Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans.

Department Administrative Order (DAO) 209-04, Occupational Safety and Health Program.

Department of Commerce *Commerce Acquisition Manual (CAM)*, Chapter 1323.70.

Department of Commerce Personal Property Management Manual.

General Services Administration (GSA) Bulletin Federal Management Regulation (FMR) B-34, “Disposal of Federal Electronic Assets.”

Resource Conservation and Recovery Act (RCRA), Subtitle C, 42 U.S.C. § 6901 *et seq.*

12-2 Terms and Definitions

12-2.1 Disposal Facility. Disposal facility means a facility or part of a facility at which HW is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed (40 CFR 260.10).

12-2.2 Electronic Waste. Electronic waste (e-waste) is the popular name for electronic products (e.g., mobile phones, computers/laptops, televisions, components) that are nearing or have reached the end of their service life. These products typically consist of commercial off-the-shelf electronic items or consumer-grade electronics that can still be reused, donated, refurbished, or recycled.

12-2.3 Facility. Facility means (40 CFR 260.10):

- (1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of HW, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
- (2) For the purpose of implementing corrective action under 40 CFR Part 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).
- (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR Part 264.101, but is subject to corrective action requirements if the site is located within such a facility (40 CFR 260.10).

12-2.4 Hazardous Material. A hazardous material (HM) is any item or agent (e.g., biological, chemical, radiological, physical) with the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors. The EPA, the U.S. Occupational Safety and Health Administration (OSHA), the U.S. Department of Transportation (DOT), and the U.S. Nuclear Regulatory Commission, all of which regulate HMs, have their own definitions. OSHA’s definition includes any substance or chemical that is a “health hazard” or “physical hazard,” including chemicals which are carcinogens; toxic agents; irritants; corrosives; sensitizers; agents which act on the hematopoietic system; agents which damage the lungs, skin, eyes, or mucous membranes; chemicals which are combustible, explosive, flammable, oxidizers, pyrophoric, unstable-reactive, or water-reactive; and chemicals which in the course of normal handling, use, or storage may produce or release dusts, gases, fumes, vapors, mists, or smoke which may have any of the previously mentioned characteristics. The full OSHA definition is available at 29 CFR Part 1910.1200. The EPA incorporates the OSHA definition and adds any item or chemical which can cause harm to people, plants, or animals when released by spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

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12-2.5 Hazardous Waste. HW is a solid waste identified as a characteristic or listed HW in 40 CFR Part 261.3 which—because of its quantity or concentration or its physical or chemical characteristics—may:

- (a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness
- (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

12-2.6 Hazardous Waste Generator. A HW generator is any person, by site, whose act or process produces HW or whose act first causes a HW to become subject to regulation.

12-2.7 Solid Waste. Any garbage or refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material (40 CFR 257.2). This waste may result from industrial, commercial, mining, and agricultural operations, and from community activities. It does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources (such as those subject to permits under 40 CFR Part 142), or source, special nuclear, or byproduct material (as defined by 42 U.S.C. § 2011 *et seq.*).

12-2.8 Storage. Storage means the holding of HW for a temporary period, at the end of which the HW is treated, disposed of, or stored elsewhere (40 CFR 260.10).

12-2.9 Treatment. Treatment means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any HW so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume (40 CFR 260.10).

12-2.10 Universal Waste. Any of the following types of HW that are managed under the universal waste requirements of 40 CFR Part 273: (1) batteries as described in 40 CFR Part 273.2; (2) pesticides as described in 40 CFR Part 273.3; (3) mercury-containing equipment as described in 40 CFR Part 273.4; (4) lamps as described in 40 CFR Part 273.5 and (6) aerosol cans as described in 40 CFR Part 273.6. States may designate additional wastes as universal waste, such as antifreeze and e-waste.

12-3 Requirements

Wastes that would be categorized as HW ashore are not regulated as HW under RCRA, Subtitle C, while on vessels. While aboard vessels, all waste generated and materials used are subject to U.S. Coast Guard (USCG) (46 CFR) regulations and not EPA regulations. Once offloaded and received by the facility ashore, the onshore facility is considered the HW generator and has the responsibility of characterizing the vessel's waste for compliant disposal. This does not relieve the vessel of its responsibility to inform the receiving onshore facility of the waste's constituents and source. Appendix D, Hazardous Waste Generator Regulatory Requirements, provides a summary table with requirements for each class of HW generator.

12-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local hazardous and universal waste laws and regulations. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations. Facilities shall review the requirements for the state and region in which they are located. This includes facilities that generate, transport, treat, store, or dispose of HW. Nearly all states are authorized by the EPA to administer and enforce the RCRA program. A state with final authorization administers its HW program in lieu of the EPA administering the federal program in that state. If a state has a program that is not approved by the EPA, then the Department's activities shall comply with both the state and federal program requirements. Department facilities also shall comply with applicable internal Departmental policies and instructions associated with these requirements.

12-3.2 Designated Responsible Official. Department facilities shall be responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply.

Examples of when a DRO would be required for a facility are if it:

- Has an EPA identification (ID) number in the OU's name
- Ships HW under the OU's EPA ID number
- Holds a HW operating permit (e.g., RCRA) under the OU's/facility's name.

Chapter 3 provides further information on DROs and applicability.

12-3.3 Hazardous Waste Minimization. The Department's goal is to minimize HW disposal to the maximum possible extent through reducing or eliminating the use of HMs where possible and by implementing best management practices to minimize the generation of HW.

- (a) 40 CFR Part 262.27, EPA Hazardous Waste Management Regulations, requires generators who initiate a shipment of HW to certify that they practice waste minimization measures.
- (b) Minimizing HW generation protects human health and the environment, and reduces the regulatory burden and cost associated with HW management. The following hierarchy should be applied to HW management and can minimize the generation of HW.

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- (i) Reduce or eliminate the use of HMs at the source by changing the process, equipment, requirement, or materials used.
- (ii) Substitute a less-hazardous material into the process.
- (iii) Recycle or recover and reuse HMs and HW (HW recycling may require a permit unless exemptions apply).
- (iv) Reduce or eliminate excess and expired shelf-life HMs.
- (v) Treat HW to reduce the volume or to convert it to a less toxic or nonhazardous state (may require a permit).
- (vi) Destroy HW (may require a permit).
- (vii) Disposal.

12-3.4 Hazardous Waste Generator. In general, the amount of HW generated per calendar month determines the HW generator's status with respect to the applicable regulatory requirements. Department facilities are required to determine their generator status per 40 CFR Part 262.13 and shall follow all regulatory requirements applicable to their generator status and minimize waste generation to retain their status as non-permitted facilities, where applicable and feasible. The requirements stated in this section are based on federal regulations; applicable state and local requirements may differ. Below are categories of HW generators. Appendix D, Hazardous Waste Generator Regulatory Requirements, provides a summary table with requirements for each class of HW generator.

- (a) **Large Quantity Generator.** A large quantity generator (LQG) generates 1,000 kilograms (kg) or more of HW or 1 kg of acute HW per calendar month. LQGs may accumulate HW on-site for 90 days or less, provided that HW management, contingency planning, and employee training requirements are met. An LQG that accumulates HW for more than 90 days becomes a treatment, storage, and disposal facility (TSDF) and becomes subject to RCRA permit requirements unless an exception has been approved by the appropriate federal or state regulatory agency. LQGs shall obtain an EPA generator ID number and send their HW—accompanied by a manifest—to a permitted TSDF, or obtain a permit allowing them to conduct on-site treatment, storage, or disposal of HW.
- (b) **Small Quantity Generator.** A small quantity generator (SQG) generates 100 to 1,000 kg of HW and less than 1 kg of acute HW per calendar month. An SQG may accumulate HW on site for 180 days or less, provided that the quantity of waste accumulated on-site never exceeds 6,000 kg. If an SQG exceeds calendar monthly generation limits or the total on-site accumulation limit, then it will become subject to either LQG regulations or TSDF requirements, as appropriate. SQGs shall obtain an EPA generator ID number and send their HW—accompanied by a manifest—to a permitted TSDF, or obtain a permit allowing them to conduct on-site treatment, storage, or disposal of HW.
- (c) **Very Small Quantity Generators.** A very small quantity generator (VSQG) generates less than 100 kg of HW per calendar month, less than 1 kg of acute HW per calendar month, and less than or equal to 100 kg of residues from a cleanup of any acute HWs generated in a calendar month. There is no accumulation time limit for VSQGs; however, if a VSQG exceeds the monthly calendar generation limit or accumulates more than 1,000 kg of HW on-site prior to disposal, then it shall comply with more stringent requirements for SQGs or LQGs, as appropriate. VSQGs are exempt from requirements to obtain EPA generator ID numbers and from manifesting requirements, and they are free from many other RCRA requirements (40 CFR 262.14). If required by state regulations or the TSDF accepting their waste, however, then VSQGs may need to obtain an EPA generator ID number and utilize HW manifests. At a minimum, VSQGs shall:
 - (i) Ensure that staff are aware and properly trained to handle HMs and HW.
 - (ii) Make HW determinations, maintain monthly generation log, and total quantity on-site (not to exceed 1,000 kg at any time) to demonstrate VSQG status. If exceeded, appropriate SQG or LQG requirements apply.
 - (iii) Label HW containers per 49 CFR Part 172 and keep them closed when not in use.
 - (iv) Ensure that HW containers are in good condition, free of leaks, and made of materials that will not react with the HW. Do not mix incompatible wastes or place HW in an unwashed container that previously held an incompatible waste or material.
 - (v) Keep HW containers holding waste that is incompatible with other nearby wastes and materials separated by means of a dike, berm, wall, locker, or other means.
 - (vi) Prepare containers for transportation by packaging, labeling, and marking them accordingly per 40 CFR Part 262.32(b).
 - (vii) Arrange for proper disposal at a facility permitted to manage HW as soon as practicable.

12-3.5 Waste Stream Identification. It is the generator's responsibility to determine whether waste generated is a HW subject to regulation under RCRA, applicable state and local laws, or a combination of federal and applicable state and local requirements. Department facilities that generate solid waste are obligated under 40 CFR Part 262.11 to determine whether their wastes are hazardous.

- (a) Generators shall identify and characterize all waste streams to determine whether the waste streams are HW. Any waste material that meets one or more of the hazardous characteristics as described in 40 CFR Part 261.20, Subpart C—Ignitability (40 CFR 261.21), Corrosivity (40 CFR 261.22), Reactivity (40 CFR 261.23), or Toxicity (40 CFR 261.24)—is considered a HW. Mixtures of a solid waste and a listed HW also are considered hazardous and are regulated under RCRA, unless the HW was listed solely for the characteristic of ignitability, reactivity, or corrosivity. Such mixtures are excluded from regulation as a HW once they no longer exhibit one of the characteristics. Knowingly diluting a HW for the purposes of avoiding HW regulations is prohibited.
- (b) Generators shall determine whether the HW is “prohibited” from land disposal under the land disposal restriction (LDR) program (40 CFR 268). A prohibited waste is that which does not meet its applicable LDR treatment standards at its point of generation and cannot be land disposed until it meets those standards. If a Department facility has a prohibited waste, it shall either treat it on-site to meet the standards or send it to an off-site treater or recycler along with the required paperwork.
- (c) If a generator determines that a waste stream is not a HW—either through generator knowledge or laboratory analysis—then records of such determinations shall be maintained and periodically reviewed to ensure there has not been a change in the waste stream.
- (d) If a generator excludes/exempts a HW stream from counting toward the total quantity generated in a calendar month due to recycling of the waste stream, then records must be maintained of the waste stream's final disposition and be periodically reviewed to ensure that the waste stream continues to be recycled.

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12-3.6 Accumulation and Storage. Department facilities shall manage their HW in accordance with all applicable requirements in 40 CFR Parts 262–268.

- (a) **Satellite Accumulation.** Under RCRA, SQGs and LQGs may accumulate up to 55 gallons of HW (or 1 quart of acute HW) at or near the point of generation and under the control of the operator of the process generating the waste. This is the cumulative amount of waste from a single waste stream that may be accumulated regardless of the number of waste streams involved.
- (i) Waste at a satellite accumulation area (SAA) must be dated on the day the individual container is considered full and be removed within 3 calendar days to a central accumulation area (i.e., 180-day or 90-day storage area) or to a TSDF.
 - (ii) The SAAs must strictly adhere to accumulation limits and ensure that all containers are in good condition and are compatible with the waste generated.
 - (iii) Containers at SAAs must be clearly labeled with “Hazardous Waste” and include descriptive wording identifying the contents with one of the following hazard warnings:
 - (A) The applicable HW characteristics (i.e., ignitable, corrosive, reactive, toxic).
 - (B) Hazard communication consistent with the DOT requirements at 49 CFR Part 172, Subpart E (labeling) or Subpart F (placarding).
 - (C) A hazard statement or pictogram consistent with the OSHA Hazard Communication Standard at 29 CFR Part 1910.120, a chemical hazard label consistent with the National Fire Protection Association (NFPA) 704, Standard System for the Identification of the Hazards of Materials for Emergency Response.
 - (iv) Containers must remain closed except when adding or removing material.

SAAs at SQGs also must meet the preparedness and prevention regulations found in 40 CFR Part 262.16(b)(8). SAAs at SQGs must meet the emergency procedure requirements found in 40 CFR Part 262.16(b)(9). SAAs at LQGs must meet the more extensive preparedness and prevention regulations found in 40 CFR Parts 262.250–262.265.

- (b) **Central Accumulation Areas.** LQGs may store HW at central accumulation areas that meet the standards in reference 40 CFR Parts 262.17 and 262.250–262.256 for up to 90 days. LQGs shall fully comply with management of containers, tanks, drip pads, or containment buildings. SQG may store HW at central accumulation areas that meet the standards in 40 CFR Part 262.16 for up to 180 days. VSQGs are not subject to time limitations with respect to HW storage, but they cannot accumulate more than 1,000 kg at any one time prior to disposal.
- (c) Department facilities with a RCRA permit shall store HW per the provisions of the permit, typically for up to one year.

12-3.7 Permits. RCRA permits contain detailed, prescriptive requirements for operation of a TSDF including inspection, monitoring, corrective action, and closure and post-closure care of individual HW management units such as tanks, surface impoundments, container storage areas, and landfills. The need for a RCRA permit usually is dictated by the nature of the processes or wastes being generated and their subsequent handling. Facilities shall abide by all conditions of the applicable RCRA permit.

12-3.8 Manifests. The Uniform Hazardous Waste Manifest (EPA Form 8700-22) must be completed and accompany all HW transported over any public road. Furthermore, the generator or designated representative shall sign the manifest certifying that the shipment has been prepared according to applicable EPA and DOT regulations. Some states may have additional requirements regarding the manifest and may require copies to be submitted to the state or require state-specific waste codes in addition to federal HW codes. Sufficient copies of the manifest must be provided to allow the generator, each transporter, and the TSDF operator designated to receive the HW to keep a copy for their records and to allow copies to be returned to the generator for record keeping and distribution to the appropriate state(s). Each designated signatory shall be qualified by appropriate DOT training to make such certifications. A generator who generates a HW subject to federal LDRs shall notify the receiving TSDF the waste is a restricted waste or certify that the waste meets the requirements for land disposal. Electronic manifests also may be an option. 40 CFR Part 262, Subpart B provides manifesting requirements, including those for originating, signing, and tracking electronic manifests.

12-3.9 Transportation.

- (a) **Hazardous Waste.** Transporters must have an EPA ID number to pick up and haul HW to a TSDF. A transporter of HW is also subject to the hazardous material transportation requirements of DOT, including labeling, marking, placarding, use of proper containers, spill reporting, and HM employee training. Transport of HW over a public highway requires the vehicle operator to have a commercial driver’s license with a HM endorsement. Some states may require additional training beyond DOT requirements.
- (b) **Universal Waste.** Universal wastes can be self-transported by the handler of the waste or can be transported by a third party. The person transporting the waste must comply with the transportation standards in 40 CFR Part 273, Subpart D of the universal waste regulations. These standards regulate disposal or treatment of universal wastes and cover management standards, complying with DOT regulations, storage time limits, responding to releases, and exports.

12-3.10 Reporting and Record Keeping. Multiple record keeping requirements apply to HW generators and TSDFs. Record keeping requirements are determined based on types of HW generated, HW generator status, and permits. OUs and their facilities shall comply with all applicable reporting and record keeping requirements. The following is a list of the most common reporting and record keeping requirements.

- (a) **Biennial Reports and Re-notifications.** LQGs and TSDFs shall submit a biennial report (EPA Form 8700-13 A/B) and re-notification to the appropriate EPA regional office or designated state agency by March 1 of each even-numbered year (some states require an annual report rather than the biennial report) and shall maintain a copy of each biennial report for a period of at least three years from the due date of the report (40 CFR 262.18 and 262.41).
- (b) **Manifests.** Except as otherwise required by state law, copies of manifests signed by the HW generator, the transporter, and the TSDF owner or operator must be maintained for three years from the date the HW was accepted by the original transporter (40 CFR 262.40(a)).

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If a TSDF accepts HW from an off-site source without an accompanying manifest, the TSDF operator must submit a report to the EPA regional administrator or appropriate state office within 15 days after receiving the waste. Manifest record keeping requirements are in 40 CFR Parts 262.20–262.

- (c) **Land Disposal Restriction Notifications and Certifications.** Generators shall comply with all requirements of LDRs (40 CFR 268.7).
- (i) Generators of waste shall determine whether waste meets the LDR treatment standards, either by testing or using knowledge of the waste. With the initial shipment of waste, the generator shall transmit a one-time written notice to each TSDF receiving the waste and place a copy in the generator's file. The notice should include the applicable notification and certifications per the LDR section of 40 CFR Part 268. No further notification is necessary unless the waste or TSDF changes, in which case a new notification must be sent, and a copy placed in the generator's file.
 - (ii) Generators shall retain an on-site copy of all notices, certifications, waste analysis data, and other documentation related to the LDRs for at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal. The three-year record retention period is automatically extended during the course of any unresolved enforcement action.
- (d) **Waste Determinations.** Whether waste determinations are based on knowledge of the waste or on analytical testing, generators shall retain all supporting data used to make the determination in the on-site files (40 CFR 262.11).
- (e) **Waste Analysis Plan.** Generators or TSDFs that treat HW on-site in tanks, containers, or containment buildings to meet LDR standards in 40 CFR Part 268 shall prepare and follow a waste analysis plan (40 CFR 268.7(a)(5)) to test waste and comply with other applicable LDR treatment standards found at 40 CFR Parts 268.40–268.49.
- (f) **Spill Reporting.** In the event of a fire, explosion, or other release which could threaten human health outside the facility or when a spill has reached surface water, the emergency coordinator must immediately notify the National Response Center (NRC) using its 24-hour toll-free number: 800-424-8802. LQGs are required to follow the emergency procedures given in 40 CFR Part 262.265. Additional notification may be required by the facility spill response plan, if applicable. Transporters shall report any discharge of HW in transit, as specified in 40 CFR Part 263.30.
- (g) **Other Records.** HW generators and TSDFs shall keep a written record of inspections, such as that of central accumulation areas (i.e., 180-day and 90-day storage areas) to demonstrate compliance with the requirements of 40 CFR Parts 260–279 for three years. Additionally, copies of correspondence with regulators, applications for permits and renewals, reports of releases, and documentation of response actions all are necessary records to retain should questions arise.

12-3.11 Air Emissions. LQGs shall control hazardous air emissions from tanks and containers, per 40 CFR Part 265, Subparts AA, BB, and CC.

12-3.12 Emergency Procedures. To prepare for an emergency, SQGs and LQGs are required to develop procedures.

- (a) SQGs are required to post the following information next to telephones or in areas directly involved in the generation and accumulation of HW (40 CFR 262.16(b)(9)):
 - (i) The name and emergency telephone number of the emergency coordinator.
 - (ii) Location of fire extinguishers, spill control material, and—if present—fire alarm.
 - (iii) The telephone number of the fire department, unless the facility has an alarm that contacts the fire department directly.
- (b) SQGs and LQGs shall have documented arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This includes documentation in the operating record that either confirms that such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made (40 CFR 262.16(b)(8) and 262.256).
- (c) LQGs shall develop and implement a contingency plan in accordance with 40 CFR Parts 262.263–262.264.

12-3.13 Electronic Waste

- (a) E-waste is subject to the full range of RCRA waste regulations (materials destined for reuse are not considered “waste”). This includes any exemptions, exclusions, or universal waste provisions that may apply. Certain components of some electronic products contain materials that render them hazardous, depending on their condition and density. Department facilities shall manage such e-waste as HW and shall assume responsibility as the HW generator for any e-waste that cannot be exempted or excluded from the full range of applicable HW regulations. Some authorized states manage and enforce RCRA compliance related to electronics under their own state program.
- (b) Department policy is to practice environmentally sound end-of-life management of electronics, practicing reuse or recycling where feasible. The Department's *Personal Property Management Manual* provides the Department's requirements for turn-in and disposal of electronics. Additionally, OUs shall follow GSA Bulletin FMR B-34, “Disposal of Federal Electronic Assets,” which provides requirements for the disposition of excess and surplus electronics or when returning leased electronics. The goal is to maximize reuse, donation, transfer, sale, and recycling of e-waste rather than disposal as HW. Chapter 14, Solid Waste Management, Resource Recovery, and Recycling provides additional information.

12-3.14 Universal Waste. The purpose of universal waste regulations is to promote recycling and resource recovery by easing the regulatory burden associated with common HW streams. Universal wastes have less-stringent storage, accumulation, labeling, and tracking requirements than other types of HW. Federal universal waste regulations apply to batteries, pesticides, mercury-containing equipment, mercury lamps, and aerosol cans. There are also four types of regulated participants in the universal waste system—small quantity handlers of universal waste, large quantity handlers of universal waste, universal waste transporters, and universal waste destination facilities. States may adopt the federal universal waste regulations or modify them to include other wastes through state legislation (40 CFR Part 273).

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12-3.15 Treatment, Storage, and Disposal Facilities. TSDFs need a permit to continue existing operations or to initiate new operations. The EPA initially developed a two-part permitting procedure. The application conferred interim status to an existing TSDF, allowing the TSDF to operate until receipt of a decision on the Part B final permit application. TSDFs may be expanded or significantly changed and still remain in an interim status only with the approval of EPA regional offices or the state HW office. Interim status cannot be conferred on a new TSDF if operation commenced after November 19, 1980. In such instances, a final permit must be applied for and obtained before operation begins. Before the award of a Part B permit or modification of an existing Part B permit, the operation must be approved by the cognizant state or the EPA. Any existing facility that becomes subject to RCRA—due to new regulations or amendments to the existing regulations—may be granted interim status after timely submission of a Part A application and may have a 12-month grace period to submit its Part B permit application.

12-3.16 Closure. RCRA provides specified performance standards and disposal and decontamination requirements for equipment, structures, soils, and units associated with closure of the HW facility. Requirements are found in 40 CFR Part 262.16 (SQG), 40 CFR Part 262.17 (LQG), and 40 CFR Part 265 Subpart W (SQG and LQG).

12-3.17 Enforcement Actions, Fines, and Penalties. The full range of available enforcement tools, including fees, assessments, civil fines, supplemental environmental projects, and penalties, is available to the EPA, states, and local governments in enforcing HW laws and regulations. There is no exemption from personal liability for criminal acts and any associated penalties.

Department facilities shall report all regulatory compliance inspections (e.g., EPA, state) notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

12-4 Responsibilities

12-4.1 The Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by federal and state regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the GSA in accordance with its delegated authority, and follow guidance within this chapter, as applicable.
- (c) The Office of Personal Property and Transportation Management (OPPTM) oversees electronic assets (e-waste) disposal and provides guidance in the *Department of Commerce Personal Property Management Manual*, and it oversees e-waste disposal at HCHB.
- (d) The Office of Acquisition Management oversees green procurement acquisition policy and provides guidance in the CAM.
- (e) The Office of Occupational Safety and Health oversees health and safety concerns associated with the handling of HW and provides guidance in DAO 209-4, Occupational Safety and Health Program.

12-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with all applicable hazardous and universal waste management requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), including those in this chapter (e.g., RCRA, OSHA, CAM, *Department of Commerce Personal Property Manual*, DAO 209-4).
- (b) Designate a DRO and ensure that the DRO has a “backup” staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable hazardous and universal waste management laws, regulations, policies, and guidance.
- (d) Report any NOV and penalty assessments in accordance with Chapter 3, Environmental Compliance Program and Environmental Management Systems, and consult with legal counsel before paying any penalties.
- (e) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information on HW operations at its facilities (e.g., HW and universal waste generated, hazardous waste permits), documents outside regulatory inspections and enforcement actions within an ECARS, and maintains an environmental assessment program to assess the status of hazardous and universal waste compliance. The Department's ECARS is the CPTrack™ application.
- (f) Ensure programming, budgeting, and allocation of funds associated with environmental compliance for hazardous and universal waste management, including requesting resources to meet those requirements (e.g., assignment and training of operational and management personnel, operation and maintenance of equipment and facilities, applicable permits, waste characterization, transport and disposal of waste) in budget submissions, and assisting their facilities in determining and estimating resource requirements.

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- (g) Ensure that contractors performing work for the Department on federal property—or on private property through a grants program—comply with all applicable requirements.
- (h) Provide advice and technical assistance to facilities on hazardous and universal waste compliance requirements.

12-5 Training

Personnel who conduct or supervise staff associated with hazardous or universal waste operations shall be trained in accordance with applicable environmental compliance laws and regulations. This includes ensuring that appropriate personnel complete training to become familiar with proper HW management and emergency procedures for the wastes handled at their facility. Training curriculum shall be tailored to include applicable state and local HW laws and regulations. Training requirements may include:

- (a) SQGs shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies (40 CFR 262.16(b)(9)(iii)).
- (b) LQG requirements are described under 40 CFR Part 262.17(a)(7). These include successfully completing a program of classroom instruction; online training (e.g., computer-based, electronic); or on-the-job training that teaches duty performance in a way that ensures compliance with this part. Training records on current personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same organization.
 - (i) Every person who produces, packages, handles, treats, or transports HW shall receive applicable hazard communication training per 29 CFR Part 1910.1200 (sometimes referred to HAZCOM training).
 - (ii) Personnel with a role in emergency response shall receive appropriate training per 29 CFR Part 1910.120. Emergency response roles range from simply witnessing and reporting an incident to participating in or supervising a response.
 - (iii) Personnel with a role at HW cleanup sites shall receive appropriate training per 29 CFR Part 1910.120 (e).
 - (iv) Personnel with a role at TSDFs shall receive appropriate training per 29 CFR Part 1910.120(p)(7).
 - (v) Every person who directly affects HW transportation safety in commerce, including those with signature authority for HW manifests, shall receive training on compliance with applicable DOT requirements and HM transport safety. Refer to 49 CFR Part 172.704.
- (c) Personnel who conduct operations that can impact the environment or compliance with hazardous and universal waste laws and regulations should be trained to perform their job duties safely and in compliance with applicable laws, regulations, and policies.
- (d) All training records shall be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

Note that requirements of 29 CFR Part 1910.120 are commonly referred to HW operator or HAZWOPER training.

12-6 Reporting Requirements

12-6.1 Reporting to the Office of the Secretary. No reporting required.

12-6.2 Reporting to Federal, State, and Local Agencies. Reporting is dependent on the waste generator categorization. Biennial Reports may be required. Refer to Section 12-3.9.

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TOXIC SUBSTANCES CONTROL ACT (TSCA)**13-1 Scope**

13-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; Department of Commerce (Department) requirements (e.g., policies, guidance); as well as responsibilities applicable to the Toxic Substances Control Act (TSCA) at Department facilities within the United States and its territories. TSCA requirements most often affect the regulation of polychlorinated biphenyls (PCBs), asbestos, and lead-based paint (LBP) in federal facilities, so the scope of this chapter is limited to these toxic substances. TSCA provides further information on regulations associated with other toxic substances. Other regulations regulate activities associated with toxic substances addressed in this chapter. This chapter only addresses requirements under 40 CFR and does not address requirements and regulations under other CFRs, such as 29 CFR OSHA and 24 CFR Housing and Urban Development, which target health and safety concerns. In addition, lead is also regulated as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). Refer to Chapter 12, Hazardous and Universal Waste. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

13-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 5, Compliance with the Emergency Planning and Community Right-to-Know Act (EPCRA); Chapter 6, Air Quality; and Chapter 12, Hazardous and Universal Waste Management.

13-1.3 References

29 Code of Federal Regulations (CFR) Part 1910.1001, Asbestos.

29 CFR Part 1910.106, Flammable Liquids.

29 CFR Part 1910.1025, Lead.

29 CFR Part 1910.1200, Hazard Communication.

29 CFR Part 1910.132, General Requirements, Personal Protective Equipment.

29 CFR 1926.1101, Asbestos.

40 CFR Part 61, Subpart M: National Emissions Standard for Asbestos.

40 CFR Part 745, Lead-Based Paint Poisoning in Certain Structures.

40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

Department Administrative Order (DAO) 209-4, Occupational Safety and Health Program.

Department of Commerce *Commerce Acquisition Manual* (CAM), Chapter 1323.70.

TSCA, 15 U.S.C. §§ 2601–2692, as amended.

13-2 Terms and Definitions

13-2.1 Asbestos. Asbestos means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite (40 CFR 61.141).

13-2.2 Asbestos-Containing Material. As defined under OSHA, 29 CFR Part 1910.1001(b), any material containing 1% asbestos.

13-2.3 Asbestos-Containing Waste Materials. Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of 40 CFR Part 61, Subpart M. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material (RACM) waste and materials contaminated with asbestos, including disposable equipment and clothing (40 CFR 61.141).

13-2.4 Asbestos Material. This term refers to asbestos or any material containing asbestos.

13-2.5 Capacitor. A capacitor is a device for accumulating and holding a charge of electricity, consisting of conducting surfaces separated by a dielectric. There are three types of capacitors:

- (a) **Small Capacitor.** A capacitor that contains less than 1.36 kilograms (kg) (3 pounds) of dielectric fluid.
- (b) **Large, High-Voltage Capacitor.** A capacitor that contains 1.36 kg (3 pounds) or more of dielectric fluid and operates at 2,000 volts (alternating current [AC] or direct current [DC]) or above.
- (c) **Large, Low-Voltage Capacitor.** A capacitor that contains 1.36 kg (3 pounds) or more of dielectric fluid and operates below 2,000 volts (AC or DC).

13-2.6 Child-Occupied Facility. In reference to LBP, a child-occupied facility is a building, or portion of a building constructed prior to 1978, visited regularly by the same child under 6 years of age on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.

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Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through—such as hallways, stairways, and garages—are not included. Additionally, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

13-2.7 Lead-Based Paint. This term refers to paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5 percent by weight.

13-2.8 Lead-Based Paint Activities. In the case of target housing and child-occupied facilities, LBP activities refer to inspection, risk assessment, and abatement. Also refer to OSHA, 29 CFR Part 1910.1025, Lead; and 24 CFR Housing and Urban Development, which also have requirements, including those for facilities that are not target housing or child-occupied facilities.

13-2.9 Lead-Based Paint Hazard. An LBP hazard is any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.

13-2.10 Lead-Contaminated Dust. Lead-contaminated dust is the surface dust in residential dwellings or child-occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by the U.S. Environmental Protection Agency (EPA) or authorized regulatory agency pursuant to TSCA Section 403 (40 CFR 745.223).

13-2.11 Lead-Contaminated Soil. Lead-contaminated soil is the bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels identified by the EPA administrator pursuant to TSCA Section 403 (40 CFR 745.223). Lead is also regulated under RCRA as a hazardous waste. Refer to Chapter 12, Hazardous and Universal Waste, as well as of 40 CFR 268.9 and 40 CFR 268.7 for disposal requirements for lead-contaminated soil not associated with residential real property or a child-occupied facility.

13-2.12 Lead-Hazard Screen. A lead-hazard screen is a limited risk assessment activity that involves limited paint and dust sampling as described in 40 CFR Part 745.227(e).

13-2.13 Non-Polychlorinated Biphenyl Transformers. Non-PCB transformer means any transformer that contains less than 50 parts per million (ppm) PCB, except any transformer that has been converted from a PCB transformer. A PCB-contaminated transformer cannot be classified as a non-PCB transformer until reclassification has occurred in accordance with the requirements of 40 CFR Part 761.30(a)(2)(v).

13-2.14 Polychlorinated Biphenyls. This category includes any chemical substance limited to the biphenyl molecule that has been chlorinated to varying degrees, and any combination of substances that contain such substance. The following assumptions may be made in relation to PCB concentrations (40 CFR 761.1(b)(2), 761.1(b)(3), and 761.2(a)):

- (a) Transformers with less than 3 pounds (1.36 kg) of fluid, circuit breakers, reclosers, oil-filled cable, and rectifiers for which PCB concentration is not established contain PCBs at more than 50 ppm.
- (b) Mineral oil-filled electrical equipment that was manufactured before July 2, 1979, and with a PCB concentration that is not established, is PCB-contaminated electrical equipment (i.e., contains 50 ppm or more PCBs, but less than 500 ppm PCBs).
- (c) All pole-top and pad-mounted distribution transformers manufactured before July 2, 1979 are assumed to be mineral oil-filled.
- (d) Electrical equipment manufactured after July 2, 1979 is non-PCB (i.e., less than 50 ppm PCBs). If the date of manufacture of mineral oil-filled electrical equipment is unknown, assume it to be PCB contaminated.
- (e) Transformers manufactured prior to July 2, 1979 that contain 1.36 kg (3 pounds) or more of fluid other than mineral oil, and with a PCB concentration that is not established, are PCB transformers (i.e., 500 ppm or more PCBs). If the date of manufacture and the type of dielectric fluid are unknown, then the transformer is assumed to be a PCB transformer.
- (f) A capacitor manufactured prior to July 2, 1979, and with a PCB concentration that is not established, contains 500 ppm or more PCBs.
- (g) A capacitor manufactured after July 2, 1979 is non-PCB (i.e., less than 50 ppm PCBs). If the date of manufacture is unknown, assume the capacitor contains 500 ppm or more PCBs.
- (h) A capacitor marked at the time of manufacture with the statement “No PCBs” in accordance with 40 CFR Part 761.40(g) is non-PCB.
- (i) Provisions that apply to PCBs at concentrations of less than 50 ppm apply also to contaminated surfaces at PCB concentrations of 10 micrograms (µg) or less per 100 cm².
- (j) Provisions that apply to PCBs at concentrations of 50 ppm and less than 500 ppm also apply to contaminated surfaces at PCB concentrations of more than 10 µg per 100 cm² to less than 100 µg per 100 cm².
- (k) Provisions that apply to PCBs at concentrations of 500 ppm or more also apply to contaminated surfaces at PCB concentrations of 100 µg or more per 100 cm².

Unless otherwise noted, PCB concentrations shall be determined on a weight-per-weight basis or, for liquids, on a weight-per-volume basis if the density of the liquid is also reported. Unless otherwise provided, PCBs are quantified based on the formulation of PCBs present in the material analyzed.

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13-2.15 PCB Article. A PCB article is any manufactured article—other than a PCB container—that contains PCBs with a surface that has been in direct contact with a PCB. This includes capacitors, transformers, electric motors, pumps, and pipes.

13-2.16 PCB Article Container. A PCB article container is any package, can, bottle, bag, barrel, drum, tank, or other device used to contain PCB articles or PCB equipment having surfaces that have not been in direct contact with PCBs.

13-2.17 PCB Bulk-Product Waste. PCB bulk-product waste is that derived from manufactured products containing PCBs in a non-liquid state and the PCB concentration at the time of designation for disposal is greater than or equal to 50 ppm. PCB bulk-product waste does not include PCBs or PCB items regulated for disposal under 40 CFR Parts 761.60(a)–(c), 761.61, 761.63, and 761.64. PCB bulk-product waste includes, but is not limited to:

- (a) Non-liquid bulk wastes or debris from the demolition of buildings and other manmade structures manufactured, coated, or serviced with PCBs. PCB bulk-product waste does not include debris from the demolition of buildings or other manmade structures that is contaminated by spills from regulated PCBs which have not been disposed of, decontaminated, or otherwise cleaned up in accordance with Subpart D of 40 CFR Part 761.
- (b) PCB-containing wastes from the shredding of automobiles, household appliances, or industrial appliances.
- (c) Plastics (e.g., plastic insulation from wire or cable; radio, television and computer casings; vehicle parts; furniture laminates); preformed or molded rubber parts and components; applied dried paints, varnishes, waxes, or other similar coatings or sealants; caulking; adhesives; paper; Galbestos; sound-deadening or other types of insulation; and felt or fabric products such as gaskets.
- (d) Fluorescent light ballasts containing PCBs in the potting material (40 CFR 761.3).

Note that the EPA Memorandum, *PCB Bulk Waste Reinterpretation*, dated October 24, 2012, “allows building material ‘coated or serviced’ with PCB bulk product waste [e.g., caulk, paint, mastics, sealants] at the time of designation for disposal as a PCB bulk product waste.”

13-2.18 PCB Capacitor. A PCB capacitor is any capacitor that contains 500 ppm or more PCB. Concentration assumptions applicable to capacitors appear under 40 CFR Part 761.2.

13-2.19 PCB Container. A PCB container is any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB articles and whose surface or surfaces have been in direct contact with PCBs (40 CFR 761.3).

13-2.20 PCB-Contaminated Electrical Equipment. PCB-contaminated electrical equipment is any electrical equipment including, but not limited to, transformers (including those used in railway locomotives and self-propelled cars), capacitors, circuit breakers, reclosers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, and cable that contains PCBs at concentrations of 50 ppm or more and less than 500 ppm in the contaminating fluid. In the absence of liquids, electrical equipment is PCB-contaminated if it has PCBs at more than 10 µg per 100 cm² and less than 100 µg per 100 cm² as measured by a standard wipe test (as defined in 40 CFR Part 761.123) of a non-porous surface (40 CFR 761.3).

13-2.21 PCB-Contaminated. A non-liquid material containing PCBs at concentrations more than 50 ppm but less than 500 ppm; a liquid material containing PCBs at concentrations 50 ppm or more but less than 500 ppm or where insufficient liquid material is available for analysis; or a non-porous surface having a surface concentration more than 10 µg per 100 cm² but less than 100 µg per 100 cm², measured by a standard wipe test as defined in 40 CFR Part 761.123 (40 CFR 761.3).

13-2.22 PCB Equipment. Any manufactured item—other than a PCB container—that contains a PCB article or other PCB equipment. This may include microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures.

13-2.23 PCB Item. Any PCB article, PCB article container, PCB container, PCB equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

13-2.24 PCB Transformer. A PCB transformer is any transformer that contains 500 ppm PCBs or more. For PCB concentration assumptions applicable to transformers containing 1.36 kg (3 pounds) or more of fluid other than mineral oil, see 40 CFR Part 761.2. For provisions permitting reclassification of electrical equipment, including PCB transformers, containing 500 ppm PCBs or more to PCB-contaminated electrical equipment, see 40 CFR Parts 761.30(a) and (h).

13-2.25 PCB Waste. PCB waste is those PCBs and PCB items that are subject to the disposal requirements of 40 CFR Part 761, Subpart D.

13-2.26 Regulated Asbestos-Containing Material. RACM includes friable asbestos material; Category I nonfriable asbestos-containing material (ACM) that has become friable; Category I nonfriable ACM that has been subjected to grinding, casting, cutting, or abrading; and Category II nonfriable ACM that has a high probability of becoming crumbled, crushed, or pulverized (40 CFR 61.141).

13-2.27 Residential Building. In reference to LBP, a residential building is that containing one or more residential dwellings.

13-2.28 Residential/Commercial Areas. In reference to LBP, residential/commercial areas are those areas where people live or reside, or where people work in industries other than manufacturing or farming. Residential areas include housing and the property on which housing is located, as well as playgrounds, roadways, sidewalks, parks, and other similar areas within a residential community. Commercial areas typically are accessible to both members of the general public and employees, and include public assembly properties, institutional properties, stores, office buildings, and transportation centers.

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13-2.29 Residential Dwelling. In reference to LBP, a residential dwelling is:

- (a) A single-family dwelling, including attached structures such as porches and stoops, or
- (b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which such unit is used or occupied, in whole or in part, as the residence of one or more persons.

13-2.30 Target Housing. In reference to LBP, target housing is any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

13-3 Requirements

Regulations promulgated due to TSCA prescribe requirements associated with PCBs, asbestos, and LBP. Requirements may be specific to records maintenance; reporting; notices, or other information; permitting access to, or copying of, required records; permitting entry or inspection of facilities; handling; training and certification; and sampling, as applicable to the regulated substance.

13-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local toxic substance laws and regulations. States can be authorized by EPA to operate their own EPA-authorized programs for some portions of the statute. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations.

13-3.2 Designated Responsible Official. Department facilities are responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply.

An example of when a DRO would be required is when the facility contains a substance regulated under TSCA. Chapter 3 provides further information on DROs and applicability.

13-3.3 Polychlorinated Biphenyls

13-3.3.1 Polychlorinated Biphenyls Management

- (a) **PCB Materials.** All items or materials containing PCBs, or suspected of containing PCBs, including PCB bulk product waste and PCB capacitors shall be considered regulated unless exempt by regulation. PCBs may exist in older electrical equipment and hydraulic and lubricating oils, subject to the restrictions in 40 CFR Part 761. Employees shall perform all repair, removal, handling, storage, and disposal of PCB materials and PCB waste in accordance with applicable federal, state, and local requirements.

Note that, prior to stringent regulation of PCBs, PCBs were used in a variety of applications as a fire retardant and plasticizer in paints and for other purposes, such as sound insulating felt and electrical cables. Often, PCBs were added in these applications without being specified in material or equipment procurement specifications. Thus, the presence of PCBs cannot always be determined through review of applicable procurement documents. During the disposal of equipment, construction debris, and other components, care should be taken to identify all potential contaminants and disposal carried out accordingly.

- (b) **PCB Spill Reporting.** A spill of a reportable quantity of “pure PCB” shall be reported immediately as required by regulation (see Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act [EPCRA]). Use the PCB concentration of the spilled material, the amount of material spilled, and the density of the particular type of PCB (if unknown, assume 10 pounds per gallon) to calculate the quantity of “pure PCB” spilled. Report all spills involving 1 pound or more of PCBs to the National Response Center (NRC) at 800-424-8802. Report spills that directly contaminate surface water, sewers, drinking water supplies, grazing lands, or vegetable gardens to the appropriate EPA regional office within 24 hours. States may define PCBs to a more stringent reporting requirement.
- (c) **PCB Spill Cleanup.** All PCB spills shall be cleaned up per 40 CFR Part 761, Subpart G, PCB Spill Cleanup Policy.
- (d) **Contractors.** Department facilities shall ensure that contractors performing work for the Department on Department property comply with all applicable PCB regulations while on-site, including Department requirements.
- (e) **Annual Document Log.** Department facilities that have had any of the following at any time during the calendar year must produce a document log covering the preceding year by July 1 as outlined in 40 CFR Part 761.180.
 - (i) 45 kg (99.4 pounds) of PCBs contained in PCB containers
 - (ii) One or more PCB transformers (500 ppm or greater)
 - (iii) Usage or storage of 50 or more PCB large, high- or low-voltage capacitors.
- (f) **Operations and Maintenance.** With regard to PCB transformers and PCB-contaminated transformers, Department facilities shall conduct the following operations and maintenance (O&M) practices for Department-owned transformers.
 - (i) Inspect the PCB transformers (500 ppm or greater) every three months
 - (ii) Repair all leaks
 - (iii) Maintain records
 - (iv) Register the PCB transformers (with 500 ppm or greater) with the EPA.

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- (g) **Procurement.** All procurement of transformers or any other equipment containing dielectric or hydraulic fluid must be accompanied by a manufacturer's certification that the equipment contains no detectable PCBs (less than 2 ppm) at the time of shipment. Newly procured transformers and equipment no longer require permanent labels stating they are PCB-free (no detectable PCBs); however, facilities may find it useful to mark the items as non-PCB for inventory purposes. The CAM provides procurement guidance for the Department.

13-3.3.2 PCB Equipment Elimination/Removal. The procedures provided below shall be followed.

(a) **Transformers**

- (i) Determine the PCB concentration for all Department-owned pad-mounted and pole-mounted transformers by using an EPA-approved method. Transformers must be marked according to classification—an M⁺ mark for PCB transformers as described in 40 CFR Part 761.45; a tag showing PCB concentration and sample identification (ID) number for PCB-contaminated transformers; or a label indicating non-PCB. Activity records must note the PCB test results (in ppm) for each transformer.
- (ii) To reduce future potential liabilities, transformer elimination must be accomplished by replacement or removal with load transfer to non-PCB transformers. Retrofill is an acceptable alternative to replacement for transformers when it has a clear economic benefit, and for those transformers that are difficult or impossible to replace due to the constraints of their physical location. Typically, transformers must be in good condition, less than 25 years old, and 300 kilovolt-ampere (kVA) or larger. For retrofill applications, Department facilities shall consider environmentally preferred and bio-based products.

(b) **Capacitors**

- (i) Department facilities shall establish an accurate inventory of high- and low-voltage capacitors based on manufacturing information.
- (ii) Department facilities shall mark large capacitors established to contain PCBs of more than 50 ppm as "PCB-contaminated" and label each with the sample ID number and concentration. Large capacitors established as not containing PCBs must also be marked as non-PCB. Activity records must note the PCB classification of each large capacitor.

- (c) **Ballasts.** As fluorescent light ballasts are replaced, ballasts must be examined to determine whether they contain PCBs and be disposed of as PCB waste according to the results of the determination.

13-3.3.3 PCB Disposal. Department facilities shall dispose of PCB waste in accordance with federal and state regulations.

13-3.4 Asbestos. ACMs commonly are found in older building materials and related products, such as building exterior surfaces; insulation in walls and ceilings; floor tiles and adhesives; furnace, boiler, and heater piping and insulation; and interior surface walls and ceilings. When disturbed, ACMs can become airborne, posing a significant risk to human health (friable asbestos).

The management, removal, and disposal of ACM or Asbestos-Containing Waste Materials is regulated by 40 CFR Part 61, Subpart M, 61.140 Asbestos, as promulgated under the Clean Air Act (CAA) (see Chapter 6, Air Quality). Worker exposure to asbestos also is regulated by the Occupational Safety and Health Administration (OSHA) under 29 CFR Part 1910.1001 and 29 CFR Part 1926.1101. For asbestos sampling and testing and abatement work, reference TSCA 40 CFR Part 763 and Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M (see Chapter 6, Air Quality).

13-3.5 Lead-Based Paint. Owners of target housing and child-occupied facilities shall notify occupants regarding LBP risks (40 CFR 745). Regulations also address renovation, maintenance, sampling, and abatement practices for LBP in target housing and child-occupied facilities (40 CFR 745). When removing LBP, Department facilities shall comply with the requirements of 29 CFR Part 1910.1001 and applicable state and local LBP management requirements.

(a) **Lead-Based Paint Notification Requirements**

- (i) Department facilities providing target housing shall notify prospective occupants about the presence of any known LBP or LBP hazards. If the facility does not know whether LBP or LBP hazards exist, the notification requirement does not impose a requirement to test for such hazards. Notification must be given prior to signing of a lease.
- (ii) Occupants of target housing or child-occupied facilities or child-occupied residential dwellings where renovations involving LBP will occur must be notified of the renovation no more than 60 days before renovation activities begin. An adult occupant must provide a written acknowledgment of receipt of notification. Notification of renovation in LBP areas also must be provided for renovations in common areas or target housing and child-occupied facilities. This notification requirement also applies to repair and maintenance activities that disrupt LBP surfaces in occupied units and common areas of multifamily dwellings.

- (b) **Renovations.** Renovations involving target housing or child-occupied facilities require posting warning signs; isolating the work area so no dust or debris leaves the work area while the renovation is being performed; maintaining the integrity of the containment by ensuring any plastic or other impermeable materials are not torn or displaced; and installing containment so that renovations do not interfere with occupant and worker egress in an emergency.

- (c) **Lead-Based Paint Abatement.** EPA must be notified of any abatement projects in target housing or child-occupied facilities. Personnel involved in the abatement project shall be trained and certified from accredited programs per 40 CFR Part 745. Specific EPA-defined work practices must be followed if personnel are performing an inspection, a lead-hazard screen, a risk assessment, or an abatement.

- (d) **Disposal.** Department facilities shall dispose of LBP-containing materials per applicable federal, state, and local environmental requirements. Construction and demolition (C&D) debris with intact LBP may be sent to a C&D landfill permitted to accept such waste. LBP waste containing primarily waste paint, strippers, and paint chips typically is a hazardous waste (HW). When disposing of HW, Department facilities shall comply with HW disposal requirements mandated by laws and regulations. Chapter 12 provides information on regulatory requirements associated with HW disposal.

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- (e) **Contracts and Contractors.** Construction or renovation projects with the potential to impact LBP in target housing or child-occupied facilities must include appropriate references, clauses, or both as necessary to ensure proper management, control (including dust control), abatement, and disposal of LBP. Workers performing maintenance, repair, remodeling, and renovation in target housing and child-occupied facilities where LBP may be disturbed need not be certified unless the specific intent is to abate a hazard. OSHA requirements for worker protection still apply, however, and work practices that are protective of the occupants should be followed.

13-3.6 Enforcement Actions, Fines, and Penalties. Federal employees (and contractor staff at federal facilities) may be subject to criminal sanctions, in accordance with § 16(b) of TSCA and 45 U.S.C. § 2615(b) for knowing or willful violations of TSCA. States are preempted under TSCA from issuing TSCA enforcement cases unless they have TSCA lookalike laws. Currently, no state has implemented legislative authority to take TSCA enforcement actions. Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

13-4 Responsibilities

13-4.1 The Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
- (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority and follow guidance within this chapter, as applicable.
- (c) The Office of Occupational Safety and Health oversees health and safety concerns associated with the handling of hazardous substances (HS) and provides guidance in DAO 209-4.

13-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with applicable toxic substance control requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), including those in this chapter (e.g., ACM management, removal, and disposal; LBP notifications, abatement, and disposal; PCB spill reporting, O&M, and disposal; DAO 209-4; CAM).
- (b) Designate a DRO and ensure that the DRO has a “backup” staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable toxic substance control laws, regulations, policies, and guidance.
- (d) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information on operations that can be affected by TSCA requirements at its facilities (e.g., presence of LBP, ACM, or PCBs), documents outside regulatory inspections and enforcement actions, and maintains an environmental assessment program to assess the status of compliance with TSCA. The Department’s ECARS is the CTrack™ application.
- (e) Ensure programming, budgeting, and allocation of funds associated with environmental compliance for toxic substance control requirements, including requesting resources to meet those requirements (e.g., compliance with TSCA, CAM) in budget submissions, and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on TSCA environmental compliance requirements.

13-5 Training

Personnel who conduct or supervise staff associated with toxic substance operations regulated by TSCA (i.e., LBP, PCBs, ACM) shall be trained in accordance with applicable environmental compliance laws and regulations.

- (a) LBP technicians and their supervisors must receive Hazardous Communications (29 CFR 1910.1200) training and job-specific training on marking, inventorying, reporting, inspection, release reporting, and any applicable facility-specific requirements.
- (b) Personnel involved in LBP activities shall be trained as required by 40 CFR Part 745.226 or the applicable state-accredited LBP program.
- (c) Personnel involved in the stripping, removal, handling, or disturbing of RACM must be trained as required by 40 CFR Part 61.145 and 29 CFR Part 1910.1001.

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Additionally, personnel who conduct operations that can impact the environment or compliance with toxic substance control laws and regulations should be trained to perform their job duties safely and in compliance with applicable laws, regulations, and policies.

All training records shall be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

13-6 Reporting Requirements

13-6.1 Reporting to the Office of the Secretary. None.

13-6.2 Reporting to Federal, State, and Local Regulatory Agencies. PCB spills shall be reported immediately to the NRC as per 13-3.3.1 (b) above and Chapter 5, EPCRA.

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**CHAPTER 14:
SOLID WASTE MANAGEMENT, RESOURCE RECOVERY, AND RECYCLING**

14-1 Scope

14-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; and Department of Commerce (Department) requirements (e.g., policies, guidance) as well as responsibilities applicable to nonhazardous solid waste management at Department facilities within the United States and its territories. Requirements of this chapter apply to Department facilities within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter. This chapter does not cover solid waste reduction or reporting requirements covered solely under an executive order or other federal organizations—such as the Office of Management and Budget (OMB) or the White House Council on Environmental Quality (CEQ).

14-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 6, Air Quality; Chapter 12, Hazardous and Universal Waste Management.

14-1.3 References

10 Code of Federal Regulations (CFR) Part 436, Subpart C, Agency Procurement of Energy Efficient Products.

40 CFR Part 240, Guidelines for the Thermal Processing of Solid Wastes.

40 CFR Part 247, Guidelines for Procurement of Products that Contain Recycled Material.

40 CFR Part 257, Regulations on Criteria for Classification of Solid Waste Disposal Facilities and Practices.

40 CFR Part 258, Criteria for Municipal Solid Waste Landfills.

41 CFR Part 102, Federal Management Regulation (FMR), Subchapter B - Personal Property.

48 CFR, Federal Acquisition Regulation.

42 U.S.C. § 6961, Chapter 82, Solid Waste Disposal, Application of Federal, State, and Local Laws to Federal Agencies.

42 U.S.C. § 8259b, Federal Procurement of Energy Efficient Products.

Department of Commerce Annual Sustainability Plan.

Department of Commerce *Commerce Acquisition Manual* (CAM), Chapter 1323.70.

Department of Commerce *Personal Property Management Manual*.

Department of Commerce *Portfolio Manager*[®] *Business Rules*.

General Services Administration (GSA) Bulletin FMR B-34, “Disposal of Federal Electronic Assets.”

Resource Conservation and Recovery Act (RCRA), Subtitle D, 42 U.S.C. §§ 6941–6949a.

14-2 Terms and Definitions

14-2.1 Composting. Composting is a controlled process for managing the degradation of plant and other organic wastes to produce a useful product that can be used as mulch or soil conditioner.

14-2.2 Diversion Rate. The diversion rate is the rate at which nonhazardous solid waste is diverted from conventional treatment and disposal facilities (e.g., landfill and incineration without energy recovery). Reuse, donation, composting, mulching, and recycling are generally accepted waste diversion methods. If diversion rates are tracked for construction and demolition (C&D) debris, C&D debris is tracked separately from non-C&D solid waste.

14-2.3 Electronic Waste (e-waste). E-waste is the popular name for electronic products (e.g., mobile phones, computers/laptops, televisions, and their components) that are nearing or have reached the end of their service life. These products typically consist of commercial off-the-shelf electronic items or consumer-grade electronics that can still be reused, donated, refurbished, or recycled.

14-2.4 Energy Recovery. Energy recovery occurs when steam or electrical energy produced from solid waste is used as a fuel in a waste-to-energy plant. Incineration for energy recovery is partially counted when calculating the diversion rate.

14-2.5 Portfolio Manager. ENERGY STAR[®] Portfolio Manager (Portfolio Manager) is a utility tracking tool maintained by the U.S. Environmental Protection Agency (EPA). The Department uses this as its database of record and as a tracking and baselining tool for energy and sustainability data including electricity, water, sustainable buildings, and nonhazardous solid waste diversion.

14-2.6 Recyclable Material. A recyclable material is that which can be transformed into a new, useable product.

14-2.7 Recycling. Recycling is the process of collecting and processing materials that otherwise would have been thrown away as trash for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

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14-2.8 Resource Recovery. Resource recovery is the recovery of materials or energy from solid waste.

14-2.9 Solid Waste. Solid waste is any garbage or refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material resulting from industrial, commercial, mining, and agricultural operations and from community activities. It does not include solid or dissolved material in domestic sewage; solid or dissolved materials in irrigation return flows; industrial discharges which are point sources subject to permits under 32 U.S.C. § 1342; or source, special nuclear, or byproduct material as defined by 42 U.S.C. § 2011 *et seq.*

14-2.10 Source Reduction. Source reduction is the reducing—at the point of introduction into the process—of the volume or weight of material used before the products are purchased, used, or discarded. This includes reuse, sale, transfer, or donation of materials, items, or products prior to recycling or disposal.

14-3 Requirements

Department facilities shall comply with solid waste management regulations to include those associated with collection, storage, handling, recycling, and disposal of solid waste (40 CFR 240; 40 CFR 257; 40 CFR 258), and manage any solid waste that is determined to be a hazardous waste (HW) per 40 CFR Part 262. Refer to Chapter 12, Hazardous and Universal Waste Management, for HW management requirements. Department facilities shall consider solid waste generated by its operations and actions as government property for purposes of disposal. Contractors shall manage solid waste generated on Department facilities in compliance with all applicable laws and regulations and as specified in their contracts. Additionally, 42 U.S.C. § 6961 requires agencies to comply with federal as well as state, interstate, and local requirements for management and disposal of nonhazardous solid waste and HW.

14-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local solid waste management, resource recovery, and recycling laws and regulations. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations.

14-3.2 Designated Responsible Official. Department facilities are responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply. Chapter 3 provides further information on DROs and applicability.

14-3.3 Integrated Solid Waste Management. Department facilities should use EPA's integrated solid waste management hierarchy, as listed, to manage solid waste. Source reduction (Item 1) is the preferred option for management and treatment and disposal (Item 4) is the least preferred, as follows.

1. Source reduction and reuse
2. Recycling and composting
3. Energy recovery
4. Treatment and disposal

14-3.4 Source Reduction. Source reduction through pollution prevention shall be practiced to reduce generation of solid waste. Examples of source reduction include:

- (a) Process modifications
- (b) Using electronic documents in lieu of printed materials
- (c) Dual-sided printing
- (d) Take-back provisions for packing materials
- (e) Procurement of materials that generate less solid waste (e.g., materials that are reusable, have extended service life, use reduced packaging, or are recyclable packaging materials).

14-3.5 Green Procurement

- (a) Department facilities shall acquire products and services, including electronics, in accordance with statutory mandates for purchasing preference, Federal Acquisition Regulation (FAR) requirements, and other applicable federal procurement policies. Agencies should prioritize products and services that meet more than one of the applicable requirements and are encouraged to procure products and services in a cost-effective manner that advances achievement of energy and environmental performance goals.
- (b) RCRA Section 6002(c)(1), as implemented by 40 CFR Parts 247.2–247.17 (40 CFR 240), requires federal agencies to procure products containing recovered materials (i.e., recycled content) as designated in the EPA's guideline, to the maximum extent possible. This includes meeting minimum requirements for recycled content as identified by EPA's Comprehensive Procurement Guideline (CPG) Program. Appendix A, Useful Web Links provides a link to EPA's CPG Program.
- (c) Facilities shall give purchasing preferences to products designated as biobased or BioPreferred® by the United States Department of Agriculture (USDA). Appendix A, Useful Web Links provides a link to USDA's BioPreferred website.

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- (d) Facilities shall purchase products certified by ENERGY STAR or designated by the U.S. Department of Energy Federal Energy Management Program (FEMP) as energy efficient products (42 U.S.C. § 8259b, 10 CFR 436, Subpart C). Appendix A, Useful Web Links provides links to EPA ENERGY STAR and FEMP Energy Efficient Product Acquisition Guidance, which provide information and resources for purchasing energy efficient products and equipment.
- (e) Contracts for procurement are required to contain environmentally related clauses that are defined in 48 CFR Part 23.7, Contracting for Environmentally Preferable Products and Services, and 48 CFR Part 52, Solicitation Provisions and Contract Clauses.
- (f) Facilities that generate scopes of work should assist the contracting officer by identifying the required salient characteristics of their requirements, so the contracting officer can insert the proper clauses in the contract. The CAM provides green procurement requirements for the Department.
- (g) Useful resources when researching sustainable products and services include the following.
 - (i) GSA's Green Procurement Compilation identifies applicable sustainable acquisition requirements and provides information on sustainable acquisition by product and service category.
 - (ii) EPA's Sustainable Marketplace: Greener Products and Services website includes Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing, which identifies products and services that meet statutory purchasing requirements.
 Appendix A, Useful Web Links provides links to GSA's Green Procurement Compilation and EPA's Sustainable Marketplace: Greener Products and Services.

14-3.6 Reuse and Donation. Department facilities shall to the maximum extent practical reuse or donate unneeded but usable property and recycle or compost solid waste to minimize the amount of material sent to landfills and incinerators. Alternatives for disposition of recovered materials include the following.

- (a) Sale of recovered materials through GSA.
- (b) Transfer of waste materials to a volunteer or community organization, even when the materials are located on Department-owned, leased, or occupied facilities if:
 - (i) Materials were not government-purchased or generated
 - (ii) Materials, while owned or generated by the Department, are uneconomical for government supported collection and disposal.

14-3.7 Composting, Chipping, and Mulching. Department facilities should consider composting organic waste as an alternative to disposal at a landfill. Note that organic material management is regulated at the state and local level, per state and local laws. For example, some jurisdictions prohibit yard waste from landfills; and some states have management or permit requirements for composting.

- (a) Facilities shall consider vessel composting or contractor composting for food waste. Facilities should compost landscaping cuttings, yard and green waste, limbs, branches, and other organic materials suitable for composting at an on-site, municipal, or private facility. The following composting alternatives can be considered when determining the most feasible composting method.
 - (i) Require landscaping contractors to deposit green waste at an on-site, municipal, or private composting facility
 - (ii) Use municipal or regional composting facilities (regional composting facilities' tipping fees are almost always less than landfill tipping fees)
 - (iii) Establish composting facilities on-site if municipal composting facilities are not available or feasible and all state and local regulatory requirements can be met.
- (b) Compost generated on-site may not be applied on-site, given to personnel for personal use, or sold without consulting state and local regulatory authorities to ensure all applicable federal, state, and local regulations are met.

14-3.8 Recycling Programs. Department facilities shall recycle all commodities in the solid waste stream when federal, state, or local regulations require recycling. All OUs shall, where cost effective (including savings associated with cost avoidance), ensure that Department facilities have a recycling program, and these programs are available to serve all Department tenants occupying space on site, including leased space.

- (a) Recycling programs are established for the following purposes:
 - (i) To comply with federal, state, and local environmental laws and regulations
 - (ii) To reuse readily available resources
 - (iii) To avoid excessive costs for disposal of solid waste by other means (cost avoidance)
 - (iv) To reduce the volume of wastes disposed of in landfills and incinerators
 - (v) To meet the Department's Sustainability Plan goals
 - (vi) To obtain proceeds for the Department from the sale of recyclable materials.
- (b) Recycling must comply with applicable federal, state, and local recycling laws, regulations, and policies, including the annual Consolidated Appropriations Act, which specifies allowable use of recycling proceeds.
- (c) If a building is leased, the building owner may administer the program; however, the owner may delegate this responsibility to a tenant. The owner/tenant shall either conduct or request from GSA a recovered materials market analysis, including estimated return from sale and length of market availability prior to any source separation effort. The owner/tenant may add any suitable material to those being recycled. As a general rule, sites shall recycle all nonhazardous solid waste where the cost of recycling is less than the cost of disposal.

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- (d) Recycling programs shall ensure that:
- (i) Contracts include provisions that obligate the contractor to participate in a recycling program where cost effective.
 - (ii) Recycling includes aluminum cans, batteries, cardboard, glass bottles, hardback books, microfiche, news blend, office blend, plastic bottles, toner cartridges, transparencies, videotapes, newspapers, phone books, catalogs and magazines, brown paper bags, and additional items as implemented. Facilities management recycling includes C&D debris, motor oil, oil filters, paint, pallets, refrigerants, scrap metal, solvents, yard waste, and additional items as implemented.
 - (iii) Appropriate management controls are in place for recyclable materials that may be hazardous, such as lead-acid batteries.
 - (iv) Management keeps records of proceeds from the sale of recyclable materials and avoided costs for disposal.
- (e) Recyclable materials sales: Department facilities with recycling programs shall first use proceeds from recyclable materials sales to cover the costs directly attributable to all OU recycling programs, including but not limited to: labor, facilities, training, program awareness expenses, equipment, overhead, and other capital investments. After these costs are recovered, the Department may use the remaining proceeds for pollution abatement, pollution prevention, composting, and energy conservation, with first consideration given to projects included in the OU facility's recycling programs. Questions about whether the purchase of a specific item with recycling funds is appropriate should be directed to the Office of General Counsel.

14-3.9 Construction and Demolition Waste

- (a) For states where a construction waste management plan is a legal requirement, all C&D projects awarded to contractors at Department-owned property shall include a construction waste management plan for C&D debris. The construction waste management plan shall evaluate and determine the extent of recycling, reuse, and composting possible for the project. For states where the plan is not a requirement, the plan is recommended as a best management practice.
- (b) Construction, demolition, or renovation projects that generate HW—such as debris containing mercury, lead-based paint, or asbestos—must be managed and disposed as RCRA HW (see Chapter 12, Hazardous and Universal Waste Management) and all other applicable regulations, such as the Occupational Safety and Health Act (OSHA) and Clean Air Act (CAA) (e.g., National Emission Standards for Hazardous Air Pollutants [NESHAP] for asbestos—see Chapter 6, Air Quality) associated with managing and handling the waste stream.

14-3.10 Incineration. An OU may operate an incineration facility for solid waste if all applicable federal, state, and local requirements are met. Requirements are dependent on capacity, age, and materials being incinerated.

14-3.11 Landfill Disposal. Landfill disposal at municipal or Department-owned facilities may be used for disposal of solid waste that cannot be diverted from the waste stream. When disposing of solid waste via landfill, facilities shall utilize only appropriately permitted, designed, and constructed landfills. Department-owned landfills shall be designed, constructed, and operated per the most stringent federal, state, or local regulations.

14-3.12 Waste Diversion. OUs and their facilities should make all possible efforts to obtain accurate weight data on nonhazardous solid waste disposal and diversion from the landfill. Applicable OUs (those with facilities that pay for solid waste disposal) shall enter nonhazardous waste disposal and diversion data in Portfolio Manager monthly in accordance with the Department *Portfolio Manager*® *Business Rules*.

14-3.13 E-Waste

- (a) Department policy is to practice environmentally sound end-of-life management of electronics, practicing reuse or recycling where feasible. The Department's *Personal Property Management Manual* provides the Department's requirements for turn-in and disposal of electronics. The goal is to maximize reuse, donation, transfer, sale, and recycling of e-waste.
- (b) Department facilities shall acquire, use, and dispose of electronics and associated services in accordance with statutory mandates for purchasing preference, FAR requirements, and other applicable federal procurement policies.
- (c) Department facilities shall follow GSA Bulletin FMR B-34, "Disposal of Federal Electronic Assets"; 41 CFR Part 102, FMR, Subchapter B - Personal Property; as well as other relevant state and local laws associated with disposition of excess and surplus electronics or when returning leased electronics. FMR B-34 identifies the following hierarchy:
- (i) Reuse, within an agency and through transfers, donations, and sales
 - (ii) Recycling through certified recyclers and manufacturer take-back programs using certified recyclers.
- (d) When recycling electronics, Department facilities shall use the following sources:
- (i) UNICOR
 - (ii) U.S. Postal Service BlueEarth®
 - (iii) Other accredited electronics recyclers.

Up-to-date lists of certified recyclers can be found on the websites for the e-Stewards and R2 industry standards. Refer to Appendix A, Useful Web Links.

Note that state or local certification or approval of a recycler alone is not sufficient for meeting federal requirements for third-party certification.

- (e) E-waste is subject to the full range of RCRA waste regulations. Certain components of some electronic products contain materials that render them hazardous, depending on their condition and density. OUs and their facilities shall manage such e-waste as HW (see Chapter 12, Hazardous and Universal Waste Management). Some authorized states manage and enforce electronics RCRA compliance under their own state program. Some states require e-waste recycling. Excess and surplus electronics should not be disposed of in landfills or incinerators.

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14-3.14 Returnable Beverage Containers. Department facilities in states with beverage container recovery laws shall comply with state laws.

14-3.15 Enforcement Actions, Fines, and Penalties. Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), notices of violation (NOVs) and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

14-4 Responsibilities

14-4.1 The Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance, including the *Portfolio Manager® Business Rules*
 - (ii) Notify Department Offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department facilities' compliance with environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies and guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) For federal data calls (e.g., OMB, CEQ), collate waste management data (e.g., recycling, waste diversion) received from OUs, track progress toward meeting applicable waste diversion goals, review data entered into Portfolio Manager, and submit waste data.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the GSA in accordance with its delegated authority and follow guidance within this chapter, as applicable.
- (c) The Office of Personal Property and Transportation Management (OPPTM) oversees electronic assets (e-waste) disposal, provides guidance in the Department's *Portfolio Manager® Business Rules*, *Personal Property Management Manual*, and oversees e-waste disposal at HCHB.
- (d) The Office of Acquisition Management oversees green procurement acquisition policy and provides guidance in the CAM.

14-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with applicable nonhazardous solid waste, resource recovery, recycling, and pollution prevention requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), including those prescribed in this chapter (e.g., RCRA Subtitle D, CAM, the Department's *Personal Property Management Manual*).
- (b) Designate a DRO and ensure the DRO has a "backup" staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable nonhazardous solid waste management laws, regulations, policies, and guidance.
- (d) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information on nonhazardous solid waste and pollution prevention operations at its facilities, documents outside regulatory inspections and enforcement actions within an ECARS, and maintains an environmental assessment program to assess the status of nonhazardous solid waste compliance. The Department's ECARS is the CPTTrack™ application.
- (e) Ensure programming, budgeting, and allocation of funds associated with environmental compliance with nonhazardous solid waste and pollution prevention, including requesting resources to meet those requirements (e.g., compliance with RCRA Subtitle D) in budget submissions, and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on solid waste management, pollution prevention, resource recovery, and recycling compliance requirements.

14-5 Training

Personnel who conduct operations or supervise staff associated with nonhazardous solid waste management, resource recovery, or recycling shall be trained in accordance with applicable environmental compliance laws and regulations. Additionally, personnel who conduct operations that can impact the environment or compliance with nonhazardous solid waste laws and regulations should be trained to perform their job duties safely and in compliance with applicable laws, regulations, and policies. Employees should be provided pollution prevention awareness training, including recycling protocols, green procurement, and Department waste-reduction goals. All training records must be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

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14-6 Reporting Requirements

14-6.1 Reporting to the Office of the Secretary. OUs shall report the following to OSEEP.

- (a) Waste disposal and diversion data may be required to be submitted from applicable OUs in response to CEQ or OMB data calls. To facilitate data call responses, applicable OUs shall enter waste-disposal and waste-diversion data in Portfolio Manager.
- (b) Waste management and waste diversion progress and initiatives as required for reporting in the Department's annual Sustainability Plan, submitted annually to CEQ.

14-6.2 Reporting to External Agencies. As applicable, OSEEP shall submit solid waste disposal and diversion data as directed by CEQ and OMB, and any legislative solid waste diversion goals as directed by CEQ and OMB.

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MANAGEMENT MANUAL**CHAPTER 15:
PESTICIDE COMPLIANCE****15-1 Scope**

15-1.1 This chapter identifies environmental compliance requirements mandated by laws, regulations, and executive orders; Department of Commerce (Department) requirements (e.g., policies, guidance); as well as responsibilities applicable to restricted-use pesticides at Department facilities within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may apply to this chapter.

15-1.2 Related Chapters. Chapter 2 Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 5, Compliance with the Emergency Planning and Community Right-to-Know Act (EPCRA); Chapter 7, Clean Water; Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response; and Chapter 17, Natural Resources Management.

15-1.3 References

29 Code of Federal Regulations (CFR) Part 1910, Occupational Safety and Health Standards.

29 CFR Part 1910.1200, Hazard Communication Standard.

29 CFR Part 1910.132, General Requirements, Personal Protective Equipment

40 CFR Parts 150–180, U.S. Environmental Protection Agency (EPA) Regulations for Pesticide Programs.

7 U.S.C. § 136 *et seq.* (1996), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Clean Water Act (CWA), Section 402, National Pollution Discharge Elimination System.

Department Administrative Order (DAO) 209-04, Occupational Safety and Health Program.

15-2 Terms and Definitions

15-2.1 Certified Applicator. A certified applicator is any individual who is certified by the EPA or the state to use or supervise the use of any restricted-use pesticide covered by that individual's certification.

15-2.2 Safety Data Sheet. A safety data sheet (SDS) is a document that accompanies a pesticide product. It provides chemical information on ingredients, handling instructions, potential hazards, manufacturer address, and emergency contact information.

15-2.3 Pest. A pest is any organism that adversely affects operations, preparedness, the well-being of humans or animals, real property, material, equipment, or vegetation, or is otherwise undesirable.

15-2.4 Pesticide. Any substance or mixture of substances registered by EPA under FIFRA, intended to destroy, repel, or mitigate pests. Includes insecticides, rodenticides, herbicides, fungicides, plant regulators, defoliants, desiccants, disinfectants, antifouling paints, and biocides (such as water treatment chemicals).

15-2.5 Restricted-Use Pesticide. A pesticide designated for restricted use under the provisions of Section 3(d)(1)(c) of FIFRA.

15-3 Requirements

15-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local pesticide regulations. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations. States also may publish their own additional restricted-use lists.

15-3.2 Designated Responsible Official. Department facilities are responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply.

An example of when a DRO would be required is when a facility is applying pesticides in a manner impacting the waters of the United States and has a National Pollutant Discharge Elimination System (NPDES) general pesticide permit under the CWA. Chapter 7, Clean Water provides information on NPDES permits. Chapter 3 provides further information on DROs and applicability.

15-3.3 Proper Use. Department facilities shall ensure that all pesticides are used in strict accordance with their labels. The label provides directions on the organisms the pesticide may be used against, the locations in which the pesticide may be used, and the method of use. Restricted-use pesticides may only be used by certified applicators.

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15-3.4 Endangered Species. Department facilities shall not use pesticides in areas with endangered and threatened animal or plant species unless it is determined that the use will not adversely affect the species or its critical habitat. The determination shall be made according to the Endangered Species Act (ESA) consultation process prescribed in 50 CFR Part 402. Chapter 17, Natural Resources Management, provides information on the ESA.

15-3.5 Records and Record Keeping. Whether performed by contractors or Department personnel, all pest management operations performed at Department facilities shall be recorded, including surveys, applications, and non-chemical control operations. Records shall include, at a minimum, the date of the operation, type of operation, site description, pest, size of area treated, pesticide applicator's name and certification number, pesticide trade name, EPA registration number of the pesticide, active ingredients, formulation, quantity, and final concentration applied. Pest management records must be archived on-site for a minimum of two years, or in accordance with state law, whichever is more stringent.

15-3.6 Wastewater Discharges. Department facilities shall collect rinsate from triple-rinsing of containers and pesticide application equipment for use in the pesticide application area, and they shall not discharge rinsate to wastewater treatment systems.

15-3.7 Pesticide Labels and Safety Data Sheets

- (a) **Pesticide Labels.** Department facilities shall ensure that EPA-approved labels are on all pesticide containers. If additional labels are required, then Department facilities shall place the label so as not to obscure the pesticide label and follow all management and handling requirements on the labels. If not followed, regulatory agencies may issue Notices of Violation (NOVs) for noncompliance with label requirements.
- (b) **Safety Data Sheet.** A copy of the SDS and pesticide label for every pesticide product in the shop inventory shall be available to all employees at all pesticide facilities.

15-3.8 Integrated Pest Management and Pesticide Use Reduction

Department facilities should use an integrated approach to pest management and other applicable landscape management practices and, wherever practicable, employ integrated pest management practices to minimize pesticide use. This approach also applies to pesticide use by contractors.

Integrated pest management:

- Incorporates education, continuous monitoring, record keeping, and communication to prevent pests and disease vectors from causing unacceptable damage to operations, people, property, material, or the environment.
- Uses targeted, sustainable (effective, economical, environmentally sound) methods, including habitat modification; biological, genetic, cultural, mechanical, physical, and regulatory controls; and, when necessary, the judicious use of least-hazardous pesticides.

Department facilities should use pest management research, control, and assistance programs to develop, support, and adopt integrated pest management strategies wherever practical.

15-3.9 Disposal. Stringent regulations govern the disposal of pesticides, their containers, and related wastes. Instructions on pesticide labels and SDSs must be followed for the disposal of pesticides and their containers.

15-3.10 Pesticide Spill Management

- (a) Ready-to-use pesticide spill kits should be present at every storage and mixing facility, and in vehicles used to transport or apply restricted-use pesticides.
- (b) Contractors shall be responsible for providing their own spill kits.
- (c) Spills of undiluted pesticides may be required to be reported under EPCRA, depending on the concentration of the active ingredient and the amount spilled (refer to Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act [EPCRA]).

15-3.11 Safety and Health in the Workplace. Department facilities shall monitor workplace safety through the responsible safety offices.

15-3.12 Pesticide Storage. Department facilities should store all liquid, dust, and granular pesticide formulations in an area with adequate spill containment. Pesticide applicators, whether contractors or in-house personnel, shall perform all pesticide mixing in an area with adequate spill containment.

15-3.13 Occupied Spaces. Personnel in a routinely occupied area shall be notified at least 24 hours in advance of spraying a pesticide. Department facilities shall not permit the application of liquid, dust, or aerosol pesticide formulations in any space immediately occupied by unprotected personnel. Pesticides contained in gel, paste, or pellet bait formulations, however, may be applied in occupied spaces in accordance with the pesticide label directions.

15-3.14 Personal Protective Equipment. Department facilities shall provide federal personnel engaged in pesticide application with appropriate personal protective equipment (PPE) (e.g., face shields, respirators, eye protection, impermeable gloves, protective clothing). Occupational safety and health standards in 29 CFR Part 1910, the SDS, and the pesticide labels establish the requirements for PPE.

15-3.15 Enforcement Actions, Fines, and Penalties. Department facilities shall report all regulatory compliance inspections (e.g., EPA, state), NOVs, and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OU shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS) as described in Chapter 3 of this Manual.

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MANAGEMENT MANUAL**15-4 Responsibilities****15-4.1 The Office of the Secretary**

- (a) Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
 - (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department Offices and OUs of changes to environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department facilities' compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iv) Provide technical support on environmental compliance, as needed
 - (v) Coordinate OU responses and respond to federal and Departmental data calls, as applicable.
- (b) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority, and follow guidance within this chapter, as applicable.
- (c) The Office of Occupational Safety and Health oversees health and safety concerns associated with the handling of pesticides and provides guidance included in DAO 209-4, Occupational Safety and Health Program.

15-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with applicable pesticide management requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), including those in this chapter (e.g., FIFRA, 40 CFR Parts 150–180, 29 CFR Part 1910, CWA).
- (b) Designate a DRO and ensure that the DRO has a “backup” staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable pesticide laws, regulations, policies, and guidance.
- (d) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information on pesticide management operations at its facilities, documents outside regulatory inspections and enforcement actions, and maintains an environmental assessment program to assess the status of pesticide management compliance. The Department's ECARS is the CPTrack™ application.
- (e) Ensure programming, budgeting, and allocation of funds associated with compliance with pest management requirements, including resources to meet those requirements (e.g., PPE, storage, disposal, application, certifications, training) in budget submissions, and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on pesticide management compliance requirements.

15-5 Training

Personnel who conduct operations or supervise staff associated with regulated pest management operations shall be trained in accordance with applicable environmental compliance laws and regulations. Additionally, personnel who conduct operations that can impact the environment or compliance with laws and regulations should be trained to perform their job duties safely and in compliance with applicable laws, regulations, and policies.

- (a) Federal laws and regulations (40 CFR 171, Certification of Pesticide Applicators) require certification for any person who applies or supervises the use of restricted-use pesticides.
- (b) All states run their own training programs with some state programs being more stringent than federal requirements. When determining training requirements, state programs should be referenced in addition to federal requirements.
- (c) All training records must be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

15-6 Reporting Requirements. Spills reportable under EPCRA shall be reported. See Chapter 5, Compliance with the Emergency Planning and Community Right-To-Know Act (EPCRA).

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**CHAPTER 16:
THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

16-1 Scope

Department Administrative Order (DAO) 216-6 lists National Environmental Policy Act (NEPA) policies and procedures specific to Operating Units. Department-wide NEPA categorical exclusions are available at 74 Federal Register 33204 (July 10, 2009). Questions regarding NEPA-related matters should be referred to the Operating Unit's staff members who have an understanding of the NEPA process.

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**CHAPTER 17:
NATURAL RESOURCES MANAGEMENT**

17-1 Scope

17-1.1 This chapter identifies natural resources and conservation requirements mandated by laws, regulations, and executive orders; Department of Commerce (Department) requirements (e.g., policies, guidance), as well as responsibilities applicable to the management of natural resources at Department facilities within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

17-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; Chapter 7, Clean Water; Chapter 15, Pesticide Compliance.

17-1.3 References

15 Code of Federal Regulations (CFR) Part 923, Coastal Zone Management Program Regulations.

15 CFR Part 930, Coastal Zone Management Act (CZMA) Federal Consistency Regulations.

33 CFR Parts 320–330, Clean Water Act (CWA) Section 404, and Rivers and Harbors Act Section 10 Regulatory Programs.

50 CFR Part 10.13, List of Migratory Birds.

50 CFR Parts 10, 18, 216, and 228, Regulations Concerning Marine Mammals.

50 CFR Part 17, Endangered and Threatened Wildlife and Plants.

50 CFR Part 402, Interagency Cooperation – Endangered Species Act of 1973, as Amended.

16 U.S.C. § 661, Fish and Wildlife Coordination Act.

16 U.S.C. § 1361, Marine Mammal Protection Act (MMPA).

16 U.S.C. § 1451 *et seq.*, CZMA of 1972, as amended.

16 U.S.C. § 1531 *et seq.*, Endangered Species Act (ESA).

16 U.S.C. § 1801 *et seq.*, Magnuson-Stevens Fishery Conservation and Management Act.

16 U.S.C. § 4701, National Invasive Species Act of 1996.

Executive Order (E.O.) 11988, “Floodplain Management,” dated May 24, 1977.

E.O. 11990, “Protection of Wetlands,” dated May 24, 1977, as amended.

E.O. 13089, “Coral Reef Protection,” dated June 11, 1998.

E.O. 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds,” dated January 17, 2001.

E.O. 13751, “Safeguarding the Nation from the Impacts of Invasive Species,” dated December 8, 2016.

U.S. Fish and Wildlife Service (USFWS) Memorandum, “Guidance for the Establishment, Use, and Operation of Conservation Banks,” dated May 2, 2003.

17-2 Terms and Definitions

17-2.1 Action Area. Action area means all areas to be affected directly or indirectly by the federal action, and not merely the immediate area involved in the action.

17-2.2 Biological Assessment. A biological assessment is the information prepared by or under the direction of the 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 (50 CFR 402.02).

17-2.3 Biological Opinion. A Biological Opinion is the document that states the opinion of the USFWS or National Marine Fisheries Service (NMFS) as to whether the federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat (50 CFR 402.02).

17-2.4 Candidate Species. A candidate species is any species that is being considered by the secretary of interior or secretary of commerce for listing under the ESA as an endangered or a threatened species but is not yet the subject of a proposed listing.

17-2.5 Coastal Use or Resource. A coastal use or resource is defined as any land or water use or natural resource of the coastal zone. Coastal uses include, but are not limited to public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found permanently or cyclically within a state’s coastal zone. Biological and physical resources include, but are not limited to air, tidal and non-tidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also include uses and resources described in the state’s Coastal Management Plan.

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17-2.6 Coastal States. Coastal states are the U.S. states bordering on the Atlantic, Pacific, or Arctic oceans; the Gulf of Mexico; Long Island Sound; or one or more of the Great Lakes. The term “coastal states” also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and American Samoa.

17-2.7 Coastal Zone. The U.S. coastal zone is 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. It includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. § 1301 *et seq.*), the Act of March 2, 1917 (48 U.S.C. § 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. § 1681 note), or Section 1 of the Act of November 20, 1963 (48 U.S.C. § 1705), as applicable. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are 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.

17-2.8 Critical Habitat. Critical habitat means specific areas within the geographic area commonly occupied by a species, which contain features essential to the conservation of the species and which may require special management considerations or protection. Specific areas outside the currently occupied range of a threatened or endangered species may be determined by the secretary of interior as areas essential for the conservation of the species. Critical habitats are federally designated (50 CFR Part 424.02).

17-2.9 Department Action or Activity. Any function performed by or on behalf of the Department action proponent in the exercise of its statutory responsibilities (e.g., facilities development, tests, exercises). The term “action” is used interchangeably with the term “activity” in this instruction.

17-2.10 Effect on Any Coastal Use or Resource. Any reasonably foreseeable effect on coastal uses or resources resulting from a Department action or activity. These reasonably foreseeable effects can take the form of:

- (a) **Direct Effects:** Effects that occur at the same time or in the same place as the Department action.
- (b) **Indirect Effects:** Secondary and cumulative impacts that result from the Department action and are later in time or farther removed in distance but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the Department action when added to other past, present, and reasonably foreseeable actions, regardless of what agency or individual undertakes such actions. This definition is consistent with the Council on Environmental Quality’s (CEQ’s) definition of cumulative effects (40 CFR 1508.7).

17-2.11 Enforceable Policies of a State Coastal Management Program. State policies that are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a state exerts control over private and public land and water uses and natural resources in the coastal zone and which are incorporated in a federally-approved state Coastal Management Program. An enforceable policy contains standards of sufficient specificity to guide public and private uses, but it need not establish detailed criteria such that an action proponent is capable of determining the consistency of an activity without interaction with the state agency.

17-2.12 Endangered or Threatened Species. A species of fauna or flora that has been listed by the USFWS or the NMFS for special protection and management under the ESA.

17-2.13 Essential Fish Habitat. The water and substrates necessary to fish for spawning, feeding, or growth to maturity, per the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*).

17-2.14 Habitat. An area where a plant or animal species lives, grows, and reproduces, and the environment that satisfies its life requirements.

17-2.15 Harm in the Definition of “Take” in the Endangered Species Act. “Harm” is an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

17-2.16 Jeopardize the Continued Existence of. To engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02).

17-2.17 Land Use. A use or activity conducted in or on the shore lands within the coastal zone.

17-2.18 Marine Environment. The oceans and the seas, including estuarine and brackish waters (50 CFR 216.3).

17-2.19 Marine Mammal. Those specimens of the following orders, which are morphologically adapted to the marine environment, and whether alive or dead, and any part thereof, including but not limited to, any raw, dressed, or dyed fur or skin: Cetacea (whales, dolphins, and porpoises) and Pinnipedia, other than walrus (seals and sea lions) (50 CFR 216.3).

17-2.20 Natural Resources. Landforms, soils, waters, and their associated flora and fauna.

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17-2.21 Nonpoint Source Pollution/Polluted Runoff. Pollution caused by diffuse sources that are not regulated as point sources. This pollution normally is associated with runoff from construction activities; urban, agricultural, and silvicultural runoff; and other land disturbances such as military training and operations that disturb lands, soils, and waters. Nonpoint source pollution can result from stormwater runoff, precipitation, atmospheric deposition, or percolation.

17-2.22 Recovery Credit System. A Recovery Credit System (RCS) is an optional tool available to federal agencies to promote and enhance the recovery of listed species on non-federal lands.

17-2.23 Take. As defined in relation to the MMPA, the term “take” means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel; or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild (50 CFR 216.3).

17-2.24 Water Use. A use or activity conducted in or on waters within the coastal zone.

17-2.25 Wetlands. Those areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds (40 CFR 110.2).

17-3 Requirements

17-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local conservation and natural resources laws and regulations. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations.

17-3.2 Designated Responsible Official. Department facilities are responsible for selecting the designated responsible official (DRO) for facilities and permits under their jurisdiction. The Department recommends that the DRO for a given facility or permit be the facility manager or an equivalent staff member. It generally is better to appoint the DRO at the lowest level that still has the authority to submit permit applications and sign reports required by regulatory permits, as he or she will be closer to the operations being certified. In no case shall the responsibility for permits be delegated to personnel holding any position below the federal facility manager, operations director, or the manager responsible for facility operations. If an Operating Unit (OU) does not have authority over operations at a facility, then this paragraph does not apply.

17-3.3 Coastal Management

17-3.3.1 The CZMA outlines three national programs: the National Coastal Zone Management Program, the National Estuarine Research Reserve System, and the Coastal and Estuarine Land Conservation Program (CELCP). The National Coastal Zone Management Program aims to balance competing land and water issues through state and territorial coastal management programs; the reserves serve as field laboratories that provide a greater understanding of estuaries and how humans impact them. The CELCP provides matching funds to state and local governments to purchase threatened coastal and estuarine lands or obtain conservation easements. The CZMA is administered by the National Oceanic and Atmospheric Administration (NOAA). NOAA’s Office for Coastal Management oversees implementation and provides technical assistance; federally approved state programs provide day-to-day implementation.

- The federal consistency component ensures that federal actions with reasonably foreseeable effects on coastal uses and resources are consistent with the enforceable policies of a state’s approved coastal management program. This also applies to federally authorized and funded nonfederal actions. The Coastal Zone Enhancement Program provides incentives to states to enhance their state programs within nine key areas: wetlands, coastal hazards, public access, marine debris, cumulative and secondary impacts, special area management planning, ocean and Great Lakes resources, energy and government facility siting, and aquaculture.
- The Coastal Nonpoint Pollution Control Program ensures that participating states have the necessary tools to prevent and control polluted runoff.

17-3.3.2 The Department is required by the CZMA to ensure that its activities affecting any coastal use or resource are “consistent to the maximum extent practicable”—which is defined in 15 CFR Part 930.32(a)(1) to mean “fully consistent”—with the enforceable policies of the state’s Coastal Management Plan. See 15 CFR Part 930 for NOAA’s CZMA federal consistency regulations. Appendix A, Useful Web Links provides links to NOAA’s CZMA federal consistency website and federal consistency Quick Reference Guide.

17-3.3.3 Protection of Coastal Barriers. Before construction, maintenance, or other federal expenditures may take place in designated Coastal Barrier Resources, the Department is required to consult with the secretary of the interior.

17-3.3.4 Protection of Coral Reefs. The Department recognizes that coral reefs and related endemic mangrove and sea grass ecosystems are biologically rich and diverse habitats. High priority should be given to the protection of these resources in accordance with E.O. 13089, “Coral Reef Protection.” Any action that is likely to adversely affect a U.S. coral reef system or that may qualify as an exemption under E.O. 13089 shall be promptly reported to the affected OU headquarters.

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17-3.4 Fish and Wildlife Management. Fish and wildlife management are actions designed to preserve, enhance, and regulate indigenous wildlife and its habitats, including conservation of protected species and non-game species, management and harvest of game species, and animal damage control.

- (a) Department facilities shall comply with applicable laws for the protection and management of wildlife resources, and to develop, where compatible with the mission, programs for the development, enhancement, and use of wildlife resources.
- (b) When contracting fish and wildlife work on Department-controlled lands, Department facilities shall give priority to federal and state agencies having responsibilities for conservation and management of fish and wildlife.
- (c) Congress directs all federal agencies to use their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's responsibilities, to conserve and to promote conservation of non-game fish and wildlife and their habitats.

17-3.4.1 Endangered Species. Department facilities, in consultation with the USFWS and NMFS, shall ensure that any action authorized, funded, or carried out by the OU that "may affect" protected species, including candidate species, or critical habitat is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Such consultations can be either formal or informal (see 50 CFR Part 17).

- (a) When required by the USFWS, Department facilities shall prepare a biological assessment.
- (b) Facilities shall conduct surveys to review its mission activities, identify those that may affect federally listed species or habitats, and consult formally or informally with the appropriate agency as necessary.
- (c) The USFWS or NMFS may include compensatory mitigation as advisory conservation recommendations in the Biological Opinion.
 - (i) **Conservation Banking.** Conservation banks are among the tools available to offset the potential adverse impacts to species listed as federally threatened or endangered. Refer to USFWS Memorandum of May 2, 2003, "Guidance for the Establishment, Use, and Operation of Conservation Banks" for additional information. The USFWS evaluates and approves the use of conservation banks.
 - (ii) **Recovery Credit System.** An RCS is also for federally threatened and endangered species but is different from a conservation bank in that it may not necessarily be managed in perpetuity.

17-3.4.2 Marine Mammals. The MMPA (16 U.S.C. § 1361), subject to limited exceptions, prohibits any person (including federal agencies) or vessels subject to the jurisdiction of the United States from "taking" marine mammals on the high seas, in U.S. waters, or on land under the jurisdiction of the United States. Section 101(a)(5) of the MMPA directs the secretary of commerce (through NMFS) and the secretary of the interior (through USFWS) to allow, upon request, the incidental (but not intentional) taking of marine mammals by U.S. citizens who engage in a specified activity (exclusive of commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

17-3.4.3 Recreational Fisheries. As applicable, Department activities shall incorporate into natural resource management planning provisions for habitat restoration projects, public access where feasible, and participation in outreach programs for recreational fisheries. In keeping with E.O. 12962, "Recreational Fisheries," Department facilities shall improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by restoring degraded habitat, fostering conservation, providing access, and having awareness of opportunities for recreational fishing.

17-3.4.4 Essential Fish Habitat. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801), as reauthorized by the Sustainable Fisheries Act Amendments, federal agencies must consult with NMFS prior to undertaking any actions that may adversely affect essential fish habit.

17-3.4.5 Migratory Birds. OUs shall coordinate with the USFWS (E.O. 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds") to minimize the effects of actions that may harm or kill migratory birds (listed in 50 CFR Part 10.13), their young, or their eggs. Department facilities shall have the appropriate permits when performing work for the Department.

17-3.4.6 The Fish and Wildlife Coordination Act. The Fish and Wildlife Coordination Act (16 U.S.C. § 661) requires that when proposing to take an action that modifies any stream or body of water, the OU first consult with the USFWS and the cognizant state wildlife agency with a view to the conservation of wildlife resources possibly affected by the proposed action. Recommendations of the USFWS and state shall be included in reports to Congress or to persons authorizing the construction. The OU shall fully consider the wildlife aspects of the proposed action.

17-3.5 Land Management

17-3.5.1 Wetlands Protection. Section 404 of the CWA (33 CFR 320–330), prohibits discharges of dredged or filled material into U.S. waters, including wetlands, without first obtaining a permit from the U.S. Army Corps of Engineers (USACE). E.O. 11990, "Protection of Wetlands," requires federal agencies, in planning their actions, to consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. Department facilities shall comply with the national goal of no net loss of wetlands and shall avoid loss of size, function, and value of wetlands. Additionally, the Department facilities shall preserve and enhance the natural and beneficial values of wetlands in carrying out its activities.

OUs shall plan all construction and operational actions to avoid adverse impacts to, or destruction of, wetlands. Any construction requirement that cannot be sited to avoid wetlands shall be designed to minimize wetlands degradation and shall include compensatory mitigation as required by wetlands regulatory agencies in all phases of the project's planning, programming, and budgeting process.

17-3.5.2 Floodplain Management. OUs shall provide leadership in avoiding direct or indirect development of floodplains, and in restoring and preserving the natural and beneficial values served by floodplains. E.O. 11988, "Floodplain Management," requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

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17-3.6 Invasive Species. Invasive species cause a loss of biodiversity, pose increased wildland fire hazards, and degrade habitat. Prevention and rapid response reduce costs and impacts to the mission while enhancing native ecosystems. Because invasive species are specific to a geographic area, many areas regulate invasive species at the local level. The National Invasive Species Act of 1996 (16 U.S.C. § 4701) first addressed this issue by regulating the management of ballast water on inland waterways. E.O. 13751, “Protecting and Safeguarding the Nation from the Impacts of Invasive Species,” directs federal agencies to conduct coordinated federal prevention and control efforts related to invasive species.

17-3.7 Enforcement Actions, Fines, and Penalties. Department facilities shall report all regulatory compliance inspections (e.g., U.S. Environmental Protection Agency [EPA], state), notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

17-4 Responsibilities

17-4.1 Office of the Secretary

- (a) The Office of Sustainable Energy and Environmental Programs (OSEEP) shall:
- (i) Publish and maintain Department-wide policy and program guidance on environmental compliance
 - (ii) Notify Department offices and OUs of changes to natural resources requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iii) Monitor Department facilities’ compliance with applicable environmental compliance requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance)
 - (iv) Provide technical support on environmental compliance, as needed.

17-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with applicable natural resources and conservation requirements mandated by laws, regulations, executive orders; NOAA (NMFS and Office of Coastal Zone Management), USFWS, and USACE implementing requirements; and Department requirements (e.g., policies, guidance) including those in this chapter (e.g., ESA, CZMA, MMPA, CWA, Magnuson-Stevens Fishery Conservation and Management Act, Invasive Species Act).
- (b) Designate a DRO and ensure that the DRO has a “backup” staff member with the required knowledge of facility processes.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable natural resources and conservation laws, regulations, policies, and guidance.
- (d) Maintain an ECARS in accordance with Chapter 3 of this Manual that includes OU-wide information on operations that can adversely affect natural resources and conservation at its facilities, documents outside regulatory inspections and enforcement actions, and maintains an environmental assessment program to assess the status of natural resources compliance. The Department’s ECARS is the CPTrack™ application.
- (e) Ensure programming, budgeting, and allocation of funds for the management of natural resources, including requesting resources to meet those requirements (e.g., biological assessments, species habitat maintenance) in budget submissions, and assist their facilities in determining and estimating resource requirements.
- (f) Provide advice and technical assistance to facilities on management of natural resources in compliance with all applicable laws and regulations.
- (g) Ensure a natural resource management program is appropriately integrated with other planning and management processes to provide the most effective and efficient management of Department natural resources.

17-5 Training

Personnel who conduct or supervise staff associated with natural resources and conservation shall be trained in accordance with applicable environmental compliance laws and regulations. Additionally, personnel who conduct operations that can impact the protection, conservation, or management of natural resources should be trained to perform their job duties safely and in the compliance with applicable laws, regulations, and policies. Training for natural resources management may include the following elements:

- (a) Wetlands delineation
- (b) Wetlands soil and hydrology
- (c) Wetlands functions
- (d) Wetlands regulation policy
- (e) Wetland ecology
- (f) Managing development in floodplains
- (g) Floodplain mitigation

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(h) Overview of the ESA

(i) Consistency determination for agency activities within a coastal zone.

All training records shall be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

17-6 Reporting Requirements

17-6.1 Reporting to the Office of the Secretary. None.

17-6.2 Reporting to External Federal, State, and Local Agencies. None

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**CHAPTER 18:
CULTURAL RESOURCES MANAGEMENT**

18-1 Scope

18-1.1 This chapter identifies requirements mandated by laws, regulations, and executive orders; Department of Commerce (Department) requirements (e.g., policies, guidance), as well as responsibilities applicable to cultural resources management at Department facilities within the United States and its territories. Chapter 2, Authorities, provides a list and description of environmental laws and executive orders that may be applicable to this chapter.

18-1.2 Related Chapters. Chapter 2, Authorities; Chapter 3, Environmental Compliance Program and Environmental Management Systems; and Chapter 17, Natural Resources Management.

18-1.3 References

36 Code of Federal Regulations (CFR) Part 60, National Register of Historic Places (National Register).

36 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections.

36 CFR Part 800, Protection of Historic Properties.

43 CFR Part 7, Protection of Archeological Resources.

43 CFR Part 10, Native American Graves Protection and Repatriation Regulations (NAGPRA).

American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996.

Archaeological Resources Protection Act (ARPA), 16 U.S.C. § 470aa–mm.

Department of Commerce Department Administrative Order (DAO) 218-8, Consultation and Coordination with Indian Tribal Governments, dated April 26, 2012.

Executive Order (E.O.) 13006, “Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities,” dated May 21, 1996.

E.O. 13007, “Indian Sacred Sites,” dated May 24, 1996.

E.O. 13175, “Consultation and Coordination with Indian Tribal Governments,” dated November 6, 2000.

E.O. 13287, “Preserve America,” dated March 3, 2003.

NAGPRA, 25 U.S.C. § 3001 *et seq.* (Pub. L. 101-601).

National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*

National Historic Preservation Act (NHPA), 16 U.S.C. § 470 *et seq.*

National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 *et seq.*

Secretary of the Interior’s Standards and Guidelines for Federal Agency Historic Preservation Programs; Federal Register, April 24, 2014.

18-2 Terms and Definitions

18-2.1 Advisory Council on Historic Preservation. The Advisory Council on Historic Preservation (ACHP) is an independent federal agency charged with advising the president, Congress, and federal agencies regarding the protection of historic properties. The ACHP plays a key role in the NHPA Section 106 review process. Any NHPA Section 106 review disputes that cannot be resolved between the state historic preservation officer (SHPO) and the federal agency are presented to the ACHP. Appendix A of 36 CFR Part 800 provides the criteria for ACHP involvement in individual Section 106 cases.

18-2.2 Archaeological Resource. An archaeological resource is any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to 16 U.S.C., Chapter 1b. The regulations containing a determination shall include, but not be limited to, pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources under the regulations, unless found in archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age (16 U.S.C. § 470bb).

18-2.3 Archaeological Survey. Archaeological survey is a systematic analysis by a professional meeting secretary of the interior standards (36 CFR Part 61, Appendix A), sufficient to allow categorization of archaeological potential to the degree required to make decisions.

18-2.4 Architectural Survey and Evaluation. This survey and evaluation effort are used to determine which real properties, sites, buildings, structures, works of engineering, industrial facilities, fortifications, and landscapes are eligible for the National Register.

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18-2.5 Consultation. The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process. The secretary of the department of agriculture’s “Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act” provide further guidance on consultation (36 CFR 800.16). The DAO 218-8 definition refers to an accountable process ensuring meaningful and timely input from tribal officials on Department policies that have tribal implications.

18-2.6 Cultural Items. Cultural items are associated and unassociated funerary objects, sacred objects, and cultural patrimony (Pub. L. 101-601, Section 2(3)(a–d)).

18-2.7 Cultural Patrimony. Cultural patrimony refers to an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself—rather than property owned by an individual Native American—and which therefore cannot be alienated, appropriated, or conveyed by any individual regardless of whether the individual is a member of the Indian tribe or Native Hawaiian organization (Pub. L. 101-601, Section 2).

18-2.8 Cultural Resources. “Cultural resources” is a general term commonly defined as tangible evidence or place of past human activity. It can include historic buildings, structures, and districts; archaeological sites; historic and cultural landscapes; cemeteries; traditional cultural places; Indian sacred sites; and objects of significance in history, architecture, archaeology, engineering, or culture. The term also includes associated documents and records.

18-2.9 Curatorial Services. Managing and preserving a collection according to professional museum and archival practices (36 CFR 79.4).

18-2.10 Federal Preservation Officer. The federal preservation officer (FPO) is the Operating Unit (OU)–wide official responsible for coordinating activities under NHPA and related laws and regulations.

18-2.11 Federal Trust Responsibility. The federal trust responsibility between American Indians and the federal government is an outgrowth of the federal treaty period during which tribes ceded lands in return for protection and certain assurances. Treaties are construed as the tribes would have understood them at the time they were signed, with ambiguities being resolved in favor of the tribes because of the disproportionate bargaining power between the tribes and the United States. Among the federal assurances were that the tribes retained any rights that were not expressly ceded, such as the use of their ancestral lands for fishing, hunting, and gathering in usual and accustomed places and tribal sovereignty.

18-2.12 Funerary Objects. Funerary objects are items that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later, with or near individual human remains (43 CFR 10.2(d)(2)).

18-2.13 Historic Property. Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register (maintained by the secretary of the interior). This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. The term “eligible for inclusion in the National Register” includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria (36 CFR 800.16).

18-2.14 Human Remains. The physical remains of a human body of a person of Native American ancestry. This term does not include remains or portions of remains that reasonably may be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony must be considered a part of the item (43 CFR 10.2(d)(1)).

18-2.15 Inadvertent Discovery. The unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of federal or tribal lands pursuant to section 3(d) of the Native American Graves Protection and Repatriation Act (43 CFR 10.2(g)(4)).

18-2.16 Indian Tribe. An Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation, or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (36 CFR 800.16).

18-2.17 Material Remains. Artifacts, objects, specimens, and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource. Classes of material remains that may be in a collection include but are not limited to (36 CFR 79.4):

- (a) Components of structures and features (such as houses, mills, piers, fortifications, earthworks, and mounds)
- (b) Intact or fragmentary artifacts of human manufacture
- (c) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers, and pigments)
- (d) Byproducts, waste products, or debris resulting from the manufacture or use of manmade or natural materials
- (e) Organic materials (such as vegetable and animal remains)
- (f) Human remains
- (g) Components of petroglyphs, pictographs, intaglios, or other works of artistic or symbolic representation

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- (h) Components of shipwrecks
- (i) Environmental and chronometric specimens
- (j) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

18-2.18 Memorandum of Agreement. In relation to protection of historic properties, the memorandum of agreement is the document that records the terms and conditions agreed upon the parties (minimally the OU and the SHPO) to resolve the adverse effects of an undertaking upon historic properties. Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register (36 CFR 800.16).

18-2.19 National Historic Landmark. In relation to the National Historic Landmark Program (36 CFR 65.3), a district, site, building, structure, or object in public or private ownership that is judged by the secretary of the interior to possess national significance in American history, archaeology, architecture, engineering, and culture, and is so designated by the secretary of the interior.

18-2.20 The National Register of Historic Places. The National Register of Historic Places is the listing of districts, sites, buildings, structures, and objects of national, state, or local significance in American history, architecture, archaeology, engineering, and culture maintained by the secretary of the interior (36 CFR 65.3).

18-2.21 Native American. Of or relating to a tribe, people, or culture that is indigenous to the United States.

18-2.22 Native Hawaiian. NAGPRA regulations define “Native Hawaiian” as any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii (43 CFR 10.2(b)(3)(ii)).

18-2.23 Programmatic Agreement. A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with 36 CFR Part 800.14(b) (36 CFR 800.16).

18-2.24 Section 106 Consultation. A Section 106 consultation is a compliance procedure in which an agency requests the concurrence of the SHPO or the ACHP when there is a federal undertaking that may affect a property on, or eligible for, the National Register (36 CFR 800.3–800.9).

18-2.25 State Historic Preservation Officer. The person designated by the governor, chief executive, or by state statute in each state to administer the State Historic Preservation Program, including identifying and nominating eligible properties to the National Register and otherwise administering applications for listing historic properties in the National Register (36 CFR 60.3).

18-2.26 Summary. Under NAGPRA, a summary provides information about the collections to lineal descendants and culturally affiliated Indian tribes or Native Hawaiian organizations that may wish to request repatriation of such objects. The summary serves in lieu of an object-by-object inventory of these collections, although if an inventory is available it may be substituted. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the federal agency or by a non-federal institution.

18-2.27 Tribal Historic Preservation Officer. The tribal historic preservation officer (THPO) is the tribal official, appointed by the tribe’s chief governing authority or designated by a tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of the NHPA of 1966, as amended, 16 U.S.C. §§ 470–470w(6). For the purposes of Subpart B, the term also includes the designated representative of an Indian tribe that has not formally assumed the SHPO’s responsibilities when an undertaking occurs on or affects historic properties on the tribal lands of the Indian tribe (see 36 CFR Part 800.2(c)(2)) (36 CFR Part 800.16).

18-2.28 Undertaking. In relation to the preservation of historic properties, a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license, or approval (36 CFR 800.16(y)).

18-3 Requirements

18-3.1 State and Local Requirements. Department facilities shall comply with all applicable state and local cultural resources regulations. Note that state and local laws, regulations, and guidance may be more stringent than federal laws and regulations.

18-3.2 Cultural Resources Management. Department facilities should coordinate with their respective FPO and define a process for managing cultural resources on their property, identify contributing elements, and guide maintenance actions. In many cases, development of building condition, landscape and or archeological surveys, preservation plans, historic structure(s) surveys, and programmatic agreements can provide the agency with critical tools for ongoing cultural resource management.

18-3.3 Historic Properties. As required by 36 CFR Part 60.9, all federal agencies are required to establish a program to locate, inventory, and nominate to the secretary of the interior all properties under their jurisdiction or control that appear to qualify for inclusion on the National Register. The NHPA requires that federal agencies take into consideration actions that could adversely affect historic properties listed or eligible for listing on the National Register, known as the Section 106 Review Process. While the Department does not have management responsibility for historic properties without jurisdiction or control, it may have compliance responsibilities associated with its undertakings that affect them (for

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more information see the Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the NHPA; Federal Register, 24 April 2014).

- (a) The OU's program shall:
 - (i) Per the NHPA, assign responsibility to a qualified FPO for coordinating OU cultural resources activities.
 - (ii) Inventory and evaluate all known cultural resources according to approved secretary of the interior standards. Section 110 of the NHPA requires federal agencies to identify, evaluate, inventory, and protect historic properties (or resources that are eligible for listing on the National Register) on properties that they control.
 - (iii) Identify the likelihood (based on scientific study according to methodologies approved by the secretary of interior) of the presence of other significant cultural resources.
 - (iv) When identified, nominate historic properties for inclusion in the National Register of Historic Places and any equivalent state register. The National Register nomination process is reserved for the OU with jurisdiction or control for the historic property.
 - (v) Develop and implement strategies for maintaining cultural resources and the methods used for compliance with applicable regulations such that the historic, architectural, archeological, or cultural value of the resource is maintained.
 - (vi) Clearly identify the impact on historic resources of ongoing projects and the resolutions to those impacts. Section 106 of the Act requires federal agencies to consider the effects of their undertakings on historic properties.
- (b) **Historic Property Management.** As part of the overarching management of historic properties, federal agencies shall ensure that such resources are not inadvertently transferred, leased, sold, demolished, substantially altered, or allowed to deteriorate significantly. Each agency must, to the maximum extent feasible, use historic properties available to it in carrying out its responsibilities, and shall carry out related activities in consultation with other federal, state, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector. Failure to identify resources that meet National Register criteria does not exempt an agency from any legal responsibilities (NHPA § 110).

18-3.4 Preservation Program. In accordance with NHPA Section 110, an agency must manage and maintain historic properties under its jurisdiction or control in a manner that considers the preservation of historic, architectural, archaeological, and cultural values.

- (a) **Undertakings.** Once a historic property has been identified, no undertaking shall begin until the impact of that undertaking on the historic property has been investigated through the Section 106 process of consultation and documentation as outlined in 36 CFR Part 800. The Section 106 consultation process must be completed prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license.
- (b) **Use of Historic Structures.** Federal agencies will use available historic buildings, when feasible, prior to new construction, lease, or any acquisition of a building for the purpose of carrying out its responsibilities (E.O. 13287, "Preserve America"; E.O. 13006, "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities").
- (c) **National Environmental Policy Act Integration.** The statutory requirements of NEPA and NHPA, although independent, are interrelated. Agency officials may use the NEPA process and documentation required for the preparation of NEPA documents to comply with Section 106 in lieu of the procedures set forth in 36 CFR Parts 800.3–800.6. The agency official must notify in advance the SHPO or THPO and the Council that it intends to do so and must follow the standards discussed in 36 CFR Part 800.
- (d) **Memoranda of Agreement and Programmatic Agreements.** The ACHP provides federal agencies templates to facilitate the development of legally recognized memoranda of agreement and programmatic agreements. The Department recommends the use of the ACHP memorandum of agreement and programmatic agreement format, unless otherwise determined beneficial to the department.

18-3.5 Archeological Resources

- (a) ARPA authorizes federal land managers to protect archaeological resources through permits authorizing excavation or removal of archaeological resources; through civil and criminal penalties for unauthorized excavation or removal, damage, alteration, or defacement of archaeological resources or attempts to perform such unauthorized acts; through provisions for the preservation of archaeological resource collections and data; and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the resource.
- (b) No archaeological resources located on public lands can be excavated, removed, damaged, or otherwise altered, or defaced without a permit (43 CFR 7). However, persons carrying out official duties under the federal land manager's direction need not apply for permits if the federal land manager insures that all provisions of ARPA have been met by other documented means. Permit requests must explicitly address and ensure professional curation of all remains, samples, and documentation in accordance with 36 CFR Part 79.
- (c) In cases where the Department contracts with an archaeologist (or a Department contractor subcontracts with an archaeologist) to perform archaeological work for the Department, OUs may consider a brief compliance statement in the contract or subcontract as the equivalent of a permit. In cases where employees of the Department perform archaeology on Department lands, satisfy legal permitting requirements by ensuring that such employees are professionally qualified archaeologists (as defined by current federal regulations).
- (d) Federal agencies are required to withhold information from the public regarding nature and location of archaeological sites if disclosure of this information might create a risk of harm to such resources.
- (e) Archaeological resources excavated from public lands will remain the property of the United States, and the material remains and copies of associated records will be preserved in a suitable university, museum, or other scientific or educational institution.
- (f) For archeological surveys, the secretary of interior's "Standards and Guidelines for Archaeology and Historic Preservation" recognizes several techniques, methodologies, and types of surveys to allow a federal land manager to make decisions about property use that is consistent with the legislated intent of protecting important archaeological properties, including archival research, field surveys, reconnaissance surveys, intensive surveys, predictive modeling, sampling methodologies, and special survey techniques such as remote sensing or deep testing.

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18-3.6 Native American Considerations

- (a) **Native American Cultural Items.** Federal facilities in possession or control of any collection that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony are required to develop a summary according to the requirements of 43 CFR Part 10.8. Consultation with pertinent federally recognized Indian tribes and Native Hawaiian organizations, tribal officials, and traditional religious leaders in relation to the unassociated funerary objects, sacred objects, or objects of cultural patrimony must begin no later than the date upon which the summary is completed.
- (b) **Human Remains and Associated Funerary Objects.** Federal facilities must develop an inventory of any human remains, whether excavated intentionally or discovered inadvertently on federal lands, and funerary objects as outlined in 43 CFR Part 10.9. During the creation of the inventory, the consultation and notification procedures outlined in 43 CFR Part 10.9 must be followed.
- (c) **Repatriation.** In the case of repatriation of Native American human remains or cultural objects, extensive consultation procedures and documentation of the actions to be taken must be executed. See 43 CFR Part 10.
- (d) **Sacred Sites.** Under AIRFA and E.O. 13007, “Indian Sacred Sites,” federal facilities may not prohibit American Indians from access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites. In this case, “American Indian” includes American Indian, Eskimo, Aleut, and Native Hawaiians. In addition to not prohibiting access, federal facilities will accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners while also avoiding adversely affecting the physical integrity of such sacred sites. Where appropriate, federal facilities shall maintain the confidentiality of sacred sites.
- (e) Section 3 requires notification of and consultation with lineal descendants, federally recognized tribes, and Native Hawaiian organizations prior to the intentional excavation of NAGPRA cultural items from archaeological sites, and establishes a process to follow in cases of their inadvertent discovery, including procedures for transfer of custody.

18-3.7 Collection Curation. Federal facilities with the long-term management and preservation of preexisting or new archaeological collections must manage them according to the curation standards in 36 CFR Part 79. Curation includes ensuring that collections are housed appropriately and that appropriately trained individuals oversee the collection; and the general management of the collection. Note that, under these regulations, a collection may be as large as a full museum or as small as a single display case.

18-3.8 Consultation. The term “consultation” is used throughout cultural resources regulations, including NHPA, AIRFA, NAGPRA, and the Federal Trust Responsibility. Depending on the applicable regulation, consultations also may include the ACHP, SHPO, THPO, Indian tribes, Native Hawaiian organizations, and interested public. In general, federal agencies are to consult with interested parties at the earliest stages in the planning process to allow consideration of all possible program alternatives that facilitate timely completion of the project or mission while avoiding or mitigating impact to a historic property, archeological site, sacred site, or Native American resource.

18-3.9 Marine Sanctuaries. As applicable, Department facilities shall comply with the NMSA. The primary objective of the NMSA is to protect marine resources such as coral reefs, sunken historical vessels, and unique habitats. Day-to-day management of National Marine Sanctuaries has been delegated to the National Oceanic and Atmospheric Administration’s (NOAA’s) Office of National Marine Sanctuaries.

18-3.10 Enforcement Actions, Fines, and Penalties. Department facilities shall report all regulatory compliance inspections (e.g., U.S. Environmental Protection Agency [EPA], state), notices of violation (NOVs), and penalty assessments to their OU headquarters and consult with their legal counsel as appropriate before paying any penalties. OUs shall report receipt of enforcement actions and status of enforcement actions to the Department and document the actions within an environmental compliance assessment and reporting system (ECARS), as described in Chapter 3 of this Manual.

NAGPRA establishes criminal penalties for trafficking in cultural items obtained in violation of the law. U.S. Department of the Interior bureaus may take custody of human remains and cultural items that were illegally trafficked in violation of the law and—after any criminal penalties are issued by prosecutors and approval for transfer is granted—may assume responsibility for such items until appropriate consultation with tribes occurs and ultimate disposition is determined. ARPA authorizes criminal and civil penalties against any person who violates any prohibition of the Act.

18-4 Responsibilities

18-4.1 The Office of the Secretary

- (a) The Office of Legislative and Intergovernmental Affairs issues Departmental policy on tribal consultation in DAO 218-8, Tribal Consultation and Coordination Policy of the U.S. Department of Commerce, and implementation of the DAO. The DAO designates the Department’s tribal consultation official within the Office of the Secretary (OS) who is responsible for acting on the requirements of the DAO and has principle responsibility for implementing E.O. 13175, “Consultation and Coordination with Indian Tribal Governments.”
- (b) The Office of Real Property Programs (ORPP) tracks the status of the Department’s real property within the Real Property Management database and the Federal Real Property Profile, tracking entry of historic properties into the systems.
- (c) The Office of Sustainable Energy and Environmental Programs (OSEEP) publishes, maintains, and updates this Manual.
- (d) The Office of Space and Building Management (OSBM) shall, as part of its responsibility to maintain the Herbert C. Hoover Building (HCHB), share environmental compliance responsibility for the HCHB with the General Services Administration (GSA) in accordance with its delegated authority, and follow guidance within this chapter, as applicable.

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18-4.2 Operating Units Shall:

- (a) Ensure that OU facilities comply with applicable cultural resource management requirements mandated by laws, regulations, executive orders, and Department requirements (e.g., policies, guidance) including those in this chapter (e.g., NHPA, NAGPRA, ARPA, DAO 218-8).
- (b) Ensure programming, budgeting, and allocation of funds associated with cultural resources management, including requesting resources to meet those requirements (e.g., historic preservation of buildings, archaeological studies, curation, and consultations; providing for the professional identification, evaluation, inventory, nomination, and protection of resources under their control that appear to be eligible for the National Register; ensuring that the appropriate data management systems, including spatial data systems, accurately reflect the historic status of such resources in budget submissions); assisting their facilities in determining, training, and estimating resource requirements; and meeting cultural resources requirements.
- (c) As appropriate, OU facilities should ensure the review of facilities-related agreements (e.g., memoranda of understanding, leases) for the appropriate coverage of environmental responsibilities to support compliance with applicable cultural resources laws, regulations, policies, and guidance.
- (d) Ensure that accurate information is provided in a timely manner to support compilation and assimilation of the OU's Preserve America and National Park Service annual federal archeological data calls.
- (e) Ensure a cultural resource management program is appropriately integrated with other planning and management processes to provide the most effective and efficient management of Department historic properties.
- (f) Identify all proposed undertakings for which the OU is subject to Section 106 requirements.
- (g) Carry out responsibilities in compliance with the implementing regulations established in 36 CFR Part 800.
- (h) Coordinate as required with other OUs, consulting parties, and organizations to perform cultural resources compliance and management activities associated with their undertakings.
- (i) Respond to congressional inquiries and requests for cultural resources information from federal, state, or private interests, including Preserve America and annual National Park Service Archaeological data calls.
- (j) Process applications and issue ARPA permits authorizing professional excavation and removal of archaeological resources, as appropriate.
- (k) Per DAO 218-8, designate appropriate official(s) to ensure implementation of the Tribal Consultation Policy (DAO 218-8) at the OU level.

18-4.3 Operating Unit Federal Preservation Officer

- (a) The FPO is responsible for coordinating an OU's compliance with NHPA and related laws and authorities.
- (b) The FPO acts as the liaison between the OU and state and federal compliance agencies. The FPO, at a minimum, shall meet the secretary of the interior's Historic Preservation Professional Qualification Standards as applicable. The FPO also shall have expert technical knowledge of architectural conservation and rehabilitation principles and practices and demonstrated skill in building interpersonal relations to guide project teams effectively, articulate complex positions persuasively, and influence Section 106 consultation outcomes positively.
- (c) The FPO is responsible for compliance with federal reporting requirements related to historic buildings, archeological activity, and preservation matters in accordance with NHPA, ARPA, E.O. 13287, and related laws and authorities.

18-4.4 Department Facility Managers

- (a) Facility managers for properties with cultural resources should be able to identify these resources and, as necessary, refer cultural resource matters to the appropriate staff of their OU. For historic properties, managers should be able to distinguish between historic and non-historic materials and features.
- (b) Facility managers should understand which types of work may require external compliance review.

18-5 Training

Personnel with cultural resources compliance responsibilities shall receive cultural resources training appropriate to his or her job assignment. This training is particularly important for individuals from outside the cultural resources management profession whose duties nevertheless affect the management of historic properties or archaeological resources. Additionally, personnel who conduct operations that can impact the environment or compliance with cultural resources laws and regulations should be trained to perform their job duties safely and in compliance with applicable laws, regulations, and policies. Facility managers for historic properties also should be given guidance and training on cultural resources, as appropriate and necessary.

All Department FPOs must minimally meet the secretary of the interior's Professional Qualification Standards (36 CFR Part 800, Section 110 (c)). An example of training is Section 106 training. Refer to the ACHP website for available training. Refer to Appendix A, Useful Web Links for link the ACHP. All training records must be retained in accordance with applicable laws, regulations, executive orders, and Department requirements (e.g., policies, guidance), whichever is the most stringent.

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18-6 Reporting Requirements

18-6.1 Reporting to the Office of the Secretary. None.

18-6.2 Reporting to External Federal, State, and Local Agencies

- (a) ACHP Preserve America report (see E.O. 13287, "Preserve America")
- (b) National Park Service Annual Federal Archeological data call.

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**APPENDIX A:
USEFUL WEB LINKS**

Chapter 1, Introduction

Department of Commerce energy, sustainability, and environmental compliance community website: <https://fedcenter.gov/esecc>.

FedCenter information on training opportunities and information on regulatory compliance and regulations: <https://www.fedcenter.gov/>.

U.S. Environmental Protection Agency (EPA) information on training opportunities, regulatory compliance, and regulations: <https://www.epa.gov/>.

Chapter 3, Environmental Compliance Program and Environmental Management Systems

International Organization for Standardization (ISO) 14001:2015 and its annexes may be purchased at <https://www.iso.org/obp/ui/#iso:std:iso:14001:ed-3:v1:en>.

EPA's Enforcement and Compliance History Online (ECHO) website is a useful resource for determining whether a facility has had any enforcement action under the Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), or the Safe Drinking Water Act (SDWA). <https://echo.epa.gov/>.

EPA, "Overview of the Enforcement Process for Federal Facilities." <https://www.epa.gov/enforcement/overview-enforcement-process-federal-facilities>.

Chapter 4, Environmental Liabilities and Contingencies

U.S. Department of Commerce, "Accounting Principles and Standards Handbook." <http://www.osec.doc.gov/ofm/Accounting/cover.html>.

Federal Accounting Standards Advisory Board (FASAB) offers guidance applicable to environmental liabilities and contingencies: <http://www.fasab.gov/>.

FASAB, "Handbook of Federal Accounting Standards and Other Pronouncements, as Amended" provides additional sources of information at <http://www.fasab.gov/document-by-chapter>.

FASAB, "Links to Other Helpful Websites." <http://www.fasab.gov/links-to-other-helpful-websites>.

Chapter 5, Emergency Planning and Community Right-to-Know Act (EPCRA)

Extremely hazardous substances with reportable quantities (RQs) and threshold planning quantities are listed in 40 CFR Part 355.

- Appendix A (alphabetical order): https://www.ecfr.gov/cgi-bin/textidx?SID=530892153f51dc8d716f91f10f99f0b1&node=pt40.28.355&rgn=div5#ap40.30.355_161.a.
- Appendix B (Chemical Abstracts Service [CAS] number order): https://www.ecfr.gov/cgi-bin/textidx?SID=530892153f51dc8d716f91f10f99f0b1&node=pt40.28.355&rgn=div5#ap40.30.355_161.b.

Hazardous substances (HSs) and RQs listed in Table 302.4 of 40 CFR Part 302: https://www.ecfr.gov/cgi-bin/textidx?SID=28c49a4180a16e483118086a0e8db634&node=se40.28.302_14&rgn=div8.

EPA, "Emergency Planning and Community Right-to-Know Act (EPCRA)" includes Tier I and Tier II forms: <http://www.epa.gov/epcra>.

EPA, "List of Lists: Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Section 112(r) of the Clean Air Act." https://www.epa.gov/sites/production/files/2015-03/documents/list_of_lists.pdf.

Chapter 6, Air Quality

Accidental Releases and Risk Management Plans—40 CFR § 68.130 List of substances: <https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol17/xml/CFR-2019-title40-vol17-part68.xml#seqnum68.130>.

EPA, "Greenhouse Gas Reporting Program." <https://www.epa.gov/ghgreporting>.

EPA, "List of Lists: Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Section 112(r) of the Clean Air Act." https://www.epa.gov/sites/production/files/2015-03/documents/list_of_lists.pdf.

EPA, "Nonattainment Areas for Priority Pollutants (Green Book)." <https://www.epa.gov/green-book>.

EPA, "Permitting Under the Clean Air Act" includes links that provide information on state air quality programs: <https://www.epa.gov/caa-permitting>.

EPA, "Significant New Alternatives Policy (SNAP) Program." <https://www.epa.gov/snap>.

Chapter 7, Clean Water

EPA, National Pollutant Discharge Elimination System (NPDES) website. <https://www.epa.gov/npdes>

EPA, "Stormwater Management for Federal Facilities under Section 438 of the Energy Independence and Security Act." <https://www.epa.gov/nps/stormwater-management-federal-facilities-under-section-438-energy-independence-and-security-act>.

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EPA, “Drinking Water Requirements for States and Public Water Systems.” <https://www.epa.gov/dwstandardsregulations>.

Chapter 9, Oil and Hazardous Substance Spill Preparedness and Response

EPA, “Overview of the Spill Prevention Control and Countermeasure (SPCC) Regulation.” <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/overview-spill-prevention-control-and>.

EPA, Fact Sheet: “Spill Prevention Control and Countermeasure (SPCC) Plan—Qualified Facilities Applicability.” https://www.epa.gov/sites/production/files/2013-08/documents/qf_app_guidance_0.pdf.

EPA, “Facility Response Plan Overview.” <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/facility-response-plan-frp-overview>.

Chapter 12, Hazardous and Universal Waste Management

Hazardous waste generators should check with their state regulatory agency, because certain states have additional or more stringent requirements than the federal government. See EPA’s Links to Hazardous Waste Programs and U.S. State Environmental Agencies at <https://www.epa.gov/hwgenerators/links-hazardous-waste-programs-and-us-state-environmental-agencies>.

Chapter 14, Solid Waste Management, Resource Recovery, and Recycling

E-Stewards, “Find a Recycler” tool: <http://e-stewards.org/find-a-recycler/>.

EPA, “Sustainable Marketplace: Greener Products and Services.” <https://www.epa.gov/greenerproducts>.

EPA, “Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing.” <https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>.

EPA, “Comprehensive Procurement Guideline (CPG) Program.” <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

EPA, “ENERGY STAR.” <https://www.energystar.gov/>.

Federal Energy Management Program (FEMP), “Energy Efficient Products.” <https://www.energy.gov/eere/femp/search-energy-efficient-products>.

General Services Administration (GSA), “Green Procurement Compilation.” <https://www.gsa.gov/tools-overview/buying-and-selling-tools/green-procurement-compilation>.

Sustainable Electronics Recycling International’s (SERI’s) R2 Standard “Find a Recycler” tool: <https://sustainableelectronics.org/recyclers>.

U.S. Department of Agriculture (USDA), “BioPreferred Program.” <https://www.biopreferred.gov/BioPreferred/>.

Chapter 17, Natural Resources Management

The National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management Coastal and Estuarine Land Conservation Program (CELCP) provides matching funds to state and local governments to purchase threatened coastal and estuarine lands or obtain conservation easements. See <https://coast.noaa.gov/czm/landconservation>.

NOAA, Coastal Zone Management Act (CZMA) federal consistency website: <https://www.coast.noaa.gov/czm/consistency/>.

NOAA, CZMA Federal Consistency Quick Reference Guide: <https://coast.noaa.gov/data/czm/consistency/media/federal-consistency-quick-reference.pdf>.

Chapter 18, Cultural Resources Management

Advisory Council on Historic Preservation, “Promoting Historic Preservation Across the Nation.” <https://www.achp.gov/>.

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**APPENDIX B:
INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO) 14001:2015 ELEMENTS AND SUBELEMENTS**

The following outline describes the elements of an environmental management system (EMS) under International Organization for Standardization (ISO) 14001:2015.

Context of the Organization

- Understanding the organization and its context
- Understanding the needs and expectations of interested parties
- Determining the scope of the EMS
- EMS

This section addresses EMS scope development. In addition to environmental considerations, the EMS should include internal and external considerations of the EMS, such as internal stakeholders.

Leadership

- Leadership and commitment
- Environmental policy
- Organizational roles, responsibilities, and authorities

This section addresses items that demonstrate top management's commitment to the EMS, including developing an environmental policy signed by upper leadership; communication of the organization's environmental policy; and identification and communication of roles, responsibilities, and authorities within the EMS.

Planning

- Actions to address risks and opportunities
 - General
 - Environmental aspects
 - Compliance obligations
 - Planning action
- Environmental objectives and planning to achieve them
 - Environmental objectives
 - Planning actions to achieve environmental objectives

This element addresses identification of environmental aspects associated with a facility's operations and impacts of these aspects; consideration of compliance obligations including federal, state, and local laws and regulations and executive orders; and developing objectives and targets.

Support

- Resources
- Competence
- Awareness
- Communication
 - General
 - Internal communication
 - External communication
- Documented information
 - General
 - Creating and updating
 - Control of documented information

This is the largest element and addresses resources needed for an EMS; assessing employee competence to perform their job functions; overall awareness of the EMS; control of documents and records (e.g., environmental reports, EMS documentation, permits, records for sampling, monitoring records, inspections, training); and external and internal communication.

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- Operational planning and control
- Emergency preparedness and response

This element addresses operational control (e.g., engineering controls, administrative controls), such as controls to prevent and contain spills and standard operating procedures. It also covers a facility's emergency preparedness and response procedures, such as emergency plans, drills, and communication.

Performance Evaluation

- Monitoring, measurement, analysis, and evaluation
 - General
 - Evaluation of compliance
- Internal audit
 - General
 - Internal audit program
- Management review

This is the second-largest element and addresses how a facility monitors, measures, analyzes, and evaluates its environmental performance, including environmental compliance with legal requirements and its EMS. A system of internal audits of the EMS is used to evaluate performance, identify problems, and apply corrections for these problems. It also addresses how top management will stay informed of and review its EMS and status of environmental compliance through routine management reviews.

Improvement

- General
- Nonconformity and corrective action
- Continual improvement

The last element covers how a facility addresses identified nonconformance of its EMS; implements corrective actions to correct the nonconformance and prevent recurrence; determines opportunities for improvement; and integrates continual improvement in its EMS.

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**APPENDIX C:
ENVIRONMENTAL LIABILITIES AND CONTINGENCIES GUIDANCE**

This appendix contains (1) an outline of Federal Accounting Standards Advisory Board (FASAB) guidance applicable to environmental liabilities and contingencies; and (2) detailed information related to environmental liabilities and contingencies from each of the applicable FASAB issuances. This information was compiled by the Department of Commerce (Department) Office of Financial Management (OFM). FASAB guidance can be downloaded from the FASAB website; see Appendix A, Useful Web Links (for Chapter 4, Environmental Liabilities and Contingencies).

1 Outline of FASAB Guidance Applicable to Environmental Liabilities

Note that items with an asterisk (*) have detailed information presented in Section 2 below.

Category A Hierarchy

FASAB Standards (Statement of Federal Financial Accounting Standards (SFFAS) and Interpretations)

- *SFFAS 5 Accounting for Liabilities of the Federal Government, as amended by SFFAS 12, Recognition of Contingent Liabilities Arising from Litigation
- *SFFAS 6 Accounting for Property, Plant, and Equipment
- SFFAS 34 The Hierarchy of Generally Accepted Accounting Principles, Including the Application of Standards by FASAB

Category B Hierarchy

FASAB Technical Bulletins

- *2002-1 Assigning to Component Entities Costs and Liabilities that Result from Legal Claims Against the Federal Government
- *2006-1 Recognition and Measurement of Asbestos-Related Cleanup Costs

Category C Hierarchy

Technical Releases of the Accounting and Auditing Policy Committee of FASAB

- *No. 2 Determining Probable and Reasonably Estimable for Environmental Liabilities in the Federal Government
- *No. 10 Implementation Guidance on Asbestos Cleanup Costs Associated with Facilities and Installed Equipment
- *No. 11 Implementation Guidance on Cleanup Costs Associated with Equipment
- *No. 14 Implementation Guidance on the Accounting for the Disposal of General Property, Plant & Equipment

Additional accounting guidance for Environmental Liabilities and Contingencies could include the following.

Category B Hierarchy

Additional Category B Guidance

American Institute of Certified Public Accountants (AICPA) Industry Audit and Accounting Guides, if specifically made applicable to federal governmental entities by AICPA and cleared by FASAB.

Category D Hierarchy

FASAB Staff Implementation Guidance

Implementation Guide

If Accounting Treatment for a Transaction or Event is Not Specified by a Pronouncement in Category A

If the accounting treatment for a transaction or event is not specified by a pronouncement in Category (A), a federal reporting entity should consider whether the accounting treatment is specified by an accounting principle from a source in another category. In such cases, if Categories (B) through (D) contain accounting principles that specify accounting treatments for a transaction or event, the federal reporting entity should follow the accounting treatment specified by the accounting principles from the source in the highest category—for example, follow Category (B) treatment over Category (C) treatment.

If Accounting Treatment for a Transaction or Event is Not Specified by a Pronouncement or Established in Practice as Described in Categories A to D

If the accounting treatment for a transaction or event is not specified by a pronouncement or established in practice as described in Categories (A) through (D), a federal reporting entity should then consider accounting principles for similar transactions or events within Categories (A) through (D) before considering “Other Accounting Literature” discussed in paragraph 8. For example, it might be appropriate to report the event or transaction by applying, in a similar manner, an accounting principle established within Categories (A) through (D) for an analogous transaction or even on the basis of its substance. A federal reporting entity should not follow the accounting treatment specified in accounting principles for similar transactions or events in cases in which those accounting principles either (a) specifically prohibit the application of the accounting

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treatment to the particular transaction or event, or (b) indicate that the accounting treatment should not be applied to other transaction or event by analogy.

Other Accounting Literature

“Other Accounting Literature” includes, for example, FASAB Concepts Statements: the pronouncements referred to in Category (B) of paragraph 5 when not specifically made applicable to federal reporting entities by the FASAB; pronouncements of other accounting financial reporting standards-setting bodies, such as Financial Accounting Standards Board, Governmental Accounting Standards Board, International Accounting Standards Board, and International Public-Sector Accounting Standards Board; professional associations or regulatory agencies; and accounting textbooks, handbooks, and articles. The appropriateness of other accounting literature depends on its relevance to particular circumstances, the specificity of the guidance, and the general recognition of the issuer or author as an authority. For example, FASAB Concepts Statements normally would be more influential than other sources in this category. Appendix A, Useful Web Links, provides a link to a website listing other helpful resources and other FASAB sources of information as annotated below.

Statement of Federal Financial Accounting Concepts (SFFAC) 1: Objectives of Federal Financial Reporting
SFFAC 5 Definitions of Elements and Basic Recognition Criteria for Accrual-Basis Financial Statements

2 Detailed Information Related to Environmental Liabilities and Contingencies from Each Applicable FASAB Issuance

SFFAS 5, as Amended, *Accounting for Liabilities of The Federal Government*, defines “liability” as a probable future outflow or other sacrifice of resources as a result of past transactions or events. SFFAS 5, in paragraphs 19 through 42, sets forth important liability standards which are applicable to environmental liabilities, including:

- (a) General purpose federal financial reports should recognize probable and measurable future outflows or other sacrifices of resources arising from (1) past exchange transactions; (2) government-related events; (3) government-acknowledged events; or (4) nonexchange transactions that, according to current law and applicable policy, are unpaid amounts due as of the reporting date.
- (b) The existence of a past event (which includes transactions) is essential for liability recognition
- (c) A transaction involves the transfer of something of value. Transactions may be either exchange transactions or nonexchange transactions. The distinction between exchange and nonexchange transactions is important in determining the point of liability recognition in federal accounting.
- (d) An event is defined as a happening of financial consequence to an entity. For federal financial reporting, some events may be other than transaction-based, and these events may be classified in one of two categories: (1) government-related events; or (2) government-acknowledged events.
- (e) Government-related events are non-transaction-based events that involve interaction between the federal government and its environment. The event may be beyond the control of the federal entity. Events—such as a federal entity accidentally causing damage to private property—would create a liability when the event occurred, to the extent that existing law and policy made it probable that the federal government would pay for the damages and to the extent that the amount of the payment could be estimated reliably.
- (f) Government-related events include:
 - (i) Cleanup from federal operations resulting in hazardous waste that the federal government is required by statutes and/or regulations, that are in effect as of the balance sheet date, to clean up (i.e., remove, contain, or dispose of)
 - (ii) Accidental damage to nonfederal property caused by federal operations
 - (iii) Other damage to federal property caused by such factors as federal operations or natural forces.

Government-acknowledged events are those non-transaction-based events that are of financial consequence to the federal government because it chooses to respond to the event. The federal government has broad responsibility to provide for the public’s general welfare. The federal government has established programs to fulfill many of its general needs of the public and often assumes responsibilities for which it has no prior legal obligation.

Consequently, costs from many events, such as toxic waste damage caused by nonfederal entities and natural disasters, may ultimately become the responsibility of the federal government. But these costs do not meet the definition of a “liability” until, and to the extent that, the government formally acknowledges financial responsibility for the cost from the event and an exchange or nonexchange transaction has occurred. In other words, the federal entity should recognize the liability and expense when both of the following two criteria have been met: (1) the Congress has appropriated or authorized (i.e., through authorization legislation) resources; and (2) an exchange occurs (e.g., when a contractor performs repairs) or nonexchange amounts are unpaid as of the reporting date (e.g., direct payments to disaster victims), whichever applies.

“Probable” refers to that which can reasonably be expected or is believed to be more likely than not on the basis of available evidence or logic, with the exception of pending or threatened litigation and unasserted claims, in which case “probable” refers to that which is likely. The probability of a future outflow or other sacrifice of resources is assessed on the basis of current facts and circumstances.

“Measurability” or “measurable” means that an item has a relevant attribute that can be quantified in monetary units with sufficient reliability to be reasonably estimable.

A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to an entity. The uncertainty will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm a gain (i.e., acquisition of an asset or reduction of a liability) or a loss (i.e., loss or impairment of an asset or the incurrence of a liability).

When a loss contingency (i.e., contingent liability) exists, the likelihood that the future event or events will confirm the loss or the incurrence of a liability can range from probable to remote. The probability classifications are as follows.

- Probable: The future confirming event or events are more likely than not to occur, with the exception of pending or threatened litigation and unasserted claims. For pending or threatened litigation and unasserted claims, the future confirming event or events are likely to occur.

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- Reasonably possible: The chance of the future confirming event or events occurring is more than remote but less than probable.
- Remote: The chance of the future event or events occurring is slight.

A contingent liability should be recognized when all of the following three conditions are met.

- (1) A past event or exchange transaction has occurred (e.g., a federal entity has breached a contract with a nonfederal entity).
- (2) A future outflow or other sacrifice of resources is probable (e.g., the nonfederal entity has filed a legal claim against a federal entity for breach of contract and the federal entity's management believes the claim is likely to be settled in favor of the claimant).
- (3) The future outflow or sacrifice of resources is measurable (e.g., the federal entity's management determines an estimated settlement amount) (See SFFAS 12, *Recognition of Contingent Liabilities Arising from Litigation: An Amendment of SFFAS 5, Accounting for Liabilities of the Federal Government*).

The estimated contingent liability may be a specific amount or a range of amounts. If some amount within the range is a better estimate than any other amount within the range, that amount is recognized. If no amount within the range is a better estimate than any other amount, the minimum amount in the range is recognized and the range and a description of the nature of the contingency should be disclosed.

A contingency should be disclosed in the footnotes to the financial statements if any of the conditions for liability recognition are not met and there is at least a reasonable possibility that a loss or an additional loss may have been incurred.

SFFAS 6, *Accounting for Property, Plant and Equipment*, Chapter 4, *Cleanup Costs*, sets forth standards for cleanup costs, which are defined as the costs of removing, containing, and/or disposing of (1) hazardous waste (see SFFAS 6, paragraph 86) from property, or (2) material and/or property that consists of hazardous waste at permanent or temporary closure or shutdown of associated property, plant, and equipment (PP&E). Cleanup may include, but is not limited to, decontamination, decommissioning, site restoration, site monitoring, closure, and post-closure costs. This standard applies only to cleanup costs from federal operations known to result in hazardous waste which the federal government is required by federal, state, and/or local statutes and/or regulations that have been approved as of the balance sheet date, regardless of the effective date, to clean up (i.e., remove, contain, or dispose of).

Technical Bulletin 2002-1, *Assigning to Component Entities Costs and Liabilities that Result from Legal Claims Against the Federal Government*, requires that all liabilities and costs related to legal claims (i.e., judgments and settlements) must be attributed to the component entities responsible for the programs or activities that contributed to the claims, or to their successor component entities. This attribution follows the general principle that all transactions or events reported on the U.S. government consolidated financial statements should be attributed to some federal component entity.

Technical Bulletin 2006-1, *Recognition and Measurement of Asbestos-Related Cleanup Costs*, clarifies the required reporting of liabilities and related expenses arising from asbestos-related cleanup costs. This technical bulletin supplements the relevant federal standards. The primary effects of this technical bulletin are that:

- Federal entities will (1) estimate both friable and nonfriable asbestos-related cleanup costs; and (2) recognize a liability and related expense for those costs that are both probably and reasonably estimable.
- Federal entities will disclose information related to friable and nonfriable asbestos-related cleanup costs that are probably but not reasonably estimable in a note to the financial statements.

Technical Release 2, *Determining Probable and Reasonably Estimable for Environmental Liabilities in the Federal Government*, supplements the relevant federal standards, and assists federal agencies in determining probably and reasonably estimable liabilities related to their environmental cleanup responsibilities.

Technical Release 10, *Implementation Guidance on Asbestos Cleanup Costs Associated with Facilities and Installed Equipment*, supplements the relevant federal standards, and provides a framework for identifying assets containing asbestos and assessing the asset to collect information and develop key assumptions in applying acceptable methodologies to estimate asbestos cleanup costs for federal facilities and installed equipment.

Technical Release 11, *Implementation Guidance on Cleanup Costs Associated with Equipment*, supplements the relevant federal standards, and focuses on cleanup of hazardous waste associated with equipment. It focuses on when cleanup costs should be recognized as an environmental liability and when they should be expensed as a cost of routine operation. Additionally, the guide includes two examples—one example is when an environmental liability should be recognized, and one is when the costs should be expensed as routine operations. The release provides steps that can be followed to help consistently apply existing standards, and also assists federal entities to provide reasonable estimates of cleanup costs associated with the disposal of equipment assets, when required.

Technical Release 14, *Implementation Guidance on the Accounting for the Disposal of General Property, Plant, and Equipment*, supplements the relevant federal standards, and clarifies SFFAS 6 paragraphs 97 and 98 requirements for recognition and measurement of disposal-related cleanup costs. The release sets forth that:

- A portion of estimated total cleanup costs shall be recognized as expense during each period that the General Property, Plant, and Equipment item is in operation.
- Recognition of the expense and accumulation of the liability shall begin on the date that the General Property, Plant, and Equipment item is placed into service, continue in each period that operation continues, and be completed when the item ceases operation.

See Appendix A, Useful Web Links (for Chapter 4, Environmental Liabilities and Contingencies), which provides links to an outline of FASAB guidance applicable to environmental liabilities and contingencies, FASAB's Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, and other helpful websites.

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**APPENDIX D:
HAZARDOUS WASTE GENERATOR REGULATORY REQUIREMENTS**

Table D-1 provides a summary of requirements for each class of hazardous waste (HW) generator. This is not an exhaustive list of all requirements for generators and should be used as a guide only. Generators are responsible for all applicable requirements listed in 40 Code of Federal Regulations (CFR) Part 262. Additionally, HW generators should check with their state regulatory agency because certain states have additional or more stringent requirements than those of the federal government.

Table D-1. Hazardous Waste Generator Regulatory Summary

Requirement	Very Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Quantity Limits The amount of HW generated per month determines how a generator is categorized and what regulations must be complied with.	≤ 100 kilograms (kg)/month, and ≤ 1 kg/month of acute HW, and ≤ 100 kg/month of acute spill residue or soil § 260.10	> 100 and $< 1,000$ kg/month § 260.10	$\geq 1,000$ kg/month, or > 1 kg/month of acute HW, or > 100 kg/month of acute spill residue or soil § 260.10
U.S. Environmental Protection Agency (EPA) Identification (ID) Number Acquire a unique EPA ID number that identifies generators by site.	Not required	Required § 262.18	Required § 262.18
On-Site Accumulation Quantity Determine amount of HW generators are allowed to “accumulate” on site without a permit.	$\leq 1,000$ kg or ≤ 1 kg acute HW or ≤ 100 kg of acute spill residue or soil §§ 262.14(a)(3) and (4)	$\leq 6,000$ kg § 262.16(b)(1)	No limit
Accumulation Time Limits Determine amount of time HW is allowed to accumulate on site.	None	≤ 180 days or ≤ 270 days (if transporting greater than 200 miles) §§ 262.16(b)–(d)	≤ 90 days § 262.17(a)
Accumulation Requirements Manage HW in compliance with certain technical standards.	None	Basic requirements with technical standards for containers, tanks, drip pads, or containment buildings §§ 262.16(b)(2)–(5)	Full compliance for management of containers, tanks, drip pads, or containment buildings §§ 262.17(a)(1)–(4)
Personnel Training Ensure appropriate personnel complete classroom or on-the-job training to become familiar with proper HW management and emergency procedures for the wastes handled at the facility.	Not required	Basic training required § 262.16(b)(9)(iii)	Required § 262.17(a)(7)
Contingency Plan and Emergency Procedures Develop procedures to follow during an unplanned major event.	Not required	Basic planning required § 262.16(b)(9)	Full plan required Part 262 Subpart M (from § 262.17(a)(6))
Preparedness and Prevention Develop procedures to follow in the event of an emergency.	Not required	Required § 262.16(b)(8)–(9)	Required Part 262 Subpart M (from § 262.17(a)(6))

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Air Emissions Control hazardous air emissions from tanks and containers.	Not required	Not required	Required Part 265 Subparts AA, BB and CC from §§ 262.17(a)(1) and (2)
Land Disposal Restrictions Meet standards for placing on the land and associated requirements for certifications, notifications, and waste analysis plans.	Not required	Required Part 268 from § 262.16(b)(7)	Required Part 268 from § 262.17(a)(9)
Manifest Tracking HW shipments using the multiple-copy manifest—required by the U.S. Department of Transportation (DOT) and EPA.	Not required	Required Part 262 Subpart B	Required Part 262 Subpart B
Waste Minimization Certify steps taken to reduce or eliminate the generation of HW.	None	Good faith effort required § 262.27	Program in place required § 262.27
Pre-Transport Requirements Package and label HW for shipment off-site to a Resource Conservation and Recovery Act (RCRA) facility for treatment, storage, or disposal.	Only if required by the DOT or the state	Required §§ 262.30–262.33	Required §§ 262.30–262.33
Biennial Report Report data from off-site shipments of waste during the previous calendar year.	Not required	Not required	Required § 262.41
Exception and Additional Reporting Report if any required copies of signed manifests are not received back. Provide information on quantities and disposition of wastes upon request.	Not required	Required §§ 262.42(b) and 262.43	Required §§ 262.42 and 262.43
Record Keeping Maintain records of waste testing, manifests, biennial reports, and exception reports.	Not required	Required (except biennial reports) § 262.11(f) and § 262.40(a) and (d)	Require § 262.11(f) and § 262.40
Facility Type Send off-site shipments to appropriate facilities for management.	Facilities noted in §§ 262.14(a)(5)	RCRA permitted/interim status facility Parts 264/265, 266/267 and 270	RCRA permitted/interim status facility Parts 264/265, 266/267 and 270
Closure Close equipment, structures, soils, and units by meeting specified performance standards and disposal and decontamination requirements.	Not required	Required for tanks, drip pads, and containment buildings Tanks only: § 262.16(b)(3)(vi) Unit specific: Part 265, Subparts W and DD for drip pads and containment buildings	Required General: § 262.17(a)(8) Unit specific: Part 265, Subpart W for drip pads