

**No. 9633**

September 28, 1945, 10 F.R 12305

**RESERVING AND PLACING CERTAIN RESOURCES OF THE  
CONTINENTAL SHELF UNDER THE CONTROL AND  
JURISDICTION OF THE SECRETARY OF THE INTERIOR**

By virtue of and pursuant to the authority vested in me as President of the United States, it is ordered that the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States declared this day by proclamation to appertain to the United States and to be subject to its jurisdiction and control, be and they are hereby reserved, set aside, and placed under the jurisdiction and control of the Secretary of the Interior for administrative purposes, pending the enactment of legislation in regard thereto. Neither this Order nor the aforesaid proclamation shall be deemed to affect the determination by legislation or judicial decree of any issues between the United States and the several states, relating to the ownership or control of the subsoil and sea bed of the continental shelf within or outside of the three-mile limit.

HARRY S. TRUMAN

THE WHITE HOUSE,  
*September 28, 1945.*

**No. 9701**

March 4, 1946, 11 F.R. 2369

**PROVIDING FOR THE RESERVATION OF RIGHTS TO  
FISSIONABLE MATERIALS IN LANDS OWNED BY THE  
UNITED STATES**

By virtue of the authority vested in me as the President of the United States, it is hereby ordered as follows:

1. Public lands of the United States, including lands in Alaska, which contain or may contain substantial deposits of fissionable materials shall be subject to (a) disposal under all applicable public-land laws which authorize or permit a reservation to the United States of all minerals in the land, together with the right to enter upon the land and prospect for, mine, and remove such minerals: *Provided*, that the disposal is made subject to such reservation; and (b) lease, permit, or other authorization to use the land or its resources in accordance with applicable public-land laws: *Provided*, that every such lease, permit, or authorization which grants any right to remove minerals from such land, or which otherwise would preclude the United States from exercising its right to enter upon the land and prospect for, mine, and remove minerals, shall be made subject to a reservation to the United States of all fissionable materials in the land, together with the right to enter upon the land and prospect for, mine, and remove such materials.

2. So far as not in conflict with existing law, (a) all disposals of lands, other than public lands, heretofore or hereafter acquired by the United States or any instrumentality thereof, including lands in the territories and possessions of the United States, (b) all leases, permits, or other authorizations of whatever kind hereafter granted to remove minerals from such lands, and (c) all leases, permits or other authorizations which otherwise would preclude the United States from exercising its right to enter upon the lands and prospect for, mine, and remove minerals, shall reserve to the United States all fissionable materials in the lands, together with the right, at any and all times, to enter upon the lands and prospect for, mine, and remove such materials: *Provided*, that no reservation under this paragraph shall interfere with the primary use of the land established or indicated by any act of Congress; *And provided further*, that no reservation shall be required by this paragraph whenever the Secretary of the Interior shall determine that the land affected does not contain substantial deposits of fissionable materials, or that, in view of all the circumstances, there is no reasonable probability that such materials are present in quantities sufficient to justify their extraction.

3. The term "fissionable materials" as used in this order means (a) all deposits from which the substances known as thorium, uranium (including uranium enriched as to one of its isotopes), and elements higher than uranium in the periodic table, can be refined or produced, and (b) all deposits from which there can be refined or produced other substances determined by the President by Executive order to be readily capable of or peculiarly related to transmutation of atomic species, the production of nuclear fission, or the release of atomic energy.

4. Executive Order No. 9613 of September 13, 1945,<sup>6</sup> entitled "Withdrawing and Reserving for the Use of the United States Lands Containing Radio-active Mineral Substances" is hereby revoked: *Provided, however*, that all lands withdrawn or reserved by that order which contain or may contain substantial deposits of fissionable materials shall continue to remain withdrawn and reserved but shall be subject to the provisions of this order.

5. At 10:00 a. m. on the 28th day from the date on which this order is signed, the public lands released from withdrawal by the revocation of the said Executive Order No. 9613, shall, subject to valid existing rights, the provisions of existing withdrawals, and the prior provisions of this order, become subject to application, petition, location, and selection as follows:

(a) For a period of 90 days, commencing on the day and at the hour named above, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land laws, or the small-tract act of June 1, 1938 (52 Stat. 609, 43 U.S.C. sec. 682a),<sup>7</sup> by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U.S.C. sec. 282),<sup>8</sup> subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications by such veterans shall be subject to claims of the classes described in this subdivision (2).

(b) For a period of 20 days immediately prior to the beginning of such 90-day period, such veterans, and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on the first day of the 90-day period, shall be treated as simultaneously filed.

(c) Commencing at 10:00 a. m. on the 91st day after the lands become subject to application, as hereinabove provided, any of the lands remaining unappropriated shall become subject to such application, petition, location, and selection by the public generally as may be authorized by the public-land laws.

(d) Application by the general public may be presented during the 20-day period immediately preceding such 91st day, and all such applications, together with those presented at 10:00 a. m. on that day, shall be treated as simultaneously filed.

6. Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

7. Applications for these lands, which shall be filed in the appropriate District Land Office or, if there is no district land office in the State in which the land is situated, in the General Land Office, Washington, D. C., shall be acted upon in accordance with the regulations contained in section 295.8 of title 43 of the Code of Federal Regulations (Circular 324, May 22, 1914, 43 L. D. 254), and part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in subchapter I of title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the small-tract act of June 1, 1938, shall be governed by the regulations contained in parts 232 and 257, respectively, of that title.

HARRY S. TRUMAN

THE WHITE HOUSE,  
*March 4, 1946.*

6. 43 U.S.C.A. § 141 note.

7. 43 U.S.C.A. § 682a.

8. 43 U.S.C.A. §§ 279-283.

**No. 9776**

September 5, 1946, 11 F.R. 9789

**REOPENING EAST EXECUTIVE AVENUE TO PUBLIC  
TRAVEL**

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Army and Navy, I hereby order that East Executive Avenue in the District of Columbia be reopened to public travel on and after September 9, 1946.

HARRY S. TRUMAN

THE WHITE HOUSE,  
*September 5, 1946.*

**No. 9851**

May 13, 1947, 12 F.R. 3167

**ADDING CERTAIN LANDS TO THE MOUNT VERNON  
MEMORIAL HIGHWAY**

WHEREAS by the act of June 29, 1940, 54 Stat. 686,<sup>35</sup> certain federally-owned lands lying partly in the District of Columbia and partly in the State of Virginia were placed under the control and administration of the Administrator of Civil Aeronautics, except such portion thereof as the President might, by Executive order, add to the Mount Vernon Memorial Highway, authorized by the act of May 23, 1928, 45 Stat. 721, as amended; and

WHEREAS the Administrator of Civil Aeronautics has no further need for a certain tract of 263.70745 acres of such lands, and it appears that the addition of such tract to the said Highway would be in the public interest:

NOW, THEREFORE, by virtue of the authority vested in me by section 1 of the said act of June 29, 1940, 54 Stat. 686, the following-described tract of land is hereby added to and made a part of the Mount Vernon Memorial Highway, and shall be administered by the National Park Service, Department of the Interior:

Beginning at the point of intersection of the southerly right of way line of the Richmond, Fredericksburg and Potomac Railroad Company and the dredging base line, as established by the U. S. Engineer Office, said point of beginning being referenced south 6,800.38 feet, west 9,079.43 feet, from the dome of the United States Capitol Building (being the same point of beginning as set forth in Public No. 674, 76th Congress, 3rd Session, approved June 29, 1940); thence with the said dredging base line, it being the first line of the Washington National Airport, south 22°50'39" east 2,996.66 feet to Station 30+07.26 of said dredging base line, said point being in the Potomac River east of the mouth of Roaches Run. Thence leaving said base line and crossing the Washington National Airport due west 1,678.77 feet to a monument located on the south bank of Roaches Run and 75 feet more or less easterly of the center line of the Mount Vernon Memorial Highway, said monument being marked U. S. D. I. 404—5,A3, referenced south 9,562.00 feet, west 9,594.82 feet from the dome of the United States Capitol Building. Thence parallel to and 75 feet more or less easterly of the center line of the Mount Vernon Memorial Highway, south 40°31'23" west 307.65 feet to a point. Thence on a curve to the left, having a central angle of 09°14'53" and a radius of 3,708.58 feet, a distance of 598.60 feet, and whose long cord bears south 35°53'55" west 597.93 feet to a point of compound with another curve. Thence on a curve to the left, having a central angle of 10°53'49" and a radius of 3,945.76 feet, a distance of 750.43 feet, and whose long cord bears south 25°49'36" west 749.29 feet to a monument located 75 feet more or less easterly of the center line of the Mount Vernon Memorial Highway and one foot off the back of the westerly curb of the north access road from the Washington National Airport, said monument being marked U. S. D. I. 404—5,A6. Thence on a curve to the left concentric with and one foot off the back of the aforesaid curb of north access road, said curve having a central angle of 03°26'17" and a radius of 1,548.21 feet, a distance of 92.90 feet, and whose long cord bears south 06°12'24" west 92.87 feet to a point of compound with another curve. Thence on a curve to the left concentric with and one foot off the back of the aforesaid curb of north access road, said curve having a central angle of 21°07'07" and a radius of 1,052.65 feet, a distance of 388.00 feet, and whose long cord bears south 06°04'18" east 385.85 feet to a monument located one foot off the back of said curb, said monument being marked U. S. D. I. 404—5,A8. Thence leaving said north access road,

and radial to the last mentioned curve, south  $73^{\circ}22'09''$  west 130.00 feet to a monument located 130 feet more or less easterly of the center line of the Mount Vernon Memorial Highway, said monument being marked U. S. D. I. 404—5,A9. Thence concentric to and 130 feet more or less easterly of the center line of the Mount Vernon Memorial Highway on a curve to the left, having a central angle of  $10^{\circ}21'13''$  and a radius of 3,144.05 feet, a distance of 568.14 feet, and whose long cord bears south  $06^{\circ}46'54''$  west 567.38 feet to a monument located southerly of the existing north access road to the Washington National Airport, said monument being marked U. S. D. I. 404—5,A10. Thence south  $39^{\circ}40'40''$  east 131.76 feet to a monument, said monument being marked U. S. D. I. 404—5,A11. Thence south  $02^{\circ}30'30''$  west 200.00 feet to a monument marked U. S. D. I. 401—5,A12. Thence continuing south  $02^{\circ}31'30''$  west 471.10 feet to a point. Thence on a curve to the right concentric with and 200 feet more or less easterly of the center line of the Mount Vernon Memorial Highway, said curve having a central angle of  $06^{\circ}39'40''$  and a radius of 6,231.13 feet, a distance of 724.42 feet, and whose long cord bears south  $05^{\circ}50'24''$  west 724.03 feet to a monument marked U. S. D. I. 404—5,A14. Thence south  $43^{\circ}51'47''$  west 160.00 feet to a monument marked U. S. D. I. 404—5,A15 and located at the top of a slope. Thence south  $33^{\circ}21'36''$  west 46.72 feet along the top of said slope to a monument marked U. S. U. I. 404—5,A16. Thence south  $11^{\circ}54'05''$  west 463.56 feet along the top of said slope to a monument marked U. S. U. I. 404—5,A17. Thence south  $38^{\circ}25'37''$  west 114.46 feet to a monument marked U. S. U. I. 404—5,A18 and located at the bottom of said slope, northerly of the railroad spur track and near the easterly edge of the Mount Vernon Memorial Highway, referenced south 14,220.48 feet, west 10,954.75 feet, from the dome of the United States Capitol Building. Thence across the railroad spur track and bearing south  $08^{\circ}27'13''$  east 270.12 feet to a monument marked U. S. D. I. 404—5,A19 and located at the top of a slope on the westerly side of the group of Public Roads Administration buildings. Thence south  $09^{\circ}21'53''$  west 1,115.90 feet to a monument marked U. S. D. I. 404—5,A20 and located 35 feet more or less southerly of the southerly edge of the south access road to the Washington National Airport. Thence concentric with and 35 feet more or less southerly of the said southerly edge of said access road and with a curve to the left, having a central angle of  $26^{\circ}06'40''$  and a radius of 729.00 feet, a distance of 332.22 feet, and whose long cord bears south  $34^{\circ}10'47''$  west 329.36 feet to a brass screw set in the concrete pavement of the road to the parking area. Thence parallel to and concentric with and one foot more or less off the back of the westerly curb of the service road leading to the southern end of the air field, the following six courses and distances: south  $37^{\circ}08'40''$  east 76.36 feet to a point; thence on a curve to the right, having a central angle of  $90^{\circ}00'00''$  and a radius of 13 feet, a distance of 20.42 feet, and whose long cord bears south  $07^{\circ}24'26''$  west 18.38 feet; thence south  $52^{\circ}23'50''$  west 38.94 feet to a point; thence on a curve to the left, having a central angle of  $46^{\circ}40'55''$  and a radius of 180 feet, a distance of 146.66 feet, and whose long cord bears south  $29^{\circ}15'27''$  west 141.75 feet; thence south  $05^{\circ}43'07''$  west 39.06 feet to a point; thence on a curve to the left, having a central angle of  $03^{\circ}32'48''$  and a radius of 2805.70 feet, a distance of 173.68 feet, and whose long cord bears south  $03^{\circ}56'45''$  west 173.51 feet to the end of the existing curb and one foot off the back of said curb. Thence crossing aforesaid service road south  $87^{\circ}49'31''$  east 25 feet to a point one foot off the back edge of the east curb of said service road. Thence on a curve to the left, having a central angle of  $22^{\circ}52'34''$  and a radius of 3,250.00 feet, a distance of 1,294.36 feet, and whose long cord bears south  $12^{\circ}38'13''$  east 1,289.00 feet to a monument located on the northerly bank of Four-Mile Run and marked U. S. D. I. 404—5,A29, referenced south 17,555.40 feet, west 11,046.89 feet, from the dome of the United States Capitol Building, and thence continuing with a curve of the same radius, having a central angle of  $02^{\circ}01'09''$ , a distance of 114.53 feet, and whose long cord bears

south 25°04'54" east 114.53 feet to a point in Four-Mile Run. Thence in a westerly direction radial to the aforesaid curve south 62°32'51" west 25.83 feet to a point on the outside face of the east main headwall where the north wingwall joins. Thence with the following ten courses and distances along the shoreline at the mouth of Four-Mile Run; south 83°31'11" east 307.37 feet; south 06°48'13" east 68.12 feet; south 22°08'48" west 77.03 feet; south 04°39'24" west 177.12 feet; south 20°11'20" east 283.01 feet; south 28°25'07" east 192.72 feet; south 52°44'36" east 160.91 feet; south 34°06'57" east 79.50 feet; south 01°22'34" west 250.23 feet; south 07°54'07" east 152.22 feet. Thence leaving the shoreline and running in an easterly direction to intersect the fifth line of the Washington National Airport, south 74°19'55" east 2,726.43 feet, said point being in the Potomac River. Thence with the outlines of the Washington National Airport south 15°40'05" west 2,501.09 feet to the U. S. Coast and Geodetic Survey Triangulation Station WATER, referenced south 22,220.86 feet, west 8,395.54 feet from the dome of the United States Capitol Building. Thence south 01°29'20" east 85.58 feet to the northerly line of the George Washington Memorial Parkway lands on Daingerfield Island, said point being the S. E. corner of the Washington National Airport. Thence along said line south 84°30'00" west 1,516.39 feet to a right of way monument located at a corner on the property line of the Richmond, Fredericksburg and Potomac Railroad Company, referenced south 22,451.75 feet, west 9,902.73 feet, from the dome of the United States Capitol Building, said point being the S. W. corner of the Washington National Airport. Thence continuing with the outlines of the Washington National Airport and with the property lines of the Richmond, Fredericksburg and Potomac Railroad Company, north 08°09'54" west 442.68 feet to a right of way monument. Thence north 13°10'06" west 578.64 feet. Thence north 18°07'31" west 462.94 feet to a right of way monument. Thence north 19°42'21" west 943.56 feet to a point. Thence on a curve to the right, having a central angle of 27°52'45" and a radius of 1,241.15 feet, a distance of 603.92 feet, and whose long cord bears north 05°45'48" west 597.98 feet to a right of way monument. Thence north 08°10'24" east 232.33 feet to a point. Thence on a curve to the left, having a central angle of 36°59'09" and a radius of 1,046.00 feet, a distance of 675.22 feet, and whose long cord bears north 10°19'10" west 663.56 feet to a right of way monument. Thence north 28°48'45" west 256.75 feet to a right of way monument. Thence north 59°21'55" west 287.84 feet. Thence north 18°36'35" west 1,142.08 feet. Thence north 12°53'06" west 118.02 feet to a point. Thence on a curve to the right, having a central angle of 26°20'50" and a radius of 3,665.71 feet, a distance of 1,685.66 feet, and whose long cord bears north 00°17'19" east 1,670.85 feet. Thence north 13°27'44" east 2,002.11 feet to a point. Thence on a curve to the left, having a central angle of 10°36'25" and a radius of 2,864.79 feet, a distance of 530.35 feet, and whose long cord bears north 08°09'31" east 529.59 feet. Thence north 02°51'19" east 124.53 feet. Thence north 04°06'33" west 571.33 feet. Thence north 11°29'12" west 811.63 feet. Thence north 03°12'20" east 70.41 feet to a point. Thence on a curve to the right, having a central angle of 07°43'12" and a radius of 5,479.58 feet, a distance of 738.32 feet, and whose long cord bears north 07°03'56" east 737.75 feet, said curve being 250 feet more or less easterly of and concentric with the center line of the Richmond, Fredericksburg and Potomac Railroad Company's tracks. Thence north 75°11'50" east 204.72 feet to a monument marked U. S. D. I. 404—5,A65, referenced south 10,588.57 feet, west 10,821.77 feet, from the dome of the United States Capitol Building. Thence leaving the property lines of the Richmond, Fredericksburg and Potomac Railroad Company but still continuing with the lines of the Washington National Airport, as corrected, north 75°11'50" east 203.27 feet. Thence north 40°31'23" east 1,533.67 feet to a point, said point being 75 feet more or less westerly of the center line of the Mount Vernon Memorial Highway at Station 102+34.14.

Thence on a curve to the left, concentric with and 75 feet more or less westerly of the center line of the Mount Vernon Memorial Highway, having a central angle of  $05^{\circ}45'00''$  and a radius of 7,239.41 feet, a distance of 726.52 feet, and whose long cord bears north  $37^{\circ}38'53''$  east 726.22 feet, to a point of compound with another curve. Thence on a curve to the left, still concentric with the center line of the Mount Vernon Memorial Highway, having a central angle of  $06^{\circ}00'00''$  and a radius of 2,217.01 feet, a distance of 232.16 feet, and whose long cord bears north  $31^{\circ}40'23''$  east 232.06 feet to a point of compound with another curve. Thence on a curve to the left, still concentric with the center line of the Mount Vernon Memorial Highway, having a central angle of  $57^{\circ}01'20''$  and a radius of 1,303.74 feet, a distance of 1,297.52 feet, and whose long cord bears north  $00^{\circ}15'43''$  east 1,244.63 feet to a point of compound with another curve. Thence on a curve to the left, still concentric with the center line of the Mount Vernon Memorial Highway, having a central angle of  $09^{\circ}13'22''$  and a radius of 2,217.01 feet, a distance of 356.87 feet, and whose long cord bears north  $82^{\circ}51'38''$  west 356.49 feet to a point of intersection with the southerly property line of the Richmond, Fredericksburg and Potomac Railroad Company. Thence along said property line north  $33^{\circ}59'00''$  east 306.44 feet to the point of beginning, containing 263.70745 acres of land more or less, being the same lands as shown on maps prepared by and on file with National Capital Parks, National Park Service, United States Department of the Interior, and titled, "Property Survey, Mount Vernon Memorial Highway Thru the Washington National Airport," drawing numbers N. C. P. 117.5-254, 117.5-255 and 117.5-256.

HARRY S. TRUMAN

THE WHITE HOUSE,  
*May 13, 1947.*

35. 15 U.S.C.A. § 1001

**No. 9908**

December 5, 1947, 12 F.R. 8223

**RESERVATION OF SOURCE MATERIAL IN CERTAIN LANDS  
OWNED BY THE UNITED STATES**

By virtue of the authority vested in me as President of the United States, and in further effectuation of the policies declared by section 1 of the Atomic Energy Act of 1946 (60 Stat. 755),<sup>1</sup> it is hereby ordered as follows:

1. So far as not in conflict with existing law, (a) all disposals of lands, other than public lands, heretofore or hereafter acquired by the United States or any instrumentality thereof, including lands in the Territories and possessions of the United States, except in conveyances where all minerals, including source material, are reserved to the United States, (b) all leases, permits, or other authorizations of whatever kind hereafter granted to remove minerals from such lands, and (c) all leases, permits, or other authorizations which otherwise would preclude the United States from exercising its right to enter upon the lands and prospect for, mine, and remove minerals, shall contain the following reservation:

“All uranium, thorium, and all other materials determined pursuant to section 5(b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761)<sup>2</sup> to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by this instrument are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946,<sup>3</sup> as it now exists or may hereafter be amended, such material shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been separated as such from the ores in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.”

2. The reservation required by paragraph 1 above need not be included in any disposition of land which is not in excess of one acre and which is devoted primarily to a residential use.

3. Executive Order No. 9701 of March 4, 1946,<sup>4</sup> entitled “Providing for the Reservation of Rights to Fissionable Materials in Lands Owned by the United States”, is hereby revoked; but such revocation shall not be construed to affect the revocation of

Executive Order No. 9613<sup>5</sup> made by Executive Order No. 9701 or the provisions contained therein with respect to the lands released from withdrawal by the revocation of Executive Order No. 9613.

HARRY S. TRUMAN

THE WHITE HOUSE,  
*December 5, 1947.*

1. 42 U.S.C.A. § 1801.
2. 42 U.S.C.A. § 1805.
3. 42 U.S.C.A. §§ 1801-1819.
4. 43 U.S.C.A. § 141 note.
5. U.S. Code Cong. Service 1945 p. 1300.

**No. 10014**

November 3, 1948, 13 F.R. 6601

**DIRECTING FEDERAL AGENCIES TO COOPERATE WITH  
STATE AND LOCAL AUTHORITIES IN PREVENTING  
POLLUTION OF SURFACE AND UNDERGROUND WATERS**

By virtue of the authority vested in me as President of the United States, and pursuant to the policy expressed in section 1 of the Water Pollution Control Act approved June 30, 1948 (Public Law 845, 80th Congress),<sup>30</sup> of recognizing, preserving, and protecting the primary responsibilities and rights of the States in controlling water pollution, I hereby direct the heads of the departments, agencies, and independent establishments of the executive branch of the Government to take such action as may be practicable, in cooperation with State and local authorities concerned with control of water pollution, to insure the disposal of sewage, garbage, refuse, and other wastes accumulated in the course or as a result of Federal activities, and industrial or manufactured foodstuffs and other products destroyed by order or under the supervision of Federal regulatory authorities, in such manner as will conform with programs formulated under State law and applicable to State agencies and the public generally for the preservation and improvement of the quality of surface and underground waters.

HARRY S. TRUMAN

THE WHITE HOUSE,  
*November 3, 1948.*

30. 33 U.S.C.A. § 466.

**No. 10355**

May 26, 1952, 17 F.R. 4831

**DELEGATING TO THE SECRETARY OF THE INTERIOR THE  
AUTHORITY OF THE PRESIDENT TO WITHDRAW OR  
RESERVE LANDS OF THE UNITED STATES FOR PUBLIC  
PURPOSES**

By virtue of the authority vested in me by section 301 of title 3 of the United States Code (section 10 of Public Law 248, 82d Congress),<sup>9</sup> and as President of the United States, it is ordered as follows:

**Section 1.** (a) Subject to the provisions of subsections (b), (c), and (d) of this section, I hereby delegate to the Secretary of the Interior the authority vested in the President by section 1 of the act of June 25, 1910, ch. 421, 36 Stat. 847 (43 U.S.C. 141),<sup>10</sup> and the authority otherwise vested in him to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands heretofore or hereafter made.

(b) All orders issued by the Secretary of the Interior under the authority of this order shall be designated as public land orders and shall be submitted to the Division of the Federal Register, General Services Administration, for filing and for publication in the **Federal Register**.

(c) No order affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior shall be issued by the Secretary of the Interior under the authority of this order without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned, or of such officer of the department or agency concerned as the head thereof may designate for such purpose: *Provided*, that such officer is required to be appointed by the President by and with the advice and consent of the Senate.

(d) Any disagreement between two or more executive departments or agencies with respect to any proposed withdrawal or reservation shall be referred to the Director of the Bureau of the Budget for consideration and adjustment. The Director may, in his discretion, submit the matter to the President for his determination.

**Sec. 2.** The Secretary of the Interior is authorized to issue such rules and regulations, and to prescribe such procedures, as he may from time to time deem necessary or desirable for the exercise of the authority delegated to him by this order.

**Sec. 3.** The Secretary of the Interior is authorized to redelegate the authority delegated to him by this order to one or more of the following-designated officers: the Under Secretary of the Interior and the Assistant Secretaries of the Interior.

**Sec. 4.** This order supersedes Executive Order No. 9337 of April 24, 1943, entitled "Authorizing the Secretary of the Interior To Withdraw and Reserve Lands of the Public Domain and Other Lands Owned or Controlled by the United States."<sup>11</sup>

HARRY S. TRUMAN

THE WHITE HOUSE,  
*May 26, 1952.*

9. 3 U.S.C.A. § 301.

10. 43 U.S.C.A. § 141.

11. U.S. Code Cong. Service 1943, p. 539.

**No. 10950**

June 27, 1961, 26 F.R. 5787

**DESIGNATING THE SECRETARY OF THE INTERIOR AS THE  
REPRESENTATIVE OF THE PRESIDENT TO APPROVE  
SELECTIONS BY THE STATE OF ALASKA OF PUBLIC LANDS  
LYING NORTH AND WEST OF THE NATIONAL DEFENSE  
WITHDRAWAL LINE**

By virtue of the authority vested in me by section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339),<sup>48</sup> and as President of the United States, I hereby designate the Secretary of the Interior as my representative to exercise the authority vested in me by section 6 (b) of the act to approve selections of land made by the State of Alaska under the provisions of section 6(b) in instances in which those selections include land lying north and west of the line described in section 10 (b) of the act: *Provided*, That no selection by the State shall be approved pursuant to this order, in whole or in part, without the concurrence of the Secretary of Defense or his designated representative.

As the Secretary of the Interior may direct, the Under Secretary of the Interior, and Assistant Secretary of the Interior, the Director of the Bureau of Land Management, or the Operations Supervisors of the Bureau of Land Management in Alaska are severally authorized to exercise the authority vested in the Secretary by this order.

JOHN F. KENNEDY

THE WHITE HOUSE,  
*June 27, 1961.*

48 U.S.C.A. note preceding § 21.

**No. 11017**

April 27, 1962, 27 F.R. 4141

**PROVIDING FOR COORDINATION WITH RESPECT TO  
OUTDOOR RECREATION RESOURCES AND ESTABLISHING  
THE RECREATION ADVISORY COUNCIL**

WHEREAS it is necessary, through the conservation and wise use of resources, to preserve, develop, and make accessible to all our people outdoor recreation of such quantity and quality as will make possible the individual enjoyment of, and will assure the physical, cultural, and spiritual benefits of, such recreation; and

WHEREAS the Federal Government has major nationwide responsibilities with respect to outdoor recreation resources; and

WHEREAS it is necessary to improve the effectiveness of Federal participation in the field of outdoor recreation; and

WHEREAS a new Bureau of Outdoor Recreation has recently been established in the Department of the Interior; and

WHEREAS improvements in the development of national outdoor recreation policies and the carrying out of national outdoor recreation programs will be facilitated by the provision of more adequate interagency consultation and advice:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

**Section 1. Recreation Advisory Council.** (a) There is hereby established the Recreation Advisory Council (hereinafter referred to as the Council). The Council shall be composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, the Secretary of Health, Education, and Welfare, and the Administrator of the Housing and Home Finance Agency. The chairmanship of the Council shall rotate among these officials in the order named and for terms of two years each. Each of the foregoing officers may appoint a delegate to represent him in Council activity. When matters affecting the interests of Federal agencies (including, as used in this order, executive departments and other executive agencies) the heads of which are not members of the Council are to be considered by the Council, the chairman of the Council shall invite such heads to participate in the deliberations of the Council.

(b) The Secretary of the Interior, in consultation with the other members of the Council, shall be responsible for developing methods and procedures for improved interagency coordination in the development and carrying out of national outdoor recreation policies and programs.

**Sec. 2. Functions of the Council.** (a) The Council shall provide broad policy advice to the heads of Federal agencies on all important matters affecting outdoor recreation resources and shall facilitate coordinated efforts among the various Federal agencies.

(b) As far as may be practical, the Council, in carrying out the provisions of subsection (a) of this section, shall include advice to the Federal agencies concerned with respect to the following aspects of outdoor recreation resources: (1) the protection and appropriate management of scenic areas, natural wonders, primitive areas, historic sites, and recreation areas of national significance, (2) the management of Federal lands for the broadest possible recreation benefit consistent with other essential uses, (3) the management and improvement of fish and wildlife resources for recreational purposes, (4) cooperation with and assistance to the States and local governments, (5) interstate

arrangements, including Federal participation where authorized and necessary, and (6) vigorous and cooperative leadership in a nationwide recreation effort.

**Sec. 3. Construction.** Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any Federal agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

**Sec. 4. Assistance and Cooperation.** (a) The Federal agencies headed by the officers composing the Council shall furnish necessary assistance to the Council in consonance with the provisions of Section 214 of the Act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691).

(b) In respect of duties of the Council and of the chairman of the Council, respectively, under this order, and insofar as practical, all Federal agencies shall upon request furnish information, data, and reports to, and shall otherwise cooperate with, the said Council and chairman.

JOHN F. KENNEDY

THE WHITE HOUSE,  
*April 27, 1962.*

**No. 11145**

March 7, 1964, 29 F.R. 3189

**PROVIDING FOR A CURATOR OF THE WHITE HOUSE AND  
ESTABLISHING A COMMITTEE FOR THE PRESERVATION  
OF THE WHITE HOUSE**

WHEREAS the White House, as the home of the highest elective officer of the United States

- symbolizes the American ideal of responsible self-government
- is emblematic of our democracy and our national purpose
- has been intimately associated with the personal and social life of the Presidents of the United States and many of their official acts
- occupies a particular place in the heart of every American citizen, and

WHEREAS certain historic rooms and entranceways in the White House

- possess great human interest and historic significance
- traditionally have been open to visitors
- have provided pleasure and patriotic inspiration to millions of our citizens
- have come to be regarded as a public museum and the proud possession of all Americans, and

WHEREAS the Congress by law (Act of September 22, 1961), (75 Stat. 586)<sup>1</sup> has authorized the care and preservation of the historic and artistic contents of the White House and has given the President certain responsibilities with regard thereto:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

**Section 1.** (a) There shall be in the White House a Curator of the White House. The Curator shall assist in the preservation and protection of the articles of furniture, fixtures, and decorative objects used or displayed in the principal corridor on the ground floor and the principal public rooms on the first floor of the White House, and in such other areas in the White House as the President may designate.

(b) The Curator shall report to the President and shall make recommendations with respect to the articles, fixtures, and objects to be declared by the President, under section 2 of the Act of September 22, 1961, to be of historic or artistic interest.

**Sec. 2.** There is hereby established the Committee for the Preservation of the White House, hereinafter referred to as the "Committee". The Committee shall be composed of the Director of the National Park Service, the Curator of the White House, the Secretary of the Smithsonian Institution, the Chairman of the Commission of Fine Arts, the Director of the National Gallery of Art, the Chief Usher of the White House, and seven other members to be appointed by the President. The Director of the National Park Service shall serve as Chairman of the Committee and shall designate an employee of that Service to act as Executive Secretary of the Committee. Members of the Committee shall serve without compensation.

**Sec. 3.** (a) The Committee shall report to the President and shall advise the Director of the National Park Service with respect to the discharge of his responsibility under the Act of September 22, 1961, for the preservation and the interpretation of the museum character of the principal corridor on the ground floor and the principal public rooms on the first floor of the White House. Among other things, the Committee shall make recommendations as to the articles of furniture, fixtures, and decorative objects which shall be used or displayed in the aforesaid areas of the White House and as to the decor

and arrangements therein best suited to enhance the historic and artistic values of the White House and of such articles, fixtures and objects.

(b) The Committee shall cooperate with the White House Historical Association, a nonprofit organization heretofore formed under the laws of the District of Columbia.

(c) The Committee is authorized to invite individuals who are distinguished or interested in the fine arts to attend its meetings or otherwise to assist in carrying out its functions.

**Sec. 4.** Consonant with law, each Federal department and agency represented on the Committee shall furnish necessary assistance to the Committee in accordance with section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691).<sup>2</sup> The Department of the Interior shall furnish necessary administrative services for the Committee.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*March 7, 1964.*

1. 3 U.S.C.A. § 110 note
2. 31 U.S.C.A. § 691.

**No. 11200**

February 26, 1965, 30 F.R. 2645

**PROVIDING FOR ESTABLISHING USER FEES PURSUANT TO THE LAND AND WATER CONSERVATION FUND ACT OF 1965**

WHEREAS it is desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people; and

WHEREAS these resources are to a considerable extent located on lands administered by the Federal Government through the National Park Service, the Bureau of Land Management, the Bureau of Sport Fisheries and Wildlife, the Bureau of Reclamation, the Forest Service, the Corps of Engineers, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission (United States and Mexico); and

WHEREAS the Act of May 28, 1963, 77 Stat. 49,<sup>22</sup> vested the Secretary of the Interior with legal authority to promote coordination of Federal plans and activities generally relating to outdoor recreation; and

WHEREAS it is fair and equitable that the users of certain recreation areas and facilities managed by such agencies pay a reasonable fee for the recreation benefits received; and

WHEREAS it is desirable to establish uniformity of practices among such Federal agencies regarding recreation user fees and related matters; and

WHEREAS the Congress, recognizing the need for urgent and effective action in this regard, enacted the Land and Water Conservation Fund Act of 1965, Public Law 88-578; 78 Stat. 897 (hereafter in this order referred to as "the Act");<sup>23</sup>

NOW, THEREFORE, by virtue of the authority vested in me by the Act, by Section 301 of Title 3 of the United States Code,<sup>24</sup> and as President of the United States, it is ordered as follows:

**Section 1. Designation of areas for 1965.** (a) All areas administered by the National Park Service, Bureau of Land Management, Bureau of Sport Fisheries and Wildlife, Bureau of Reclamation, Forest Service, Corps of Engineers, Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission (United States and Mexico), at which entrance, admission, or other recreation user fees (hereafter in this order referred to as "recreation user fees") were collected directly by those Federal agencies during any part of 1964 are hereby designated, pursuant to Section 2(a) of the Act, as areas at which recreation user fees shall be charged during 1965.

(b) The Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, the Board of Directors of the Tennessee Valley Authority, and the Commissioner, United States Section of the International Boundary and Water Commission (United States and Mexico), or their designees, shall, by April 1, 1965, designate any additional areas under their respective jurisdictions at which recreation user fees are to be charged during 1965.

(c) Recreation user fees for such areas shall be prescribed as provided in Section 5 of this Order.

**Sec. 2. Designation of areas for years after 1965.** (a) Subject to the provisions of subsection (b) of this section, the areas designated by Section 1(a), or pursuant to Section 1(b), of this Order are hereby designated as areas for which recreation user fees shall be charged for years after 1965.

(b) The officials described in Section 1(b) of this Order shall, before January 1, 1966, and at least annually thereafter, review all areas then under their respective jurisdictions, including those described in subsection (a) of this section, to determine (1) whether any additional areas should, in accordance with the designation criteria prescribed by Section 3 of this Order (or under those designation criteria as revised by the Secretary of the Interior pursuant to Section 6(c) of this Order), be designated as areas for which recreation user fees shall be charged, or (2) whether the recreation user fee for any area theretofore designated should be increased, reduced, or eliminated under the designation criteria then in effect.

(c) (1) Whenever, in accordance with subsection (b) of this section, it is determined that the recreation user fee for an area should be reduced or eliminated, such action shall be taken forthwith.

(2) Whenever, in accordance with subsection (b) of this section, it is determined that a recreation user fee should be charged with respect to an area with respect to which no such fee has theretofore been charged, such new fee shall be charged only after the posting requirements of Section 4 of this Order have been satisfied.

**Sec. 3. Criteria for designation of areas.** (a) Areas shall, in accordance with Section 1(b) and Section 2(b) of this Order and to the extent permitted by the Act, be designated as areas at which recreation user fees shall be charged if the following conditions are found to exist concurrently:

(1) The area is administered by any of the eight agencies specified in Section 1 (a) of this Order;

(2) The area is administered primarily for scenic, scientific, historical, cultural, or recreational purposes;

(3) The area has recreation facilities or services provided at Federal expense; and

(4) The nature of the area is such that fee collection is administratively and economically practical.

(b) Areas designated as those at which recreation user fees shall be charged shall hereafter in this Order be referred to as "designated areas."

**Sec. 4. Posting of designated areas.** The heads of administering agencies and departments shall provide for the posting of signs at all designated areas such as will clearly notify the visiting public that recreation user fees are charged therein. All areas designated pursuant to Sections 1 and 2 of this Order shall be so posted prior to the beginning of the recreation season or as soon as practicable following designation. No recreation user fee established pursuant to this Order shall be effective with respect to any designated area until that designated area has been posted.

**Sec. 5. Establishment of fees.** (a) Each official described in Section 1 (b) of this Order shall, subject to the criteria prescribed by the Secretary of the Interior, establish a recreation user fee for each designated area administered under his jurisdiction by selecting from a schedule of fees, prescribed by the Secretary of the Interior pursuant to Section 6 of this Order, the fee which is appropriate for each such designated area under criteria prescribed by the Secretary pursuant to that section. Each such official shall also specify which designated areas shall be excluded from the coverage of the annual fee described in Section 2(a) (1) of the Act and which, as a result of that exclusion will be subject to the fee described in Section 2 (a) (iii) of the Act. The range of recreation user fees to be charged and the criteria for their selection shall be established under the procedures prescribed by Section 6 of this Order.

(b) The Secretary of the Interior shall prescribe the procedures for the production, distribution, and sale of the Land and Water Conservation Fund Sticker, which shall be issued to those individuals who elect to pay the annual fee. The Secretary of the Interior shall also prescribe the manner in which the Sticker shall be displayed. The conditions under which it may be used shall be determined under the procedures prescribed by Section 6 of this Order.

**Sec. 6. Coordination.** (a) The Secretary of the Interior shall, after consultation with the heads of other affected departments and agencies, adopt such coordination measures as are necessary to carry out the purposes of Sections 2(a) and 4(a) of the Act and the provisions of this Order.

(b) (1) In order that the purposes of the Act and of this Order may be effectuated without delay, the Secretary of the Interior shall, subject to the limitations imposed by the Act and without regard to the other provisions of this section, forthwith issue a schedule of recreation user fees and criteria to be used in determining which such fees shall be charged with respect to each of the designated areas.

(2) Subject to the limitations imposed by the Act and subject to the provisions of subsections (a), (c), and (d) of this section, the Secretary of the Interior may, from time to time, amend or replace the schedule of fees and the criteria prescribed by him pursuant to subsection (b) (1) of this section.

(c) Subject to the limits set forth in the Act, the measures which the Secretary of the Interior may adopt pursuant to subsection (a) of this section may include, but are not limited to, the following—

(1) Initial preparation and coordination of the comprehensive statement of estimated requirements during the ensuing fiscal year for appropriations from the Land and Water Conservation Fund, as required by Section 4(a) of the Act.

(2) Development of such additional procedures and interpretive materials as are necessary to facilitate the implementation of this Order and related provisions of the Act.

(3) Review and revision, if needed, of the criteria for designation set forth in Section 3 of this Order.

(d) Except with respect to the schedule of fees and the criteria prescribed by the Secretary pursuant to subsection (b) (1) of this section, measures and regulations adopted by the Secretary pursuant to this Order shall not become effective until 30 days after they are presented for the consideration of the other officials described in Section 1(b). Any such official who does not concur in any such measure or regulation may, within that 30-day period, refer the matter to the Recreation Advisory Council established under Executive Order No. 11017 for resolution. If a proposed measure is referred to the Council for resolution, it shall not become effective until approved by the Council. With the approval of all other officials described in Section 1(b) of this Order, the provisions of this subsection may be waived with respect to any specific measure or regulation adopted by the Secretary of the Interior pursuant to this order so that any such measure or regulation may be made effective before the expiration of the 30-day waiting period prescribed by the first sentence of this subsection.

**Sec. 7. Review of contracts.** The officials described in Section 1(b) of this Order shall, within a reasonable time, review all existing contracts and other arrangements between their respective agencies and any non-Federal public entity which relate to non-Federal management of Federally-owned outdoor recreation areas. Special attention shall be given to any provision in any such contract or other arrangement which prohibits or discourages in any way such non-Federal public entity from charging recreation user fees. Unless otherwise prohibited by law, each such restrictive provision shall be the subject of renegotiation designed to accomplish a modification thereof that will permit the charging of recreation user fees.

**Sec. 8. Regulations.** The Secretary of the Interior is authorized to issue such regulations as may be necessary to carry out his functions under this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*February 26, 1965.*

22. 16 U.S.C.A. § 469*l*.

23. 16 U.S.C.A. §§ 460*l*-4 to 460*l*-11.

24. 3 U.S.C.A. § 301.

**No. 11210**

March 25, 1965, 30 F.R. 4051

**ESTABLISHING A TEMPORARY COMMISSION ON  
PENNSYLVANIA AVENUE**

WHEREAS Pennsylvania Avenue between the Capitol and the White House serves as the main ceremonial avenue connecting the centers of the Legislative and Executive Branches of the United States Government; and

WHEREAS parts of Pennsylvania Avenue have been in large measure developed in a manner consistent therewith; and

WHEREAS other parts of Pennsylvania Avenue have deteriorated in condition and design or are otherwise ill suited to the ceremonial purposes of the Avenue and to the National dignity; and

WHEREAS the President's Ad Hoc Committee on Federal Office Space called the attention of the President to the deterioration and obsolescence of Pennsylvania Avenue and recommended that he enlist the aid of the finest architectural talent in the Nation to develop plans for the improvement of Pennsylvania Avenue to reflect its National significance; and

WHEREAS the President requested distinguished members of the architectural and city planning profession to serve on a Council on Pennsylvania Avenue and to develop a plan for the improvement of the Avenue to a level commensurate with its National purpose; and

WHEREAS Congress, in support of this objective, appropriated funds to assist in the preparation of such plans; and

WHEREAS the President's Council on Pennsylvania Avenue has developed a general plan for the improvement of the Avenue, and the Council has been dissolved; and

WHEREAS the plan developed by the President's Council on Pennsylvania Avenue has been subjected to extensive review by the National Capital Planning Commission and other interested departments and agencies and has been deemed appropriate in its main outlines; and

WHEREAS the Congress will be asked to consider legislation to provide for the improvement of Pennsylvania Avenue:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

**Section 1. Temporary Commission on Pennsylvania Avenue.** (a) There is hereby established the Temporary Commission on Pennsylvania Avenue (hereinafter referred to as the Commission).

(b) The Commission shall be composed of the Secretary of the Interior, the Secretary of the Treasury, the Secretary of Labor, the Secretary of Commerce, the Attorney General, the Postmaster General, the Administrator of General Services, the Housing and Home Finance Administrator, the Chairman of the Commission of Fine Arts, the Chairman of the National Capital Planning Commission, the Secretary of the Smithsonian Institution, the President of the Board of Commissioners of the District of Columbia, the Director of the National Gallery of Art, and such other members as may be appointed by the President. The Chairman shall invite the Architect of the Capitol to be a member of the Commission.

(c) The President shall appoint from among its members a Chairman of the Commission who shall direct its activities.

(d) Members of the Commission who are officers or employees of the Federal Government shall receive no additional compensation by virtue of membership on the Commission. Other members of the Commission shall be entitled to receive compensation and travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 55a; 5 U.S.C. 73b—2) for persons in the Government service employed intermittently.

(e) The Commission shall meet at the call of the Chairman.

**Sec. 2. Functions of the Commission.** (a) The Commission shall advise the President with respect to:

(1) the component parts of the general plan submitted by the President's Advisory Council on Pennsylvania Avenue respecting their feasibility and practicability from the standpoint of financial, engineering, planning, and other relevant considerations;

(2) the development of an orderly, phased program for carrying out the improvement of Pennsylvania Avenue;

(3) effects of the proposed improvements on owners and occupants of private property in and adjoining the area to be improved and actions respecting the improvement program that will assure its achievement with minimum harmful effects upon such private interests and with the least disruption of business within and adjoining the area;

(4) appropriate legislation for carrying out the program of improvement;

(b) Take steps to assure that such recommendations as it may develop respecting plans and programs for the improvement of Pennsylvania Avenue and the Comprehensive Plan for the National Capital and other plans prepared or being prepared by the National Capital Planning Commission are properly coordinated.

(c) Promote an understanding of the plan and its objectives among the public generally; and

(d) Undertake such other actions as may be permitted by law and requested by the President in furtherance of the objectives of this order.

**Sec. 3. Commission staff and consultants.** (a) The Chairman is authorized to appoint such personnel as may be necessary to assist the Commission in connection with the performance of its functions.

(b) The Commission is authorized to obtain services in accordance with the provisions of Section 15 of the Act of August 2, 1946 (5 U.S.C. 55a).

**Sec. 4. Federal agencies.** (a) As deemed necessary to facilitate the work of the Commission, the Chairman may request the head of any Executive department or agency whose activities may relate to the objectives of the Commission to designate a liaison officer to consult with the Commission on matters of common concern.

(b) Upon request of the Chairman, each Executive department or agency is authorized and directed, consistent with law, to furnish the Commission available information which the Commission may require in the performance of its functions.

(c) Each Federal agency represented on the Commission shall furnish such necessary assistance to the Commission as may be authorized by Section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691).

(d) The National Capital Planning Commission is hereby designated as the agency which shall provide administrative services for the Commission.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*March 25, 1965.*

**No. 11218**

April 24, 1965, 30 F.R. 5821

**AMENDING EXECUTIVE ORDER NO. 11017 SO AS TO MAKE  
THE CHAIRMAN OF THE TENNESSEE VALLEY AUTHORITY  
A MEMBER OF THE RECREATION ADVISORY COUNCIL**

By virtue of the authority vested in me as President of the United States, it is ordered that Executive Order No. 11017 of April 27, 1962, as amended,<sup>4</sup> be, and it is hereby, further amended by substituting for subsection (a) of Section 1 thereof the following:

“(a) There is hereby established the Recreation Advisory Council (hereinafter referred to as the Council). The Council shall be composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, the Secretary of Commerce, the Secretary of Health, Education, and Welfare, the Administrator of the Housing and Home Finance Agency, and the Chairman of the Tennessee Valley Authority. The chairmanship of the Council shall rotate among these officials in the order named and for terms of two years each. Each of the foregoing officers may appoint a delegate to represent him in Council activity. When matters affecting the interests of Federal agencies (including, as used in this Order, executive departments and other executive agencies) the heads of which are not members of the Council are to be considered by the Council, the chairman of the Council shall invite such heads to participate in the deliberations of the Council.”

LYNDON B. JOHNSON

THE WHITE HOUSE,

*April 24, 1965.*

4. 16 U.S.C.A. § 17k note.

**No. 11237**

July 27, 1965, 30 F.R. 9433

**PRESCRIBING REGULATIONS FOR COORDINATING  
PLANNING AND THE ACQUISITION OF LAND UNDER THE  
OUTDOOR RECREATION PROGRAM OF THE DEPARTMENT  
OF THE INTERIOR AND THE OPEN SPACE PROGRAM OF  
THE HOUSING AND HOME FINANCE AGENCY**

WHEREAS the Housing and Home Finance Administrator, hereinafter referred to as "the Administrator," is authorized under Title VII of the Housing Act of 1961 (42 U.S.C. 1500—1500e), hereinafter referred to as Title VII, to conduct a program for making grants to States and local public bodies for acquiring lands for recreational and other purposes; and

WHEREAS Title VII provides for consultation by the Administrator with the Secretary of the Interior, hereinafter referred to as "the Secretary," with regard to general policies to be followed in reviewing applications for grants for land acquisitions under the program provided for in Title VII, hereinafter referred to as the open space program, and provides for the furnishing of information by the Secretary on the status of recreational planning for areas to be served by the open space land acquired with grants made by the Administrator; and

WHEREAS the Secretary is authorized under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4-4601-11), hereinafter referred to as "the Conservation Act," to provide financial assistance to States for planning for outdoor recreation purposes and acquiring and developing lands therefore under a program hereinafter referred to as the outdoor recreation program; and

WHEREAS the Secretary has been given certain responsibilities under the Act of May 28, 1963 (16 U.S.C. 4601-4601-3) and Executive Order No. 11017, for promoting the coordination of Federal plans and activities generally relating to outdoor recreation; and

WHEREAS the programs authorized by Title VII and the Conservation Act can be of special help in creating areas of recreation and beauty for the citizens of our urban areas; and

WHEREAS priority is being given to the needs of our growing urban population by the Secretary in the administration of programs under the Conservation Act; and

WHEREAS the primary purpose of the open space program is to help acquire and preserve open space land which is essential to the proper long-range development and welfare of the Nation's urban areas, in accordance with plans for the allocation of such land for open space purposes; and

WHEREAS, to assure the most economic and efficient utilization of Title VII and the Conservation Act and funds provided in connection therewith, it is necessary to provide standards for the guidance of the Administrator and the Secretary in the administration of these programs as they relate to the acquisition of land for recreational purposes:

NOW, THEREFORE, by virtue of the authority vested in me by Section 5(g) of the Conservation Act (16 U.S.C. 4601—8(g)), and as President of the United States, it is hereby ordered as follows:

**Section 1. Urbanized areas.** As used in this Order, "urbanized area" means an area which is an urbanized area according to the most recent decennial census together with such additional adjacent areas as the Secretary and the Administrator jointly determine to be appropriate for the accomplishment of the purposes of Title VII and the Conservation Act in a manner consistent with comprehensive planning for orderly metropolitan development.

**Sec. 2. Areas of program concern.** In the acquisition of land for recreation resources the respective responsibilities of the Administrator and the Secretary shall be as follows:

(1) **Open space program.** With respect to the provision of open space land for recreational purposes, the Administrator, through the open space program, shall have responsibility primarily for assisting in the acquisition of lands or interests therein of utility primarily to the urbanized area in which they are located, such as squares, malls, and playgrounds, and parks, recreation areas, historic sites, and open spaces for scenic purposes.

(2) **Land and water conservation fund program.** In addition to responsibilities with respect to outdoor recreation resources of statewide and nationwide utility, the Secretary, through the Conservation Act program, shall have responsibility primarily for assisting in the acquisition of lands for larger regional parks, historic sites, and recreational and scenic areas to serve residents of urban and other local areas.

**Sec. 3. Land and water conservation fund grants in urbanized areas and other urban places.** Grants made by the Secretary for the acquisition of land in urbanized areas and other urban places for outdoor recreation under the Conservation Act shall be for projects which:

(1) are consistent with the comprehensive statewide outdoor recreation plan for the State or States in which the project is to be located: *Provided*, That the portions of such plan relating to urbanized areas shall have been reviewed by the Administrator as to their consistency with comprehensive planning for such areas;

(2) when located in whole or in part in urbanized areas, meet the same requirements with respect to planning and programming as shall have been prescribed by the Administrator with respect to projects under Title VII; and

(3) when located in urban places according to the most recent decennial census (other than those included in urbanized areas), reflect consideration of comprehensive urban planning being carried on for such urban places.

**Sec. 4. Open space grants outside of urbanized areas.** Grants made by the Administrator for acquisition of land or interests therein for recreational purposes under Title VII in areas outside of urbanized areas shall be for projects which:

(1) are consistent with planning and programming required under Title VII: *Provided*, That relevant aspects of such planning and programming shall have been reviewed by the Secretary as to their consistency, insofar as they are related to the achievement of recreational objectives, with the comprehensive statewide outdoor recreation plan; and

(2) meet the same requirements with respect to planning and programming as shall have been prescribed by the Secretary with respect to projects under the Conservation Act.

**Sec. 5. Review.** (a) The Administrator, in reviewing plans under Section 3 of this Order, shall transmit his comments to the Secretary within thirty days, or such other period as may be agreed upon, after receipt of such plans. The Secretary shall take such comments into consideration before approving such plans and programs. If the Secretary

disagrees with a recommendation of the Administrator, he shall so notify the Administrator and provide him, in writing, with his reasons therefor.

(b) The Secretary, in reviewing plans and programs under Section 4 of this Order, shall transmit his comments to the Administrator within thirty days, or such other period as may be agreed upon, after receipt of such plans and programs. The Administrator shall take such comments into consideration before approving grants for acquisition. If the Administrator disagrees with a recommendation of the Secretary, he shall so notify the Secretary and provide him, in writing, with his reasons therefor.

**Sec. 6. Coordinated procedures.** (a) The Secretary and the Administrator shall jointly develop procedures consistent with the purposes and requirements of the Conservation Act and Title VII, to carry out the provisions of this Order, including procedures for:

(1) evaluating applications for assistance in acquiring land for predominantly recreational purposes under outdoor recreation and open space programs;

(2) consultation and exchange of information concerning applications for, and grants of, assistance for acquisition of land for predominantly recreational purposes in urbanized areas under the outdoor recreation program and outside of urbanized areas under the open space program; and

(3) joint and mutual determinations for making grants of assistance under either the outdoor recreation program or the open space program in cases in which unusual circumstances would make departures from the preceding provisions of this Order desirable for reasons of economy, efficiency, or equity.

(b) Whenever the Secretary and the Administrator make a joint determination pursuant to paragraph (a)(3) of this Section, assistance may be provided in accordance with such determination.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*July 27, 1965.*

**No. 11258**

November 17, 1965, 30 F.R. 14483

**PREVENTION, CONTROL, AND ABATEMENT OF WATER  
POLLUTION BY FEDERAL ACTIVITIES**

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466),<sup>4</sup> it is ordered as follows:

**Section 1. Policy.** The heads of the departments, agencies, and establishments of the Executive Branch of the Government shall provide leadership in the nationwide effort to improve water quality through prevention, control, and abatement of water pollution from Federal Government activities in the United States. In order to achieve these objectives—

(1) Pollution from all existing Federal facilities and buildings shall be controlled in accordance with plans to be submitted to the Director of the Bureau of the Budget pursuant to Section 3 of this Order;

(2) New Federal facilities and buildings shall be constructed so as to meet the pollution control standards prescribed by Section 4 of this Order;

(3) Pollution caused by all other operations of the Federal Government, such as water resources projects and operations under Federal loans, grants, or contracts, shall be reduced to the lowest level practicable;

(4) Review and surveillance of all such activities shall be maintained to assure that pollution control standards are met on a continuing basis;

(5) The Secretary of Health, Education, and Welfare shall, in administering the Federal Water Pollution Control Act, as amended, provide technical advice and assistance to the heads of other departments, agencies, and establishments in connection with their duties and responsibilities under this Order;

(6) The head of each department, agency, and establishment shall ensure compliance with Section 11 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466h), which declares it to be the intent of Congress that Federal departments and agencies shall, insofar as practicable and consistent with the interests of the United States and within available appropriations, cooperate with the Secretary of Health, Education, and Welfare and with State and interstate agencies and municipalities, in preventing or controlling water pollution; and

(7) Water pollution control needs shall be considered in the initial stages of planning for each new installation or project, and the head of each department, agency, and establishment shall establish appropriate procedures for securing advice and for consulting with the Secretary of Health, Education, and Welfare at the earliest feasible stage.

**Sec. 2. Procedures for new Federal facilities and buildings.** (a) A request for funds to defray the cost of designing and constructing new facilities and buildings in the United States shall be included in the annual budget estimates of a department, agency, or establishment only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility or building will meet the general standards prescribed by Section 4 of this Order.

(b) Prior to any solicitation of bids for construction of any such new facility or building a description of the essential features of the water pollution control and treatment measures proposed for the project shall be submitted to the Secretary of Health, Education, and Welfare for prompt review and advice as to the adequacy and

effectiveness of the measures proposed and for advice as to any related operating procedures and continuing laboratory examinations deemed necessary to ensure effective plant operation.

**Sec. 3. Procedures for existing Federal facilities and buildings.** (a) In order to facilitate budgeting for corrective and preventive measures, the head of each department, agency, and establishment shall provide for an examination of all existing facilities and buildings under his jurisdiction in the United States and shall develop and present to the Director of the Bureau of the Budget, by July 1, 1966, a phased and orderly plan for installing such improvements as may be needed to prevent water pollution, or abate such water pollution as may exist, with respect to such buildings and facilities. Subsequent revisions needed to keep any such plan up-to-date shall be promptly submitted to the Director of the Bureau of the Budget. Future construction work at each such facility and the expected future use of the facility shall be considered in developing such a plan. Each such plan, and any revisions therein, shall be developed in consultation with the Secretary of Health, Education, and Welfare in order to ensure that adoption of the measures proposed thereby will result in the prevention or abatement of water pollution in conformity with the general standards prescribed by Section 4 of this Order.

(b) The head of each department, agency, and establishment shall present to the Director of the Bureau of the Budget, by July 1, 1967, and by the first of each fiscal year thereafter, an annual report describing progress of his department, agency, or establishment in accomplishing the objectives of its pollution abatement plan.

**Sec. 4. General standards.** (a) Federal installations shall provide secondary treatment, or its equivalent, for all wastes except cooling water and fish hatchery effluents. Discharge of wastes into municipal sewerage systems maintaining adequate treatment is hereby declared to be the preferred method of disposal. However, whenever connection to such a system is not feasible, the department, agency, or establishment concerned shall be responsible for installing its own waste treatment system. Upon an application of the head of a department, agency, or establishment, a degree of treatment less than secondary may be approved with respect to an agency-installed system in an exceptional case if the Secretary of Health, Education, and Welfare finds that a lesser degree of treatment is adequate to protect the quality of the receiving waters.

(b) If discharge of cooling water is expected to create problems by significantly increasing the temperature of the receiving waters, facilities shall be installed, or operating procedures shall be established, to maintain water temperatures within acceptable limits.

(c) Storage facilities for materials which are hazardous to health and welfare, and for oils, gases, fuels or other materials capable of causing water pollution, if accidentally discharged, shall be located so as to minimize or prevent any spillage which might result in water pollution. Engineering measures to entrap spillage, such as catchment areas, relief vessels, or entrapment-dikes, shall be installed so as to prevent accidental pollution of water.

(d) No waste shall be discharged into waters if it contains any substances in concentrations which are hazardous to health.

(e) No waste shall be discharged into waters if it contains any substances in concentrations which will result in substantial harm to domestic animals, fish, shellfish, or wildlife, if methods of treatment or disposal are available that will remove or render harmless such pollutants. If such methods are not available, but can reasonably be developed, they will be developed and used at the earliest possible date. A determination that such methods are not available or cannot reasonably be developed will not be made without the concurrence of the Secretary of Health, Education, and Welfare.

(f) The head of each department, agency, and establishment shall, with respect to each installation in the United States under his jurisdiction, make, or cause to be made, such surveys as may be necessary to ensure that discharges of waste effluents from activities concerned with radioactivity are in accord with the applicable rules, regulations, or requirements of the Atomic Energy Commission (10 CFR, Part 20) and the policies and guidance of the Federal Radiation Council as published in the Federal Register.

(g) Construction and operating plans for waste treatment facilities shall include space for the conduct of necessary laboratory analyses and for the maintenance of records of results thereof whenever the size and complexity of the system makes this necessary.

(h) Construction and operating plans for waste treatment facilities shall take into account water quality standards promulgated pursuant to the provisions of the Water Quality Act of 1965 (79 Stat. 903).

(i) Any waste treatment facilities installed by any department, agency, or establishment shall as far as practicable be constructed so as to conform with any area wide program, meeting criteria established by the Housing and Home Finance Administrator for a unified or officially coordinated area wide sewer facilities system as part of a comprehensively planned development of an area pursuant to Section 702 (c) of the Housing and Urban Development Act of 1965, that may have been adopted with respect to the areas concerned.

**Sec. 5. Modification of standards.** The standards prescribed by paragraphs (a) through (e) and (g) through (i) of Section 4 of this Order may be supplemented or modified by the Secretary of Health, Education, and Welfare, after consultation with the Director of the Bureau of the Budget. All such changes shall be published in the Federal Register.

**Sec. 6. Procedures for Federal water resources projects.** (a) The Secretaries of Agriculture, the Army, and the Interior, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission shall present for the consideration of the Secretary of Health, Education, and Welfare any plans that they propose to recommend with respect to the authorization or construction of any Federal water resource development project in the United States. Such plans must be consistent with the general standards prescribed by Section 4 of this Order to the fullest extent practicable. The Secretary of Health, Education, and Welfare shall review such plans and supporting data relating to water quality, and shall prepare a report to the head of the responsible department, agency, or establishment describing the potential impact of the project on water quality, including recommendations concerning any changes or other measures with respect thereto which he considers to be necessary with respect to the design, construction, and operation of the project.

(b) The report of the Secretary of Health, Education, and Welfare shall accompany any report proposing authorization or construction of such a water resource development project. In any case in which the Secretary of Health, Education, and Welfare fails to submit a report within 90 days after receipt of project plans, the head of the department, agency, or establishment concerned may propose authorization or construction of the project without such an accompanying report. In any such case, the head of the department, agency, or establishment concerned shall explicitly state in his report concerning the project that the Secretary of Health, Education, and Welfare has not reported on the potential impact of the project on water quality,

**Sec. 7. Review of facilities or operations supported by Federal loans, grants, or contracts.** (a) The head of each department, agency, and establishment shall conduct a review of the loan, grant, and contract practices of his organization to determine the extent to which water pollution control standards similar to those set forth in this Order for direct Federal operations should be adhered to by borrowers, grantees, or contractors

with respect to their operations in the United States. The head of each department, agency, and establishment shall review all such activities for which there is a significant potential for reduction of water pollution and develop appropriate recommendations for accomplishing such reduction. In conducting this review, necessary technical assistance should be sought from the Secretary of Health, Education, and Welfare and the heads of other appropriate Federal agencies. A report on the results of this review shall be submitted to the Director of the Bureau of the Budget by July 1, 1966.

(b) The heads of departments, agencies, and establishments are encouraged to prescribe regulations covering loan, grant, or contract practices designed to reduce water pollution.

**Sec. 8. Study of water pollution from vessel operations.** The Secretary of Health, Education, and Welfare shall make a comprehensive study of the problem of water pollution within the United States caused by the operation of vessels, and shall develop such recommendations for corrective or preventive action as may be appropriate, including recommendations with respect to vessels operated by any department, agency, or establishment of the Federal Government. The results of the study and recommendations shall be transmitted to the President by January 1, 1967. The study and report thereon shall be prepared in consultation with, and with the advice and assistance of, the Secretary of Defense, the Secretary of the Treasury, and the Secretary of Commerce.

**Sec. 9. Prior Executive Order superseded.** Executive Order No. 10014 of November 5, 1948,<sup>5</sup> is hereby superseded.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*November 17, 1965.*

4. 33 U.S.C.A. § 466.

5. 33 U.S.C.A. § 466 note.

**No. 11278**

May 4, 1966, 31 F.R. 6681

**ESTABLISHING A PRESIDENT'S COUNCIL AND A  
COMMITTEE ON RECREATION AND NATURAL BEAUTY**

With each passing year America becomes more thoroughly a nation of cities. Of our two hundred million citizens, 135 million live in major urban areas. The proportion of city-dwellers is certain to rise in the decades to come.

The problems, and the opportunities, of city life have dominated our thoughts in recent years. We have devoted billions of dollars, and millions of man-hours, to planning and building better cities for our people.

Yet beyond the limits of the city there lies another America.

It is the America of forests and great plains, of mountains and valleys, of quiet lakes and lonely shores. In that America, the changing of the seasons is more than the turning of pages on a calendar. It is the cycle of decay and rebirth on which all natural life depends.

To be isolated from that natural America is to be impoverished—no matter how affluent one may be. To destroy it, to treat it carelessly, is to disregard one of the profound needs of the human spirit.

We know that we must keep open the avenues between the city and the natural America that surrounds it. We know that part of the good life in the city is the opportunity to leave it from time to time—to be refreshed by a world no human hand has fashioned.

Because the Federal Government administers massive programs that affect the natural beauty of our land, it must pursue a course that will enhance and protect that beauty. It must stimulate action in behalf of natural beauty and outdoor recreation on the part of others—of State and local governments, of private organizations and individual citizens.

If it is to do this well, its own house must be in order. Its programs must be wise, and they must be coordinated. Its organization must reflect its responsibilities.

Therefore, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

**PART I. PRESIDENT'S COUNCIL ON RECREATION AND NATURAL BEAUTY**

**Section 101. Membership and chairmanship.** (a) There is hereby established the President's Council on Recreation and Natural Beauty (hereinafter referred to as the "Council") which shall be composed of the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, the Chairman of the Federal Power Commission, the Chairman of the Board of Directors of the Tennessee Valley Authority, and the Administrator of General Services. Each of the foregoing officers may appoint a delegate to represent him in Council activities.

(b) The chairmanship of the Council shall rotate among the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Housing and Urban Development, in the order named, for terms of two years each. Prior service as chairman of the Recreation Advisory Council, established by Executive Order No. 11017 of April 27, 1962, as amended,<sup>4</sup> shall be construed as service as chairman of the Council for the purposes of such rotation.

(c) When matters are to be considered by the Council which affect the interest of Federal agencies (including, as used in this order, executive departments and other executive agencies) the heads of which are not members of the Council, the chairman of the Council shall invite such heads to participate in the deliberations of the Council.

**Sec. 102. Functions of the Council.** (a) The Council shall review plans and programs of Federal agencies for or affecting outdoor recreation and natural beauty. The Council shall make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. The Council may conduct studies in those fields and shall encourage and assist Federal agencies to accomplish effective coordination in such fields.

(b) In carrying out the provisions of subsection (a) of this section, the Council shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such agencies procedures to better accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) the management of Federal land and water resources, including fish and wildlife, to enhance natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their local subdivisions and private organizations and individuals in areas of mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) vigorous and cooperative leadership in a nationwide recreation and beautification effort.

**Sec. 103. Coordination.** The Secretary of the Interior may make available to the Council for promoting coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49; to the extent permitted by law, he may make such authorities and resources available to the Council also for promoting coordination in natural beauty.

**Sec. 104. Assistance and cooperation.** (a) The Federal agencies headed by the officers composing the Council shall furnish necessary assistance to the Council in consonance with the provisions of Section 214 of the Act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691).

(b) The staff of the Council shall include an Executive Director, from the Bureau of Outdoor Recreation, and one individual appointed by each member of the Council.

(c) Upon request of the chairman of the Council, each Federal agency shall, to the extent permitted by law and within available funds, furnish information, data, and reports needed by the Council to accomplish the purposes of this order.

(d) All Federal officials, in carrying out their statutory responsibilities and programs, shall be mindful of the objectives of this order, shall take into account any advice given by the Council under Section 102(b) herein, and shall take such measures, consistent with their authorities and available funds, as will assist in protecting and enhancing the outdoor recreation opportunities and the natural beauty of the Nation.

**Sec. 105. Construction.** Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any Federal agency or the head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

**Sec. 106. Prior orders.** Executive Order No. 11017 of April 27, 1962, Executive Order No. 11069 of November 28, 1962, and Executive Order No. 11218 of April 24, 1965,<sup>5</sup> are hereby superseded.

## PART II. CITIZENS' ADVISORY COMMITTEE ON RECREATION AND NATURAL BEAUTY

**Sec. 201. Establishment.** There is hereby established the Citizens' Advisory Committee on Recreation and Natural Beauty (hereinafter referred to as the "Committee") which shall be composed of not more than 12 members appointed by the President. Appointments to membership on the Committee shall be for two years initially, but for staggered terms thereafter, except that the chairman of the Committee shall be appointed by the President to serve until his successor is appointed.

**Sec. 202. Duties and responsibilities.** (a) The Committee shall advise both the President and the Council on matters relating to (1) outdoor recreation and the beautification of our Nation's cities and countryside, (2) the correlation of natural beauty and outdoor recreation activities by Federal agencies and bureaus, and (3) local, State, and private outdoor recreation and natural beauty activities.

(b) The Committee shall advise and assist the Council in the evaluation of the progress made in carrying out the functions of the Council and recommend to the Council, as necessary, action to accelerate such progress.

(c) The Committee may, on its own motion, request information relating to the functions set forth in Section 202(a), above, and initiate consideration of items which relate to those functions.

**Sec. 203. Expenses.** Members of the Committee shall receive no compensation from the United States by reason of their services under this order but may, subject to law, be allowed travel expenses and per diem in lieu of subsistence.

LYNDON B. JOHNSON

THE WHITE HOUSE,

*May 4, 1966.*

4. 16 U.S.C.A. § 17k.

5. 16 U.S.C.A. § 17k.

**No. 11282**

May 26, 1966, 31 F.R. 7663

**PREVENTION, CONTROL, AND ABATEMENT OF AIR  
POLLUTION BY FEDERAL ACTIVITIES**

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Clean Air Act, as amended (42 U.S.C. 1857),<sup>1</sup> it is ordered as follows:

**Section 1. Policy.** The heads of the departments, agencies, and establishments of the Executive Branch of the Government shall provide leadership in the nationwide effort to improve the quality of our air through the prevention, control, and abatement of air pollution from Federal Government activities in the United States. In order to achieve these objectives—

(1) Emissions to the atmosphere from Federal facilities and buildings shall not be permitted if such emissions endanger health or welfare, and emissions which are likely to be injurious or hazardous to people, animals, vegetation, or property shall be minimized. The procedures established in section 3 of this Order shall be followed in minimizing pollution from existing facilities and buildings.

(2) New Federal facilities and buildings shall be constructed so as to meet the objectives prescribed by this Order and the standards established pursuant to section 5 of this Order.

(3) The Secretary of Health, Education, and Welfare shall, in administering the Clean Air Act, as amended, provide technical advice and assistance to the heads of other departments, agencies, and establishments in connection with their duties and responsibilities under this Order. The head of each department, agency, and establishment shall establish appropriate procedures for securing advice from, and consulting with, the Secretary of Health, Education, and Welfare.

(4) The head of each department, agency, and establishment shall ensure compliance with section 107(a) of the Clean Air Act, as amended (42 U.S.C. 1857f(a)),<sup>2</sup> which declares it to be the intent of Congress that Federal departments and agencies shall, to the extent practicable and consistent with the interests of the United States and within available appropriations, cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency in preventing and controlling pollution of the air.

**Sec. 2. Procedures for new Federal facilities and buildings.** A request for funds to defray the cost of designing and constructing new facilities and buildings in the United States shall be included in the annual budget estimates of a department, agency, or establishment only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility or building will meet the objectives prescribed by this Order and the standards established pursuant to section 5 of this Order. Air pollution control needs shall be considered in the initial stages of planning for each new installation.

**Sec. 3. Procedures for existing Federal facilities and buildings.** (a) Inherein, shall be developed in consultation with the Secretary of Health, Education, and Welfare in order to ensure that adoption of the measures proposed thereby will result in the prevention or abatement of air pollution in conformity with the objectives prescribed by this Order and the standards prescribed pursuant to section 5 of this Order.

(b) The head of each department, agency, and establishment who has existing facilities and buildings under his jurisdiction in the United States shall present to the Director of the Bureau of the Budget, by July 1, 1968, and by the first of each fiscal year

thereafter, an annual report describing progress of his department, agency, or establishment in accomplishing the objectives of its air pollution abatement plan.

**Sec. 4. Objectives for Federal facilities and buildings.** (a) Except for discharges of radioactive emissions which are regulated by the Atomic Energy Commission, Federal facilities and buildings shall conform to the air pollution standards prescribed by the State or community in which they are located. If State or local standards are not prescribed for a particular location, or if the State or local standards are less stringent than the standards established pursuant to this Order, the standards prescribed pursuant to section 5 of this Order shall be followed.

(b) The emission of flyash and other particulate matter shall be kept to a minimum.

(c) Emission of sulfur oxides shall be minimized to the extent practicable.

(d) Wherever appropriate, tall chimneys shall be installed in order to reduce the adverse effects of pollution. The determination of chimney height shall be based on air quality criteria, land use, and meteorological, topographical, aesthetic, and operating factors.

(e) Solid fuels and ash shall be stored and handled so as not to release to the atmosphere dust in significant quantities. Gasoline or any volatile petroleum distillate or organic liquid shall be stored and handled so as not to release to the atmosphere vapor emissions in significant quantities.

(f) In urban areas refuse shall not be burned in open fires and in rural areas it shall be disposed of in such a manner as to reasonably minimize pollution. Refuse shall not be left in dumps without being covered with inert matter within a reasonably short time. Whenever incinerators are used they shall be of such design as will minimize emission of pollutant dusts, fumes, or gases.

(g) Pollutant dusts, fumes, or gases (other than those for which provision is made above), shall not be discharged to the atmosphere in quantities which will endanger health or welfare.

(h) The head of each department, agency, and establishment shall, with respect to each installation in the United States under his jurisdiction, take, or cause to be taken, such action as may be necessary to ensure that discharges of radioactive emissions to the atmosphere are in accord with the rules, regulations, or requirements of the Atomic Energy Commission and the policies and guidance of the Federal Radiation Council as published in the **Federal Register**.

(i) In extraordinary cases where it may be required in the public interest, the Secretary of Health, Education, and Welfare may exempt any Federal facility or building from the objectives of paragraphs (a) through (g) of this section.

**Sec. 5. Standards.** (a) The Secretary of Health, Education, and Welfare shall prescribe standards to implement the objectives prescribed by paragraphs (a) through (g) of section 4 of this Order. Such standards may modify these objectives whenever the Secretary of Health, Education, and Welfare shall determine that such modifications are necessary in the public interest and will not significantly conflict with the intent of this Order. Prior to issuing any changes in such standards, the Secretary of Health, Education, and Welfare shall consult with appropriate Federal agencies and shall publish the proposed changes in the **Federal Register** thirty days prior to their issuance. All such standards prescribed by the Secretary shall be published in the **Federal Register**.

(b) The permits authorized by section 107(b) of the Clean Air Act, as amended (42 U.S.C. 1857f(b)),<sup>3</sup> may be used to carry out the purposes of this Order as the Secretary of Health, Education, and Welfare may deem appropriate.

**Sec. 6. Prior Executive Order superseded.** Executive Order No. 10779 of August 20, 1958, is hereby superseded.

LYNDON B. JOHNSON

THE WHITE HOUSE,

*May 26, 1966.*

1. 42 U.S.C.A. § 1857.
2. 42 U.S.C.A. § 1857f(a).
3. 42 U.S.C.A. § 1857f(b).

**No. 11288**

July 2, 1966, 31 F.R. 9261

**PREVENTION, CONTROL, AND ABATEMENT OF WATER  
POLLUTION BY FEDERAL ACTIVITIES**

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466),<sup>2</sup> and Reorganization Plan No. 2 of 1966 (31 F.R. 6857),<sup>3</sup> it is ordered as follows:

**Section 1. Policy.** The heads of the departments, agencies, and establishments of the Executive Branch of the Government shall provide leadership in the nationwide effort to improve water quality through prevention, control, and abatement of water pollution from Federal Government activities in the United States. In order to achieve these objectives—

(1) Pollution from all existing Federal facilities and buildings shall be controlled in accordance with plans to be submitted to the Director of the Bureau of the Budget pursuant to Section 3 of this order;

(2) New Federal facilities and buildings shall be constructed so as to meet the pollution control standards prescribed by Section 4 of this order;

(3) Pollution caused by all other operations of the Federal Government, such as water resources projects and operations under Federal loans, grants, or contracts, shall be reduced to the lowest level practicable;

(4) Review and surveillance of all such activities shall be maintained to assure that pollution control standards are met on a continuing basis;

(5) The Secretary of the Interior shall, in administering the Federal Water Pollution Control Act, as amended, provide technical advice and assistance to the heads of other departments, agencies, and establishments in connection with their duties and responsibilities under this order;

(6) The head of each department, agency, and establishment shall ensure compliance with Section 11 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466h), which, as modified by Reorganization Plan No. 2 of 1966 (31 F.R. 6857), declares it to be the intent of Congress that Federal departments and agencies shall, insofar as practicable and consistent with the interests of the United States and within available appropriations, cooperate with the Secretary of the Interior and with State and interstate agencies and municipalities, in preventing or controlling water pollution; and

(7) Water pollution control needs shall be considered in the initial stages of planning for each new installation or project, and the head of each department, agency, and establishment shall establish appropriate procedures for securing advice and for consulting with the Secretary of the Interior at the earliest feasible stage.

**Sec. 2. Procedures for new Federal facilities and buildings.** (a) A request for funds to defray the cost of designing and constructing new facilities and buildings in the United States shall be included in the annual budget estimates of a department, agency, or establishment only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility or building will meet the general standards prescribed by Section 4 of this order.

(b) Prior to any solicitation of bids for construction of any such new facility or building a description of the essential features of the water pollution control and treatment measures proposed for the project shall be submitted to the Secretary of the Interior for prompt review and advice as to the adequacy and effectiveness of the measures proposed and for advice as to any related operating procedures and continuing laboratory examinations deemed necessary to ensure effective plant operation.

**Sec. 3. Procedures for existing Federal facilities and buildings.** (a) In order to facilitate budgeting for corrective and preventive measures, the head of each department, agency, and establishment shall provide for an examination of all existing facilities and buildings under his jurisdiction in the United States and shall develop and present to the Director of the Bureau of the Budget, by July 1, 1966, a phased and orderly plan for installing such improvements as may be needed to prevent water pollution, or abate such water pollution as may exist, with respect to such buildings and facilities. Subsequent revisions needed to keep any such plan up-to-date shall be promptly submitted to the Director of the Bureau of the Budget. Future construction work at each such facility and the expected future use of the facility shall be considered in developing such a plan. Each such plan, and any revisions therein, shall be developed in consultation with the Secretary of the Interior in order to ensure that adoption of the measures proposed thereby will result in the prevention or abatement of water pollution in conformity with the general standards prescribed by Section 4 of this order.

(b) The head of each department, agency, and establishment shall present to the Director of the Bureau of the Budget, by July 1, 1967, and by the first of each fiscal year thereafter, an annual report describing the progress of his department, agency, or establishment in accomplishing the objectives of its pollution abatement plan.

**Sec. 4. General standards.** (a) Federal installations shall provide secondary treatment, or its equivalent, for all wastes except cooling water and fish hatchery effluents. Discharge of wastes into municipal sewerage systems maintaining adequate treatment is hereby declared to be the preferred method of disposal. However, whenever connection to such a system is not feasible, the department, agency, or establishment concerned shall be responsible for installing its own waste treatment system. Upon an application of the head of a department, agency, or establishment, a degree of treatment less than secondary may be approved with respect to an agency-installed system in an exceptional case if the Secretary of the Interior finds that a lesser degree of treatment is adequate to protect the quality of the receiving waters.

(b) If discharge of cooling water is expected to create problems by significantly increasing the temperature of the receiving waters, facilities shall be installed, or operating procedures shall be established, to maintain water temperatures within acceptable limits.

(c) Storage facilities for materials which are hazardous to health and welfare, and for oils, gases, fuels or other materials capable of causing water pollution, if accidentally discharged, shall be located so as to minimize or prevent any spillage which might result in water pollution. Engineering measures to entrap spillage, such as catchment areas, relief vessels, or entrapment-dikes, shall be installed so as to prevent accidental pollution of water.

(d) No waste shall be discharged into waters if it contains any substances in concentrations which are hazardous to health.

(e) No waste shall be discharged into waters if it contains any substances in concentrations which will result in substantial harm to domestic animals, fish, shellfish, or wildlife, if methods of treatment or disposal are available that will remove or render harmless such pollutants. If such methods are not available, but can reasonably be developed, they will be developed and used at the earliest possible date. A determination

that such methods are not available or cannot reasonably be developed will not be made without the concurrence of the Secretary of the Interior.

(f) The head of each department, agency, and establishment shall, with respect to each installation in the United States under his jurisdiction, make, or cause to be made, such surveys as may be necessary to ensure that discharges of waste effluents from activities concerned with radioactivity are in accord with the applicable rules, regulations, or requirements of the Atomic Energy Commission (10 CFR, Part 20) and the policies and guidance of the Federal Radiation Council as published in the **Federal Register**.

(g) Construction and operating plans for waste treatment facilities shall include space for the conduct of necessary laboratory analyses and for the maintenance of records of results thereof whenever the size and complexity of the system makes this necessary.

(h) Construction and operating plans for waste treatment facilities shall take into account water quality standards promulgated pursuant to the provisions of the Water Quality Act of 1965 (79 Stat. 903).

(i) Any waste treatment facilities installed by any department, agency, or establishment shall as far as practicable be constructed so as to conform with any areawide program, meeting criteria established by the Secretary of Housing and Urban Development for a unified or officially coordinated areawide sewer facilities system as part of the comprehensively planned development of the area pursuant to Section 702(c) of the Housing and Urban Development Act of 1965, that may have been adopted with respect to the area concerned.

**Sec. 5. Modification of standards.** The standards prescribed by paragraphs (a) through (e) and (g) through (i) of Section 4 of this order may be supplemented or modified by the Secretary of the Interior, after consultation with the Director of the Bureau of the Budget. All such changes shall be published in the **Federal Register**.

**Sec. 6. Procedures for Federal water resources projects.** (a) The Secretaries of Agriculture and the Army, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission shall present for the consideration of the Secretary of the Interior any plans that they propose to recommend with respect to the authorization or construction of any Federal water resource development project in the United States. Such plans must be consistent with the general standards prescribed by Section 4 of this order to the fullest extent practicable. The Secretary of the Interior shall review such plans and supporting data relating to water quality, and shall prepare a report to the head of the responsible department, agency, or establishment describing the potential impact of the project on water quality, including recommendations concerning any changes or other measures with respect thereto which he considers to be necessary with respect to the design, construction, and operation of the project.

(b) The report of the Secretary of the Interior shall accompany any report proposing authorization or construction of such a water resource development project. In any case in which the Secretary of the Interior fails to submit a report within 90 days after receipt of project plans, the head of the department, agency, or establishment concerned may propose authorization or construction of the project without such an accompanying report. In any such case, the head of the department, agency, or establishment concerned shall explicitly state in his report concerning the project that the Secretary of the Interior has not reported on the potential impact of the project on water quality.

**Sec. 7. Review of facilities or operations supported by Federal loans, grants, or contracts.** (a) The head of each department, agency, and establishment shall conduct a review of the loan, grant, and contract practices of his organization to determine the extent to which water pollution control standards similar to those set forth in this order for direct Federal operations should be adhered to by borrowers, grantees, or contractors

with respect to their operations in the United States. The head of each department, agency, and establishment shall review all such activities for which there is a significant potential for reduction of water pollution and develop appropriate recommendations for accomplishing such reduction. In conducting this review, necessary technical assistance should be sought from the Secretary of the Interior and the heads of other appropriate Federal agencies. A report on the results of this review shall be submitted to the Director of the Bureau of the Budget by July 1, 1966.

(b) The heads of departments, agencies, and establishments are encouraged to prescribe regulations covering loan, grant, or contract practices designed to reduce water pollution.

**Sec. 8. Study of water pollution from vessel operations.** The Secretary of the Interior shall make a comprehensive study of the problem of water pollution within the United States caused by the operation of vessels, and shall develop such recommendations for corrective or preventive action as may be appropriate, including recommendations with respect to vessels operated by any department, agency, or establishment of the Federal Government. The results of the study and recommendations shall be transmitted to the President by January 1, 1967. The study and report thereon shall be prepared in consultation with, and with the advice and assistance of, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare.

**Sec. 9. Prior Executive order superseded.** Executive Order No. 11258 of November 17, 1965,<sup>4</sup> is hereby superseded.

LYNDON B. JOHNSON

THE WHITE HOUSE,

*July 2, 1966.*

2. 33 U.S.C.A § 466.

3. 5 U.S.C.A. § 133z-15 note;

4. 33 U.S..C.A. § 466 note.

5. 33 U.S.C.A. § 466 note.

**No. 11296**

August 10, 1966, 31 F.R. 10663

**EVALUATION OF FLOOD HAZARD IN LOCATING  
FEDERALLY OWNED OR FINANCED BUILDINGS, ROADS,  
AND OTHER FACILITIES, AND IN DISPOSING OF FEDERAL  
LANDS AND PROPERTIES**

WHEREAS uneconomic uses of the Nation's flood plains are occurring and potential flood losses are increasing despite substantial efforts to control floods; and

WHEREAS national and regional studies of areas and property subject to flooding indicate a further increase in flood damage potential and flood losses, even with continuing investment in flood protection structures; and

WHEREAS the Federal Government has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually disposes of thousands of acres of Federal lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

WHEREAS the availability of Federal loans and mortgage insurance and land use planning programs are determining factors in the utilization of lands:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

**Section 1.** The heads of the executive agencies shall provide leadership in encouraging a broad and unified effort to prevent uneconomic uses and development of the Nation's flood plains and, in particular, to lessen the risk of flood losses in connection with Federal lands and installations and federally financed or supported improvements. Specifically:

(1) All executive agencies directly responsible for the construction of Federal buildings, structures, roads, or other facilities shall evaluate flood hazards when planning the location of new facilities and, as far as practicable, shall preclude the uneconomic, hazardous, or unnecessary use of flood plains in connection with such facilities. With respect to existing Federally owned properties which have suffered flood damage or which may be subject thereto, the responsible agency head shall require conspicuous delineation of past and probable flood heights so as to assist in creating public awareness of and knowledge about flood hazards. Whenever practical and economically feasible, flood proofing measures shall be applied to existing facilities in order to reduce flood damage potential.

(2) All executive agencies responsible for the administration of Federal grant, loan, or mortgage insurance programs involving the construction of buildings, structures, roads, or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the Federal expenditures for flood protection and flood disaster relief, shall, as far as practicable, preclude the uneconomic, hazardous, or unnecessary use of flood plains in such connection.

(3) All executive agencies responsible for the disposal of Federal lands or properties shall evaluate flood hazards in connection with lands or properties proposed for disposal to non-Federal public instrumentalities or private interests and, as may be desirable in order to minimize future Federal expenditures for flood protection and flood disaster relief and as far as practicable, shall attach appropriate restrictions with respect to uses of the lands or properties by the purchaser and his successors and may withhold such lands or properties from disposal. In carrying out this paragraph, each executive agency

may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the disposal documents.

(4) All executive agencies responsible for programs which entail land use planning shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved.

**Sec. 2.** As may be permitted by law, the head of each executive agency shall issue appropriate rules and regulations to govern the carrying out of the provisions of Section 1 of this order by his agency.

**Sec. 3.** Requests for flood hazard information may be addressed to the Secretary of the Army or, in the case of lands lying in the basin of the Tennessee River, to the Tennessee Valley Authority. The Secretary or the Tennessee Valley Authority shall provide such information as may be available, including requested guidance on flood proofing. The Department of Agriculture, Department of the Interior, Department of Commerce, Department of Housing and Urban Development, and Office of Emergency Planning, and any other executive agency which may have information and data relating to floods shall cooperate with the Secretary of the Army in providing such information and in developing procedures to process information requests.

**Sec. 4.** Any requests for appropriations for Federal construction of new buildings, structures, roads, or other facilities transmitted to the Bureau of the Budget by an executive agency shall be accompanied by a statement by the head of the agency on the findings of his agency's evaluation and consideration of flood hazards in the development of such requests.

**Sec. 5.** As used in this order, the term "executive agency" includes any department, establishment, corporation, or other organizational entity of the executive branch of the Government.

**Sec. 6.** The executive agencies shall proceed immediately to develop such procedures, regulations, and information as are provided for in, or may be necessary to carry out, the provisions of Sections 1, 2, and 3 of this order. In other respects this order shall take effect on January 1, 1967.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*August 10, 1966.*

**No. 11347**

April 20, 1967, 32 F.R. 6333

**AMENDMENT OF EXECUTIVE ORDER NO. 11210,  
ESTABLISHING A TEMPORARY COMMISSION ON  
PENNSYLVANIA AVENUE**

By virtue of the authority vested in me as President of the United States, Executive Order No. 11210 of March 25, 1965,<sup>13</sup> is amended by substituting for subsection (b) of section 1 thereof the following:

“(b) The Commission shall be composed of the Attorney General, the Postmaster General, the Secretary of Commerce, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, the Secretary of the Interior, the Secretary of Labor, the Secretary of Transportation, the Secretary of the Treasury, the Administrator of General Services, the Chairman of the Commission of Fine Arts, the Chairman of the National Capital Planning Commission, the Director of the National Gallery of Art, the President of the Board of Commissioners of the District of Columbia, the Secretary of the Smithsonian Institution, and such other members as may be appointed by the President. The Chairman shall invite the Architect of the Capitol to be a member of the Commission.”

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*April 20, 1967.*

13. 1965 U.S. Code Cong. & Adm. News, p. 4374

**No. 11472**

May 29, 1969, 34 F.R. 8693

**ESTABLISHING THE ENVIRONMENTAL QUALITY COUNCIL  
AND THE CITIZENS' ADVISORY COMMITTEE ON  
ENVIRONMENTAL QUALITY**

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

**PART 1. ENVIRONMENTAL QUALITY COUNCIL**

**Section 101. Establishment of the Council.** (a) There is hereby established the Environmental Quality Council (hereinafter referred to as "the Council").

(b) The President of the United States shall preside over meetings of the Council. The Vice President shall preside in the absence of the President.

(c) The Council shall be composed of the following members:

The Vice President of the United States  
Secretary of Agriculture  
Secretary of Commerce  
Secretary of Health, Education and Welfare  
Secretary of Housing and Urban Development  
Secretary of the Interior  
Secretary of Transportation

and such other heads of departments and agencies and others as the President may from time to time direct.

(d) Each member of the Council may designate an alternate, who shall serve as a member of the Council whenever the regular member is unable to attend any meeting of the Council.

(e) When matters which affect the interest of Federal agencies the heads of which are not members of the Council are to be considered by the Council, the President or his representative may invite such agency heads or their alternates to participate in the deliberations of the Council.

(f) The Director of the Bureau of the Budget, the Chairman of the Council of Economic Advisers, and the Executive Secretary of the Council for Urban Affairs or their representatives may participate in the deliberations of the Environmental Quality Council as observers.

(g) The Science Adviser to the President shall be the Executive Secretary of the Council and shall assist the President in directing the affairs of the Council.

**Sec. 102. Functions of the Council.** (a) The Council shall advise and assist the President with respect to environmental quality matters and shall perform such other related duties as the President may from time to time prescribe. In addition thereto, the Council is directed to:

(1) Recommend measures to ensure that Federal policies and programs, including those for development and conservation of natural resources, take adequate account of environmental effects.

(2) Review the adequacy of existing systems for monitoring and predicting environmental changes so as to achieve effective coverage and efficient use of facilities and other resources.

(3) Foster cooperation between the Federal Government, State and local governments, and private organizations in environmental programs.

(4) Seek advancement of scientific knowledge of changes in the environment and encourage the development of technology to prevent or minimize adverse effects that endanger man's health and well-being.

(5) Stimulate public and private participation in programs and activities to protect against pollution of the Nation's air, water, and land and its living resources.

(6) Encourage timely public disclosure by all levels of government and by private parties of plans that would affect the quality of environment.

(7) Assure assessment of new and changing technologies for their potential effects on the environment.

(8) Facilitate coordination among departments and agencies of the Federal Government in protecting and improving the environment.

(b) The Council shall review plans and actions of Federal agencies affecting outdoor recreation and natural beauty. The Council may conduct studies and make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. In carrying out the foregoing provisions of this subsection, the Council shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such agencies ways to accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) Development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) wildlife, to enhance natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) leadership in a nationwide recreation and beautification effort.

(c) The Council shall assist the President in preparing periodic reports to the Congress on the subjects of this order.

**Sec. 103. Coordination.** The Secretary of the Interior may make available to the Council for coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49; to the extent permitted by law, he may make such authorities and resources available to the Council also for promoting such coordination of other matters assigned to the Council by this order.

**Sec. 104. Assistance for the Council.** In compliance with provisions of applicable law, and as necessary to serve the purposes of this order, (1) the Office of Science and Technology shall provide or arrange for necessary administrative and staff services, support, and facilities for the Council, and (2) each department and agency which has membership on the Council under Section 101 (c) hereof shall furnish the Council such information and other assistance as may be available.

## PART II. CITIZEN'S ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

**Sec. 201. Establishment of the Committee.** There is hereby established the citizens' Advisory Committee on Environmental Quality (hereinafter referred to as the "Committee"). The Committee shall be composed of a chairman and not more than 14

other members appointed by the President. Appointments to membership on the Committee shall be for staggered terms, except that the chairman of the Committee shall serve until his successor is appointed.

**Sec 202. Functions of the Committee.** The Committee shall advise the President and the Council on matters assigned to the Council by the provisions of this order.

**Sec. 203. Expenses.** Members of the Committee shall receive no compensation from the United States by reason of their services under this order but shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5708) for persons in the Government service employed intermittently.

**Sec. 204. Continuity.** Persons who on the day of this order are members of the Citizens' Advisory Committee on Recreation and Natural Beauty established by Executive Order No. 11278 of May 4, 1966, as amended,<sup>41</sup> shall, until the expirations of their respective terms and without further action by the President, be members of the Committee established by the provisions of this Part in lieu of an equal number of the members provided for in section 201 of this order.

### PART III. GENERAL PROVISIONS

**Sec. 301. Construction.** Nothing in this order shall be construed as subjecting any department, establishment, or other instrumentality of the executive branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other such agency or head or as abrogating, modifying, or restricting any function in any manner.

**Sec. 302. Prior bodies and orders.** The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked:

- (1) Executive Order No. 11278 of May 4, 1966.
- (2) Executive Order No. 11359A of June 29, 1967.<sup>42</sup>
- (3) Executive Order No. 11402 of March 29, 1968.<sup>43</sup>

RICHARD NIXON

THE WHITE HOUSE,  
*May 29, 1969.*

41. 16 U.S.C.A. § 17k note.

42. 16 U.S.C.A. § 17k note.

43. 16 U.S.C.A. § 17k note.

**No. 11507**

February 4, 1970, 35 F.R. 2573

**PREVENTION, CONTROL, AND ABATEMENT OF AIR AND  
WATER POLLUTION AT FEDERAL FACILITIES**

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and Policy of the Clean Air Act, as amended (42 U.S.C. 1857),<sup>6</sup> the Federal Water Pollution Control Act, as amended (33 U.S.C. 466),<sup>7</sup> and the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970),<sup>8</sup> it is ordered as follows:

**Section 1. Policy.** It is the intent of this order that the Federal Government in the design, operation, and maintenance of its facilities shall provide leadership in the nationwide effort to protect and enhance the quality of our air and water resources.

**Sec. 2. Definitions.** As used in this order:

(a) The term "respective Secretary" shall mean the Secretary of Health, Education, and Welfare in matters pertaining to air pollution control and the Secretary of the Interior in matters pertaining to water pollution control.

(b) The term "agencies" shall mean the departments, agencies, and establishments of the executive branch.

(c) The term "facilities" shall mean the buildings, installations, structures, public works, equipment, aircraft, vessels, and other vehicles and property, owned by or constructed or manufactured for the purpose of leasing to the Federal Government.

(d) The term "air and water quality standards" shall mean respectively the quality standards and related plans of implementation, including emission standards, adopted pursuant to the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended, or as prescribed pursuant to section 4 (b) of this order.

(e) The term "performance specifications" shall mean permissible limits of emissions, discharges, or other values applicable to a particular Federal facility that would, as a minimum, provide for conformance with air and water quality standards as defined herein.

(f) The term "United States" shall mean the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

**Sec. 3. Responsibilities.** (a) Heads of agencies shall, with regard to all facilities under their jurisdiction:

(1) Maintain review and surveillance to ensure that the standards set forth in section 4 of this order are met on a continuing basis.

(2) Direct particular attention to identifying potential air and water quality problems associated with the use and production of new materials and make provisions for their prevention and control.

(3) Consult with the respective Secretary concerning the best techniques and methods available for the protection and enhancement of air and water quality.

(4) Develop and publish procedures, within six months of the date of this order, to ensure that the facilities under their jurisdiction are in conformity with this order. In the preparation of such procedures there shall be timely and appropriate consultation with the respective Secretary.

(b) The respective Secretary shall provide leadership in implementing this order, including the provision of technical advice and assistance to the heads of agencies in connection with their duties and responsibilities under this order.

(c) The Council on Environmental Quality shall maintain continuing review of the implementation of this order and shall, from time to time, report to the President thereon.

**Sec. 4. Standards.** (a) Heads of agencies shall ensure that all facilities under their jurisdiction are designed, operated, and maintained so as to meet the following requirements:

(1) Facilities shall conform to air and water quality standards as defined in section 2(d) of this order. In those cases where no such air or water quality standards are in force for a particular geographical area, Federal facilities in that area shall conform to the standards established pursuant to subsection (b) of this section. Federal facilities shall also conform to the performance specifications provided for in this order.

(2) Actions shall be taken to avoid or minimize wastes created through the complete cycle of operations of each facility.

(3) The use of municipal or regional waste collection or disposal systems shall be the preferred method of disposal of wastes from Federal facilities. Whenever use of such a system is not feasible or appropriate, the heads of agencies concerned shall take necessary measures for the satisfactory disposal of such wastes, including:

(A) When appropriate, the installation and operation of their own waste treatment and disposal facilities in a manner consistent with this section.

(B) The provision of trained manpower, laboratory and other supporting facilities as appropriate to meet the requirements of this section.

(C) The establishment of requirements that operators of Federal pollution control facilities meet levels of proficiency consistent with the operator certification requirements of the State in which the facility is located. In the absence of such State requirements the respective Secretary may issue guidelines, pertaining to operator qualifications and performance, for the use of heads of agencies.

(4) The use, storage, and handling of all materials, including but not limited to, solid fuels, ashes, petroleum products, and other chemical and biological agents, shall be carried out so as to avoid or minimize the possibilities for water and air pollution. When appropriate, preventive measure shall be taken to entrap spillage or discharge or otherwise to prevent accidental pollution. Each agency, in consultation with the respective Secretary, shall establish appropriate emergency plans and procedures for dealing with accidental pollution.

(5) No waste shall be disposed of or discharged in such a manner as could result in the pollution of ground water which would endanger the health or welfare of the public.

(6) Discharges of radioactivity shall be in accordance with the applicable rules, regulations, or requirements of the Atomic Energy Commission and with the policies and guidance of the Federal Radiation Council as published in the **Federal Register**.

(b) In those cases where there are no air or water quality standards as defined in section 2(d) of this order in force for a particular geographic area or in those cases where more stringent requirements are deemed advisable for Federal facilities, the respective Secretary, in consultation with appropriate Federal, State, interstate, and local agencies, may issue regulations establishing air or water quality standards for the purpose of this order, including related schedules for implementation.

(c) The heads of agencies, in consultation with the respective Secretary, may from time to time identify facilities or uses thereof which are to be exempted, including temporary relief, from provisions of this order in the interest of national security or in extraordinary cases where it is in the national interest. Such exemptions shall be reviewed periodically by the respective Secretary and the heads of the agencies concerned.

A report on exemptions granted shall be submitted to the Council on Environmental Quality periodically.

**Sec. 5. Procedures for abatement of air and water pollution at existing Federal facilities.** (a) Actions necessary to meet the requirements of subsections (a) (1) and (b) of section 4 of this order pertaining to air and water pollution at existing facilities are to be completed or under way no later than December 31, 1972. In cases where an enforcement conference called pursuant to law or air and water quality standards require earlier actions, the earlier date shall be applicable.

(b) In order to ensure full compliance with the requirements of section 5 (a) and to facilitate budgeting for necessary corrective and preventive measures, heads of agencies shall present to the Director of the Bureau of the Budget by June 30, 1970, a plan to provide for such improvements as may be necessary to meet the required date. Subsequent revisions needed to keep any such plan up-to-date shall be promptly submitted to the Director of the Bureau of the Budget.

(c) Heads of agencies shall notify the respective Secretary as to the performance specifications proposed for each facility to meet the requirements of subsections 4 (a) (1) and (b) of this order. Where the respective Secretary finds that such performance specifications are not adequate to meet such requirements, he shall consult with the agency head and the latter shall thereupon develop adequate performance specifications.

(d) As may be found necessary, heads of agencies may submit requests to the Director of the Bureau of the Budget for extensions of time for a project beyond the time specified in section 5(a). The Director, in consultation with the respective Secretary, may approve such requests if the Director deems that such project is not technically feasible or immediately necessary to meet the requirements of subsections 4(a) and (b). Full justification as to the extraordinary circumstances necessitating any such extension shall be required.

(e) Heads of agencies shall not use for any other purpose any of the amounts appropriated and apportioned for corrective and preventive measures necessary to meet the requirements of subsection (a) for the fiscal year ending June 30, 1971, and for any subsequent fiscal year.

**Sec. 6. Procedures for new Federal facilities.** (a) Heads of agencies shall ensure that the requirements of section 4 of this order are considered at the earliest possible stage of planning for new facilities.

(b) A request for funds to defray the cost of designing and constructing new facilities in the United States shall be included in the annual budget estimates of an agency only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility will meet the requirements of section 4 of this order.

(c) Heads of agencies shall notify the respective Secretary as to the performance specifications proposed for each facility when action is necessary to meet the requirements of subsections 4(a) (1) and (b) of this order. Where the respective Secretary finds that such performance specifications are not adequate to meet such requirements he shall consult with the agency head and the latter shall thereupon develop adequate performance specifications.

(d) Heads of agencies shall give due consideration to the quality of air and water resources when facilities are constructed or operated outside the United States.

**Sec. 7. Procedures for Federal water resources projects.** (a) All water resources projects of the Departments of Agriculture, the Interior, and the Army, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission shall be consistent with the requirements of section 4 of this order. In addition, all such projects shall be presented for the consideration of the Secretary of the Interior at the earliest feasible stage if they involve proposals or

recommendations with respect to the authorization or construction of any Federal water resources project in the United States. The Secretary of the Interior shall review plans and supporting data for all such projects relating to water quality, and shall prepare a report to the head of the responsible agency describing the potential impact of the project on water quality, including recommendations concerning any changes or other measures with respect thereto which he considers to be necessary in connection with the design, construction, and operation of the project.

(b) The report of the Secretary of the Interior shall accompany at the earliest practicable stage any report proposing authorization or construction, or a request for funding, of such a water resource project. In any case in which the Secretary of the Interior fails to submit a report within 90 days after receipt of project plans, the head of the agency concerned may propose authorization, construction, or funding of the project without such an accompanying report. In such a case, the head of the agency concerned shall explicitly state in his request or report concerning the project that the Secretary of the Interior has not reported on the potential impact of the project on water quality.

**Sec. 8. Saving provisions.** Except to the extent that they are inconsistent with this order, all outstanding rules, regulations, orders, delegations, or other forms of administrative action issued, made, or otherwise taken under the orders superseded by section 9 hereof or relating to the subject of this order shall remain in full force and effect until amended, modified, or terminated by proper authority.

**Sec. 9. Orders superseded.** Executive Order No. 11282 of May 26, 1966,<sup>9</sup> and Executive Order No. 11288 of July 2, 1966,<sup>10</sup> are hereby superseded.

RICHARD NIXON

THE WHITE HOUSE,  
*February 4, 1970.*

6. 42 U.S.C.A. § 1857 *et seq.*
7. 33 U.S.C.A. § 466 *et. seg.*
8. 42 U.S.C.A. § 4321 *et.seq.*
9. 42 U.S.C.A. § 1857f note.
10. 33 U.S.C.A. § 466 note.

**No. 11508**

February 10, 1970, 35 F.R. 2855

**PROVIDING FOR THE IDENTIFICATION OF UNNEEDED  
FEDERAL REAL PROPERTY**

WHEREAS proper management and use of the Nation's resources require a continuing and critical review of real property held by the Federal government in order to insure that each such property is promptly released by the agency concerned for appropriate disposition whenever changing program requirements of the agency, or other considerations, obviate the need of the agency for such property; and

WHEREAS existing law, including the Federal Property and Administrative Services Act of 1949, as amended (hereinafter referred to as "the Act"), authorizes the President to prescribe property utilization and disposal policies consistent with and deemed necessary to effectuate its provisions; and

WHEREAS I have determined that it would be in the public interest to enunciate a uniform policy for the Executive branch of the Government with respect to the identification of excess real property holdings, and to establish uniform procedures with respect thereto, in order to insure the prompt identification and release by executive agencies of real property holdings that are no longer essential to their activities and responsibilities:

NOW, THEREFORE, by virtue of the authority vested in me by section 205(a) of the Act (40 U.S.C. 486(a)),<sup>11</sup> and as President of the United States, it is hereby ordered as follows:

**Section 1.** In conformity with sections 202(b) and (c) of the Act (40 U.S.C. 483(b) and (c)),<sup>12</sup> the head of each executive agency, consistent with the policies set forth in Bureau of the Budget Circular No. A-2, Revised, shall:

(1) institute immediately a vigorous and complete survey of all real property under his control; and

(2) make a report to the Administrator of General Services within sixty days of the date of this order, listing any such property or portion thereof, and state whether it is not utilized, is underutilized, or is not being put to its optimum use.

**Sec. 2.** The Administrator of General Services shall:

(1) within sixty days of the date of this order, and in implementation of the policies set forth in Bureau of the Budget Circular No. A-2, Revised, establish uniform standards and procedures for the identification of real property that is not utilized, is underutilized, or is not being put to its optimum use, and the heads of other executive agencies shall thereafter conform their policies, regulations, and practices to the provisions of such standards and procedures;

(2) within sixty days of the date of this order, institute, and thereafter conduct on a continuing basis, a survey of the real property holdings of all executive agencies to identify properties which in his judgment are not utilized, are underutilized, or are not being put to their optimum use; and

(3) make reports to the President, listing any property or portion thereof (identified either by Executive agencies or as a result of the Administrator's survey) which has not been reported excess and which in the Administrator's judgment is either not utilized, is underutilized, or is not being put to its optimum use, and which in his judgment should be reported as excess property.

**Sec. 3.** (a) The reports required of the Administrator of General Services by section 2 of this order shall be made to the President through a Property Review Board, which is hereby established.

(b) The members of the Property Review Board shall be the Director of the Bureau of the Budget, the Chairman of the Council of Economic Advisers, the Chairman of the Council of Environmental Quality, the Administrator of General Services, and such other officers or employees of the Executive branch as the President may from time to time designate. One of the members of the Board shall be designated by the President as Chairman. The Board shall have an Executive Secretary, who shall be appointed by the President.

(c) The Property Review Board shall review the reports made by the Administrator of General Services pursuant to section 2 of this order, as well as other reports to the President making recommendations for the use or disposition of specific parcels of real property, with particular attention to conflicting claims on, and alternative uses for, any property listed in such reports. The Board shall then make such recommendations to the President as it deems advisable regarding the use or disposal of such property.

**Sec. 4.** As used in this order:

(1) the term "executive agency" means "executive agency" as defined in section 3 (a) of the Act (40 U.S.C. 472 (a));<sup>13</sup>

(2) the term "property," however modified, means real property, or an interest therein, which is covered by the definition of "property" set forth in section 3 (d) of the Act (40 U.S.C. 472 (d)),<sup>14</sup> and also lands withdrawn or reserved from the public domain which are utilized by executive agencies for purposes other than national forests or national parks; and

(3) the term "excess property" means "excess property" as defined in section 3 (a) of the Act (40 U.S.C. 472 (e)).<sup>15</sup>

RICHARD NIXON

THE WHITE HOUSE,  
*February 10, 1970.*

11. 40 U.S.C.A. § 486 (a).

12. 40 U.S.C.A. § 483 (b), (c).

13. 40 U.S.C.A. § 472(a).

14. 40 U.S.C.A. § 472(d).

15. 40 U.S.C.A. § 472(e).

**No. 11514**

March 5, 1970, 35 F.R. 4247

**PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL  
QUALITY**

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970),<sup>27</sup> it is ordered as follows:

**Section 1. Policy.** The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

**Sec. 2. Responsibilities Of Federal Agencies.** Consistent with Title I of the National Environmental Policy Act of 1969,<sup>28</sup> hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review other agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality no later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.<sup>29</sup>

**Sec. 3. Responsibilities of Council on Environmental Quality.** The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2) (C) of the Act.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.<sup>30</sup>

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

**Sec. 4. Amendments of E.O. 11472.** Executive Order No. 11472 of May 29, 1969, including the heading thereof,<sup>31</sup> is hereby amended:

(1) By substituting for the term "the Environmental Quality Council" wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget," the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following: "(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) shall assist the President in directing the affairs of the Cabinet Committee."

(5) By deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91-190)".

(7) By substituting for “(hereinafter referred to as the ‘Committee’), in section 201, the following: “(hereinafter referred to as the ‘Citizens Committee)’”.

(8) By substituting for the term “the Committee”, wherever it occurs, the following: “the Citizens’ Committee”.

RICHARD NIXON

THE WHITE HOUSE,

*March 5, 1970.*

27. 42 U.S.C.A. § 4321 *et seq.*

28. 42 U.S.C.A. § 4331.

29. 42 U.S.C.A. § 4332.

30. 42 U.S.C.A. § 4341.

31. 16 U.S.C.A. § 17k note.

**No. 11593**

May 13, 1971, 36 F.R. 8921

**PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT**

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 *et seq.*),<sup>58</sup> the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 *et seq.*),<sup>59</sup> the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 *et seq.*),<sup>60</sup> and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 *et seq.*),<sup>61</sup> it is ordered as follows:

**Section 1. Policy.** The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation, and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

**Sec. 2. Responsibilities of Federal agencies.** Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council of Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as result of Federal action or assistance

a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

**Sec. 3. Responsibilities of the Secretary of the Interior.** The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by Section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

RICHARD NIXON

THE WHITE HOUSE,  
*May 13, 1971.*

58. 42 U.S.C.A. § 4321 et seq.

59. 16 U.S.C.A. § 470 et seq.

60. 16 U.S.C.A. § 461 et seq.

61. 16 U.S.C.A. § 431 et seq.

**No. 11602**

June 29, 1971, 36 F.R. 12475

**PROVIDING FOR ADMINISTRATION OF THE CLEAN AIR ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS**

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*), and particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91-604, approved December 31, 1970),<sup>68</sup> it is hereby ordered as follows:

**Section 1. Policy.** It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act (hereinafter referred to as "the Act").

**Sec. 2. Designation of Facilities.** (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as "the Administrator") shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c) (1) of the Act. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

**Sec. 3. Contracts, Grants, or Loans.** (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or programs involving the use of a facility then designated by the Administrator pursuant to section 2.

**Sec. 4. Procurement, Grant, and Loan Regulations.** The Federal Procurement Regulations, the Armed Services Procurement Regulations, and, to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Act and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

**Sec. 5. Rules and Regulations.** The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

**Sec. 6. Cooperation and Assistance.** The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of his agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such report to the Administrator.

**Sec. 7. Enforcement.** The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

**Sec. 8. Exemptions—Reports to Congress.** (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefore; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

**Sec. 9. Related Actions.** The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provision of the Act.

**Sec. 10. Applicability.** This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

RICHARD NIXON

THE WHITE HOUSE,  
*June 29, 1971.*

**No. 11643**

February 8, 1972, 37 F.R. 2875

**ENVIRONMENTAL SAFEGUARDS ON ACTIVITIES FOR  
ANIMAL DAMAGE CONTROL ON FEDERAL LANDS**

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)<sup>10</sup> and the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa),<sup>11</sup> it is ordered as follows:

**Section 1. Policy.** It is the policy of the Federal Government to (1) restrict the use on Federal lands of chemical toxicants for the purpose of killing predatory mammals or birds; (2) restrict the use on such lands of chemical toxicants which cause any secondary poisoning effects for the purpose of killing other mammals, birds, or reptiles; and (3) restrict the use of both such types of toxicants in any Federal programs of mammal or bird damage control that may be authorized by law. All such mammal or bird damage control programs shall be conducted in a manner which contributes to the maintenance of environmental quality, and to the conservation and protection, to the greatest degree possible, of the Nation's wildlife resources, including predatory animals.

**Sec. 2. Definitions.** As used in this order the term:

(a) "Federal lands" means all real property owned by or leased to the Federal Government, excluding (1) lands administered by the Secretary of the Interior pursuant to his trust responsibilities for Indian affairs, and (2) real property located in metropolitan areas.

(b) "Agencies" means the departments, agencies and establishments of the executive branch of the Federal Government.

(c) "Chemical toxicant" means any chemical substance which, when ingested, inhaled, or absorbed, or when applied to or injected into the body, in relatively small amounts, by its chemical action may cause significant bodily malfunction, injury, illness, or death, to animals or man.

(d) "Predatory mammal or bird" means any mammal or bird which habitually preys upon other animals or birds.

(e) "Secondary poisoning effect" means the result attributable to a chemical toxicant which, after being ingested, inhaled, or absorbed, or when applied to or injected into, a mammal, bird, or reptile, is retained in its tissue, or otherwise retained in such a manner and quantity that the tissue itself or retaining part if thereafter ingested by man, mammal, bird or reptile produces the effects set forth in paragraph (c) of this section.

(f) "Field use" means use on lands not in, or immediately adjacent to, occupied buildings.

**Sec. 3. Restriction on Use of Chemical Toxicants.**

(a) Heads of agencies shall take such action as is necessary to prevent on any Federal lands under their jurisdiction, or in any Federal program of mammal or bird damage control under their jurisdiction:

(1) the field use of any chemical toxicant for the purpose of killing a predatory mammal or bird; or

(2) the field use of any chemical toxicant which causes any secondary poisoning effect for the purpose of killing mammals, birds, or reptiles.

(b) Notwithstanding the provisions of subsection (a) of this section, the head of any agency may authorize the emergency use on Federal lands under his jurisdiction of a chemical toxicant for the purpose of killing predatory mammals or birds, or of a chemical toxicant which causes a secondary poisoning effect for the purpose of killing other mammals, birds, or reptiles, but only if in each specific case he makes a written finding, following consultation with the Secretaries of the Interior, Agriculture and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that any emergency exists that cannot be dealt with by means which do not involve use of chemical toxicants, and that such use is essential:

(1) to the protection of the health or safety of human life;

(2) to the preservation of one or more wildlife species threatened with extinction, or likely within the foreseeable future to become so threatened; or

(3) to the prevention of substantial irretrievable damage to nationally significant natural resources.

**Sec. 4. Rules for Implementation of Order.** Heads of agencies shall issue such rules or regulations as may be necessary and appropriate to carry out the provisions and policy of this order.

RICHARD NIXON

THE WHITE HOUSE,  
*February 8, 1972.*

10. 42 U.S.C.A. § 4321 *et seq.*

11. 16 U.S.C.A. § 668aa.

**No. 11644**

February 8, 1972, 37 F.R. 2877

**USE OF OFF-ROAD VEHICLES ON THE PUBLIC LANDS**

An estimated 5 million off-road recreational vehicles—motorcycles, minibikes, trail bikes, snowmobiles, dune-buggies, all-terrain vehicles, and others—are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands—often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity—has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321),<sup>12</sup> it is hereby ordered as follows:

**Section 1. Purpose.** It is the purpose of this order to establish policies and provide for procedures that will insure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

**Sec. 2. Definitions.** As used in this order, the term:

(1) “public lands” means (A) all lands under the custody and control of the Secretary of the Interior and the Secretary of Agriculture, except Indian lands, (B) lands under the custody and control of the Tennessee Valley Authority that are situated in western Kentucky and Tennessee and are designated as “Land Between the Lakes,” and (C) lands under the custody and control of the Secretary of Defense;

(2) “respective agency head” means the Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, and the Board of Directors of the Tennessee Valley Authority, with respect to public lands under the custody and control of each;

(3) “off-road vehicle” means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any military, fire, emergency, or law enforcement vehicle when used for emergency purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and

(4) “official use” means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

**Sec. 3. Zones of Use.** (a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following—

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

(b) The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.

(c) The limitations on off-road vehicle use imposed under this section shall not apply to official use.

**Sec. 4. Operating Conditions.** Each respective agency head shall develop and publish, within one year of the date of this order, regulations prescribing operating conditions for off-road vehicles on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

**Sec. 5. Public Information.** The respective agency head shall ensure that areas and trails where off-road vehicle use is permitted are well marked and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use. He shall seek cooperation of relevant State agencies in the dissemination of this information.

**Sec. 6. Enforcement.** The respective agency head shall, where authorized by law, prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations. To the extent permitted by law, he may enter into agreements with State or local governmental agencies for cooperative enforcement of laws and regulations relating to off-road vehicle use.

**Sec 7. Consultation.** Before issuing the regulations or administrative instructions required by this order or designating areas or trails as required by this order and those regulations and administrative instructions, the Secretary of the Interior shall, as appropriate, consult with the Atomic Energy Commission.

**Sec. 8. Monitoring of Effects and Review.** (a) The respective agency head shall monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designations of areas or other actions taken pursuant to this order as necessary to further the policy of this order.

(b) The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.

RICHARD NIXON

THE WHITE HOUSE,  
*February 8, 1972.*

**No. 11738**

September 10, 1973, 38 F.R. 25161

**PROVIDING FOR ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS**

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*), particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91-604),<sup>26</sup> and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500),<sup>27</sup> it is hereby ordered as follows:

**Section 1. Policy.** It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act (hereinafter referred to as "the Air Act") and the Federal Water Pollution Control Act (hereinafter referred to as "the Water Act").

**Sec. 2. Designation of Facilities.** (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as "the Administrator") shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c) (1) of the Air Act or section 309(c) of the Water Act. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

**Sec. 3. Contracts, Grants, or Loans.** (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

**Sec. 4. Procurement, Grant, and Loan Regulations.** The Federal Procurement Regulations, the Armed Services Procurement Regulations, and, to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act,

and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

**Sec. 5. Rules and Regulations.** The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

**Sec. 6. Cooperation and Assistance.** The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of his agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

**Sec. 7. Enforcement.** The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

**Sec. 8. Exemptions—Reports to Congress.** (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefore; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

**Sec. 9. Related Actions.** The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

**Sec. 10. Applicability.** This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

**Sec. 11. Uniformity.** Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971, and section 306 of the Air Act.<sup>28</sup>

**Sec. 12. Order Superseded.** Executive Order No. 11602 of June 29, 1971, is hereby superseded.

RICHARD NIXON

THE WHITE HOUSE,  
*September 10, 1973.*

- 26. 42 U.S.C.A. § 1857h-4.
- 27. 33 U.S.C.A. § 1369.
- 28. 42 U.S.C.A. § 1857h-4 note.

**No. 11741**

October 15, 1973, 38 F.R. 28809

**FEDERAL AGENCY USE OF THE OFFICIAL AMERICAN  
REVOLUTION BICENTENNIAL SYMBOL**

The 200th anniversary of the birth of the United States of America should be an occasion for a nationwide commemoration which includes all of our institutions.

One means of increasing awareness of and interest in the Bicentennial can be the widespread display of the official American Revolution Bicentennial symbol adopted by the American Revolution Bicentennial Commission, notification of which was published in the Federal Register on March 27, 1971, Volume 36, No. 60.

Since publications, correspondence, and documents of the Federal departments and agencies reach most institutions and citizens of the United States, the American Revolution Bicentennial Commission has recommended that the publications, correspondence, and documents of the Federal departments and agencies bear the official Bicentennial symbol to the extent practicable.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

**Section 1.** Each Federal department and agency of the executive branch shall use the official symbol of the American Revolution Bicentennial, adopted by the American Revolution Bicentennial Commission pursuant to the Act of December 7, 1970 (Public Law 91-528; 84 Stat. 1389),<sup>34</sup> on publications, envelopes, stationery, and other appropriate documents to the extent such use is permitted by law and is deemed appropriate.

**Sec. 2.** The official symbol may be used either in one color or in the three colors prescribed in the Graphics Manual of the American Revolution Bicentennial Commission.

**Sec. 3.** Use of the symbol pursuant to this order shall continue through December 31, 1976.

RICHARD NIXON

THE WHITE HOUSE,  
*October 15, 1973.*

34. 1970 U.S. Code Cong. & Adm. News, p. 1620.

**No. 11752**

December 17, 1973, 38 F.R. 34793

**PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES**

By virtue of the authority vested in me as President of the United States of America, including section 301 of title 3 of the United States Code,<sup>58</sup> and in furtherance of the purpose and policies of the Clean Air Act, as amended (42 U.S.C. 1857)<sup>59</sup>, the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251)<sup>60</sup>, the Solid Waste Disposal Act, as amended (42 U.S.C. 3251)<sup>61</sup>, the Noise Control Act of 1972 (42 U.S.C. 4901)<sup>62</sup>, the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431)<sup>63</sup>, the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. 136)<sup>64</sup>, and the National Environmental Policy Act of 1969 (42 U.S.C. 4 321)<sup>65</sup>, it is ordered as follows:

**Section 1. Policy.** It is the purpose of this order to assure that the Federal Government, in the design, construction, management, operation, and maintenance of its facilities, shall provide leadership in the nationwide effort to protect and enhance the quality of our air, water, and land resources through compliance with applicable standards for the prevention, control, and abatement of environmental pollution in full cooperation with State and local governments. Compliance by Federal facilities with Federal, State, interstate, and local substantive standards and substantive limitations, to the same extent that any person is subject to such standards and limitations, will accomplish the objective of providing Federal leadership and cooperation in the prevention of environmental pollution. In light of the principle of Federal supremacy embodied in the Constitution, this order is not intended, nor should it be interpreted, to require Federal facilities to comply with State or local administrative procedures with respect to pollution abatement and control.

**Sec. 2. Definitions.** As used in this order:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Federal agencies" means the departments, agencies, establishments, and instrumentalities of the executive branch.

(3) The term "State, interstate, and local agencies" means any of the following:

(A) a State agency designated by the Governor of that State as an official State agency responsible for enforcing State and local laws relating to the prevention, control, and abatement of environmental pollution;

(B) any agency established by two or more States and having substantial powers or duties pertaining to the prevention, control, and abatement of environmental pollution;

(C) a city, county, or other local government authority charged with responsibility for enforcing ordinances or laws relating to the prevention, control, and abatement of environmental pollution; or

(D) an agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention, control, and abatement of environmental pollution.

(4) The term “facilities” means the buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the Federal Government.

(5) The term “United States” means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

**Sec. 3. Responsibilities.** (a) Heads of Federal agencies shall, with regard to all facilities under their jurisdiction in the United States:

(1) Ensure that applicable standards specified in section 4 of this order are met on a continuing basis.

(2) Cooperate with the Administrator and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution and, in accordance with guidelines issued by the Administrator, provide to the Administrator and to those agencies such information as is necessary to determine compliance with applicable standards. Such cooperation shall include development of an abatement plan and schedule for meeting applicable standards.

(3) Present to the Director of the Office of Management and Budget, annually, a plan to provide for such improvement in the design, construction, management, operation, and maintenance of existing facilities as may be necessary to meet applicable standards specified in section 4.

(4) Consider the environmental impact in the initial stages of planning for each new facility or modification to an existing facility in accordance with the National Environmental Policy Act.

(5) Include with all budget requests for the design and construction of new facilities or for modification of existing facilities funds for such measures as may be necessary to meet applicable standards specified in section 4. Budget requests shall reflect the most efficient alternative for meeting applicable standards.

(6) Consult, as appropriate, with the Administrator and with State and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

(7) Ensure that any funds appropriated or apportioned for the prevention, control, and abatement of environmental pollution are not used for any other purpose unless permitted by law and unless specifically approved by the Office of Management and Budget.

(b) Where activities are carried out at Federal facilities acquired by leasing or other Federal agreements, the head of the responsible agency may at his discretion, to the extent of permissible to assume full responsibility for complying with standards for the prevention, control, and abatement of environmental pollution.

(c) Heads of Federal agencies responsible for the construction and operation of Federal facilities outside the United States shall assure that such facilities are operated so as to comply with the environmental pollution standards of general applicability in the host country or jurisdictions concerned.

(d) The Administrator shall:

(1) Provide technical advice and assistance to the heads of Federal agencies in connection with their duties and responsibilities under this order.

(2) Maintain such review of Federal facilities' compliance with the standards specified in section 4 as may be necessary.

(3) Provide liaison as required to assure that actions taken by Federal agencies pursuant to this order are coordinated with State, interstate, and local programs for the prevention, control, and abatement of environmental pollution.

(4) Mediate conflicts between Federal agencies and State, interstate, or local agencies in matters affecting the application of, or compliance with, applicable standards specified in section 4.

(5) Develop in consultation with the heads of other Federal agencies a coordinated strategy for Federal facility compliance with applicable standards specified in section 4 which incorporates, to the maximum extent practicable, common procedures for an integrated approach to Federal agency compliance with such standards, and issue such regulations and guidelines as are deemed necessary to facilitate implementation of that strategy and to provide a framework for coordination and cooperation among the Environmental Protection Agency, the other Federal agencies, and the State, interstate, and local agencies.

(6) Maintain a continuing review of the implementation of this order and, from time to time, report to the President on the progress of the Federal agencies in implementing this order.

**Sec. 4. Standards.** (a) Heads of Federal agencies shall ensure that all facilities under their jurisdiction are designed, constructed, managed, operated, and maintained so as to conform to the following requirements:

(1) Federal, State, interstate, and local air quality standards and emission limitations adopted in accordance with or effective under the provisions of the Clean Air Act, as amended.

(2) Federal, State, interstate, and local water quality standards and effluent limitations respecting the discharge or runoff of pollutants adopted in accordance with or effective under the provisions of the Federal Water Pollution Control Act, as amended.

(3) Federal regulations and guidelines respecting dumping of material into ocean waters adopted in accordance with the Marine Protection, Research, and Sanctuaries Act of 1972, and the Federal Water Pollution Control Act, as amended.

(4) Guidelines for solid waste recovery, collection, storage, separation, and disposal systems issued by the Administrator pursuant to the Solid Waste Disposal Act, as amended.

(5) Federal noise emission standards for products adopted in accordance with provisions of the Noise Control Act of 1972 and State, interstate, and local standards for control and abatement of environmental noise.

(6) Federal guidance on radiation and generally applicable environmental radiation standards promulgated or recommended by the Administrator and adopted in accordance with the Atomic Energy Act, as amended (42 U.S.C. 2011), and rules, regulations, requirements, and guidelines on discharges of radioactivity as prescribed by the Atomic Energy Commission.

(7) Federal regulations and guidelines respecting manufacture, transportation, purchase, use, storage, and disposal of pesticides promulgated pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972.

(b) In those cases in which there are no environmental pollution standards as specified in subsection (a) for a particular geographic area or class of Federal facilities, the Administrator, in consultation with appropriate Federal, State, interstate, and local agencies, may issue regulations, which shall be published in the **Federal Register**, establishing environmental pollution standards for the purpose of this order.

**Sec. 5. Exemptions.** (a) The heads of Federal agencies, in consultation with the Administrator, may, from time to time, identify facilities or uses thereof which are

exempted from applicable standards specified in section 4 in the interest of national security or in extraordinary cases in which it is in the paramount interest of the United States. No such exemptions shall be made except as are permissible under applicable Federal law.

(b) In any case in which the Administrator does not agree with a determination to exempt a facility or use thereof from the provisions of this order, the head of the Federal agency making such a determination must have the approval of the Director of the Office of Management and Budget to exempt that facility or use thereof; except that, the Administrator is solely responsible for approval of exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972.

(c) The heads of Federal agencies shall present to the Director of the Office of Management and Budget at the end of each calendar year a report of all exemptions made during that year, together with the justification for each such exemption.

**Sec. 6. Saving Provisions.** Except to the extent that they are inconsistent with this order, all outstanding rules, regulations, orders, delegations, or other forms of administrative action issued, made, or otherwise taken under the order superseded by Section 7 hereof or relating to the subject of this order shall remain in full force and effect until amended, modified, or terminated by proper authority.

**Sec. 7. Order Superseded.** Executive Order No. 11507 of February 4, 1970,<sup>66</sup> is hereby superseded.

RICHARD NIXON

THE WHITE HOUSE,  
*December 17, 1973.*

- 58. 3 U.S.C.A. § 301.
- 59. 42 U.S.C.A. § 1857.
- 60. 33 U.S.C.A. § 1251.
- 61. 42 U.S.C.A. § 3251.
- 62. 42 U.S.C.A. § 4901.
- 63. 16 U.S.C.A. § 1431.
- 64. 7 U.S.C.A. § 136.
- 65. 42 U.S.C.A. § 4321.
- 66. 42 U.S.C.A. § 4331 note.

**No. 11815**

October 23, 1974, 39 F.R. 37963

**DELEGATING TO THE NATIONAL CAPITAL PLANNING  
COMMISSION THE FUNCTION OF ESTABLISHING THE  
METES AND BOUNDS OF THE NATIONAL CAPITAL SERVICE  
AREA**

By virtue of the authority vested in me by section 739 (g) of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 828; Public Law 93-198), and as President of the United States, the Chairman of the National Capital Planning Commission is authorized and directed to exercise all authority and to carry out all duties vested in the President by section 739 (g) of the above cited law with respect to establishing the metes and bounds of the National Capital Service Area. Prior to establishing said metes and bounds, the Chairman shall consult with the appropriate representative of the District of Columbia Government.

GERALD R. FORD

THE WHITE HOUSE,  
*October 23, 1974.*

**No. 11870**

July 18, 1975, 40 F.R. 30611

**ENVIRONMENTAL SAFEGUARDS ON ACTIVITIES FOR  
ANIMAL DAMAGE CONTROL ON FEDERAL LANDS**

By virtue of the authority vested in me as President of the United States, and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the provisions of Section 1 of the Act of March 2, 1931 (46 Stat. 1468, 7 U.S.C. 426) and the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531 *et seq.*), Executive Order No. 11643 of February 8, 1972,<sup>31</sup> is amended to read as follows:

**“Section 1.** It is the policy of the Federal Government, consistent with the authorities cited above, to:

(1) Manage the public lands to protect all animal resources thereon in the manner most consistent with the public trust in which such lands are held.

(2) Conduct all mammal or bird damage control programs in a manner which contributes to the maintenance of environmental quality, and to the conservation and protection of the Nation's wildlife resources, including predatory animals.

(3) Restrict the use on public lands and in Federal predator control programs of any chemical toxicant for the purpose of killing predatory animals or birds which would have secondary poisoning effects.

(4) Restrict the use of chemical toxicants for the purpose of killing predatory or other mammals or birds in Federal programs and on Federal lands in a manner which will balance the need for a responsible animal damage control program consistent with the other policies set forth in this Order; and

(5) assure that where chemical toxicants or devices are used pursuant to Section 3(b), only those combinations of toxicants and techniques will be used which best serve human health and safety and which minimize the use of toxicants and best protect nontarget wildlife species and those individual predatory animals and birds which do not cause damage, consistent with the policies of this Order.”

**“Sec. 2. Definitions.** As used in this Order the term:

(a) “Federal lands” means all real property owned by or leased to the Federal Government, excluding (1) lands administered by the Secretary of the Interior pursuant to his trust responsibilities for Indian affairs, and (2) real property located in metropolitan areas.

(b) “Agencies” means the departments, agencies and establishments of the Executive branch of the Federal Government.

(c) “Chemical toxicant” means any chemical substance which, when ingested, inhaled, or absorbed, or when applied to or injected into the body, in relatively small amounts, by its chemical action may cause significant bodily malfunction, injury, illness, or death, to animals or to man.

(d) “Predatory mammal or bird” means any mammal or bird which habitually preys upon other animals, birds, reptiles or fish.

(e) “Secondary poisoning effect” means the result attributable to a chemical toxicant which, after being ingested, inhaled, or absorbed, or when applied to or injected into, a mammal, bird, reptile or fish, is retained in its tissue, or otherwise retained in such a manner and quantity that the tissue itself or retaining part if thereafter ingested by man, mammal, bird, reptile or fish, produces the effects set forth in paragraph (c) of this Section.

(f) "Field use" means use on lands not in, or immediately adjacent to occupied buildings."

**“Sec. 3. Restrictions on Use of Toxicants.** (a) Heads of agencies shall take such action as is necessary to prevent on any Federal lands under their jurisdiction, or in any Federal program of mammal or bird damage control under their jurisdiction:

(1) the field use of any chemical toxicant for the purpose of killing a predatory mammal or bird; or

(2) the field use of any chemical toxicant which causes any secondary poisoning effect for the purpose of killing mammals, birds, or reptiles.

(b) Notwithstanding the provisions of subsection (a) of this Section, the head of any agency may authorize the emergency use on Federal lands under his jurisdiction of a chemical toxicant for the purpose of killing predatory mammals or birds, or of a chemical toxicant which causes a secondary poisoning effect for the purpose of killing other mammals, birds, or reptiles, but only if in each specific case he makes a written finding, following consultation with the Secretaries of the Interior, Agriculture and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that an emergency exists that cannot be dealt with by means which do not involve use of chemical toxicants, and that such use is essential:

(1) to the protection of the health or safety of human life;

(2) to the preservation of one or more wildlife species threatened with extinction, or likely within the foreseeable future to become so threatened; or

(3) to the prevention of substantial irretrievable damage to nationally significant natural resources.

(c) Notwithstanding the provisions of subsection (a) of this Section, the head of an agency may authorize the use, on an experimental basis, of sodium cyanide to control coyote and other predatory mammal or bird damage to livestock on Federal lands or in Federal programs, provided that such use is in accordance with all applicable laws and regulations, including those relating to the use of chemical toxicants, and continues for no more than one year."

**Sec. 4. Rules for Implementation of Order.** Heads of agencies shall issue such rules or regulations as may be necessary and appropriate to carry out the provisions and policy of this Order."

GERALD R. FORD

THE WHITE HOUSE,  
*July 18, 1975.*

**No. 11911**

April 13, 1976, 41 F.R. 15683

**PRESERVATION OF ENDANGERED SPECIES**

By virtue of the authority vested in me by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed at Washington, D.C., on March 3, 1973 (Ex.Doc. H (93d Cong., 1st Sess.)), hereinafter referred to as the Convention, Section 8(e) of the Endangered Species Act of 1973 (87 Stat. 893; 16 U.S.C. 1537(e)), and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 981, effective April 30, 1942), and as President of the United States of America, it is hereby ordered as follows:

**Section 1.** The Secretary of the Interior, in accord with Article IX of the Convention and Section 8(e) of the Endangered Species Act of 1973, is hereby designated the Management Authority for purposes of the Convention, and is authorized to communicate with other Parties to the Convention and with the Secretariat established by the Convention.

**Sec. 2.** The Management Authority shall consult with appropriate agencies and shall ensure that the performance of its responsibilities, under the Convention and the Endangered Species Act of 1973, is in accord with the performance by other agencies of those functions vested by law in such agencies.

**Sec. 3.** (a) There is hereby established the Endangered Species Scientific Authority which, in accord with Article IX of the Convention and Section 8(e) of the Endangered Species Act of 1973, is designated the Scientific Authority for purposes of the Convention.

(b) The Endangered Species Scientific Authority shall be composed of scientifically qualified agency representatives. Each of the following shall designate one such representative from his agency:

- (1) The Secretary of the Interior, whose representative shall be the Chairman.
- (2) The Secretary of Agriculture.
- (3) The Secretary of Commerce.
- (4) The Secretary of Health, Education, and Welfare.
- (5) The Director of the National Science Foundation.
- (6) The Chairman of the Council on Environmental Quality.

(c) The Secretary of the Smithsonian Institution is invited to designate a representative.

(d) The Secretary of the Interior shall designate an Executive Secretary, and shall provide the necessary staff and administrative support for the Endangered Species Scientific Authority.

(e) In the discharge of its responsibilities the Endangered Species Scientific Authority shall, to the extent practicable, ascertain the views of, and utilize the expertise of, the governmental and non-governmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

**Sec. 4.** The Secretary of the Interior shall develop and implement, in coordination with the Endangered Species Scientific Authority, the Secretary of the Treasury, and the heads of other interested agencies, a system to standardize and simplify the requirements, procedures and other activities related to the issuance of permits for the international and interstate shipment of fauna and flora, including, as appropriate, the parts or products of such fauna and flora.

**Sec. 5.** The Secretary of the Interior, in consultation with the Secretary of State, is hereby designated, in accord with Section 8(e) of the Endangered Species Act of 1973, to act on behalf of and to represent the United States of America in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 981). In the discharge of these responsibilities, the Secretary of the Interior shall also consult with the Secretaries of Agriculture and Commerce and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

GERALD R. FORD

THE WHITE HOUSE,  
*April 13, 1976.*

**No. 11917**

May 28, 1976, 41 F.R. 22239

**AMENDING EXECUTIVE ORDER NO. 11643 OF FEBRUARY 8,  
1972 <sup>78</sup>, RELATING TO ENVIRONMENTAL SAFEGUARDS ON  
ACTIVITIES FOR ANIMAL DAMAGE CONTROL ON FEDERAL  
LANDS**

By virtue of the authority vested in me as President of the United States, and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the provisions of Section 1 of the Act of March 2, 1931 (46 Stat. 1468, 7 U.S.C. 426) and the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531 *et seq.*), and in view of the findings (40 F.R. 44726-44739, September 29, 1975) of the Administrator of the Environmental Protection Agency that the use of sodium cyanide is permissible under conditions prescribed by the Agency, Executive Order No. 11643 of February 8, 1972, as amended by Executive Order No. 11870 of July 18, 1975, is further amended by adding the following subsection to Section 3:

“(d) Notwithstanding the provisions of subsection (a) of this Section, the head of an agency may authorize the operational use of sodium cyanide in Federal programs or on Federal lands, but only in accordance with regulations and on the terms and subject to all the restrictions which may now or hereafter be prescribed by the Environmental Protection Agency; provided that, such use of sodium cyanide is prohibited in (1) areas where endangered or threatened animal species might be adversely affected; (2) areas of the National Park System; (3) areas of the National Wildlife Refuge System; (4) areas of the National Wilderness Preservation System; (5) areas within national forest or other Federal lands specifically set aside for recreational use; (6) prairie dog towns; (7) National Monument areas; and (8) any areas where exposure to the public and family pets is probable.”.

GERALD R. FORD

THE WHITE HOUSE,  
*May 28, 1976.*

78. 42 U.S.C.A. § 4321 note.

**No. 11987**

May 24, 1977, 42 F.R. 26949

**EXOTIC ORGANISMS**

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purposes and policies of the Lacey Act (18 U.S.C. 42) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), it is hereby ordered as follows:

**Section 1.** As used in this Order:

(a) "United States" means all of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(b) "Introduction" means the release, escape, or establishment of an exotic species into a natural ecosystem.

(c) "Exotic species" means all species of plants and animals not naturally occurring, either presently or historically, in any ecosystem of the United States.

(d) "Native species" means all species of plants and animals naturally occurring, either presently or historically, in any ecosystem of the United States.

**Sec. 2.** (a) Executive agencies shall, to the extent permitted by law, restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or hold for purposes of administration; and, shall encourage the States, local governments, and private citizens to prevent the introduction of exotic species into natural ecosystems of the United States.

(b) Executive agencies, to the extent they have been authorized by statute to restrict the importation of exotic species, shall restrict the introduction of exotic species into any natural ecosystem of the United States.

(c) Executive agencies shall, to the extent permitted by law, restrict the use of Federal funds, programs, or authorities used to export native species for the purpose of introducing such species into ecosystems outside the United States where they do not naturally occur.

(d) This Order does not apply to the introduction of any exotic species, or the export of any native species, if the Secretary of Agriculture or the Secretary of the Interior finds that such introduction or exportation will not have an adverse effect on natural ecosystems.

**Sec. 3.** The Secretary of the Interior, in consultation with the Secretary of Agriculture and the heads of other appropriate agencies, shall develop and implement, by rule or regulation, a system to standardize and simplify the requirements, procedures and other activities appropriate for implementing the provisions of this Order. The Secretary of the Interior shall ensure that such rules or regulations are in accord with the performance by other agencies of those functions vested by law, including this Order, in such agencies.

JIMMY CARTER

THE WHITE HOUSE,  
May 24, 1977.

**No. 11988**

May 24, 1977, 42 F.R. 26951

**FLOODPLAIN MANAGEMENT**

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

**Section 1.** Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal land and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities.

**Sec. 2.** In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to 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, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking such action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action taken is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or

local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

**Sec. 3.** In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They will deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State, or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of

properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

**Sec. 4.** In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

**Sec. 5.** The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

**Sec. 6.** As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

**Sec. 7.** Executive Order No. 11296 of August 10, 1966,<sup>29</sup> is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

**Sec. 8.** Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

**Sec. 9.** To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER

THE WHITE HOUSE,  
*May 24, 1977.*

29. 33 U.S.C.A. § 701 note.

**No. 11989**

May 24, 1977, 42 F.R. 26959

**OFF-ROAD VEHICLES ON PUBLIC LANDS**

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to clarify agency authority to define zones of use by off-road vehicles on public lands, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*), Executive Order No. 11644 of February 8, 1972,<sup>30</sup> is hereby amended as follows:

**Section 1.** Clause (B) of Section 2(3) of Executive Order No. 11644, setting forth an exclusion from the definition of off-road vehicles, is amended to read "(B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and".

**Sec. 2.** Add the following new Section to Executive Order No. 11644:

**"Sec. 9. Special Protection of the Public Lands.** (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such adverse effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

"(b) Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order."

JIMMY CARTER

THE WHITE HOUSE,  
*May 24, 1977.*

30. 42 U.S.C.A. § 4321 note.

**No. 11990**

May 24, 1977, 42 F.R. 26961

**PROTECTION OF WETLANDS**

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

**Section 1.** (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

**Sec. 2.** (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514,<sup>31</sup> as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

**Sec. 3.** Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

**Sec. 4.** When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetland regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (3) withhold such properties from disposal.

**Sec. 5.** In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

**Sec. 6.** As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

**Sec. 7.** As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1, which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

**Sec. 8.** This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

**Sec. 9.** Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

**Sec. 10.** To the extent the provisions of Section 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER

THE WHITE HOUSE,  
*May 24, 1977.*

**No. 11991**

May 24, 1977, 42 F.R. 26967

**RELATING TO PROTECTION AND ENHANCEMENT OF  
ENVIRONMENTAL QUALITY**

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purpose and policy of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371, *et seq.*), and Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), it is hereby ordered as follows:

**Section 1.** Subsection (h) of Section 3 (relating to the responsibilities of the Council on Environmental Quality) of Executive Order No. 11514,<sup>32</sup> as amended, is revised to read as follows:

“(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended for the Council's recommendation as to their prompt resolution”.

**Sec. 2.** The following new subsection is added to Section 2 (relating to responsibilities of Federal agencies) of Executive Order No. 11514, as amended:

“(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirement”.

JIMMY CARTER

THE WHITE HOUSE,  
*May 24, 1977.*

32. U.S.C.A. 4321 note.

**No. 12001**

June 29, 1977, 42 F.R. 33709

**TRANSFERRING CERTAIN BICENTENNIAL FUNCTIONS TO  
THE SECRETARY OF THE INTERIOR**

By the virtue of the authority vested in me by Section 7 (b) of the Act of December 11, 1973 (87 Stat. 701), hereinafter referred to as the Act, Section 202(b) of the Budget and Accounting Procedures Act of 1950 (64 Stat. 838, 31 U.S.C. 581c(b)), and Section 301 of Title 3 of the United States Code, and as President of the United States of America it is hereby ordered as follows:

**Section 1.** The Secretary of the Interior, hereinafter referred to as the Secretary, shall, through existing National Park Service programs, provide for the continuation of appropriate commemoration of events relating to the American Revolution until December 31, 1983.

**Sec. 2.** The Secretary shall administer existing contracts and grants of the American Revolution Bicentennial Administration, hereinafter referred to as ARBA.

**Sec. 3.** In performing the functions described in Sections 1 and 2 of this Order, the Secretary may, in addition to any other available authority, exercise the following powers under the Act which are hereby transferred to him for such purposes until December 31, 1983, except as otherwise provided in subsection (b) of this Section:

(a) All powers described in Section 2(f) of the Act with respect to the expenditure of funds donated to ARBA prior to the effective date of this Order, and the expenditure of revenues received or which may be received pursuant to contracts described in Section 2 of this Order.

(b) Until December 31, 1977, all powers exercised by ARBA prior to the effective date of this Order which relate to enforcement of Section 2(i) of the Act.

(c) All powers described in Section 5 (a) of the Act.

**Sec. 4.** All personnel, records, property and appropriations, including all funds and revenues described in Section 3(a) of this Order, as relate to the powers and functions assigned or transferred by this Order are hereby transferred to the Secretary.

**Sec. 5.** The Director of the Office of Management and Budget shall make such determinations and issue such orders as may be necessary or appropriate to carry out the transfers provided by this Order.

**Sec. 6.** Executive Order No. 11840 of February 18, 1975, is hereby revoked.

**Sec. 7.** This Order shall be effective June 30, 1977.

JIMMY CARTER

THE WHITE HOUSE,  
*June 29, 1977.*

**No. 12072**

Aug. 16, 1978, 43 F.R. 36869

**FEDERAL SPACE MANAGEMENT**

By the authority vested in me as President of the United States of America by Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)), and in order to prescribe appropriate policies and directives, not inconsistent with that Act and other applicable provisions of law, for the planning, acquisition, utilization, and management of Federal space facilities, it is hereby ordered as follows:

**1—1. Space Acquisition.**

1—101. Federal facilities and Federal use of space in urban areas shall serve to strengthen the Nation's cities and to make them attractive places to live and work. Such Federal space shall conserve existing urban resources and encourage the development and redevelopment of cities.

1—102. Procedures for meeting space needs in urban areas shall give serious consideration to the impact a site selection will have on improving the social, economic, environmental, and cultural conditions of the communities in the urban area.

1—103. Except where such selection is otherwise prohibited, the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials.

1—104. The process of meeting Federal space needs in urban areas shall be consistent with the policies of this Order and shall include consideration of the following criteria:

(a) Compatibility of the site with State, regional, or local development, redevelopment, or conservation objectives.

(b) Conformity with the activities and programs of other Federal agencies.

(c) Impact on economic development and employment opportunities in the urban area, including the utilization of human, natural, cultural, and community resources.

(d) Availability of adequate low and moderate income housing for Federal employees and their families on a nondiscriminatory basis.

(e) Availability of adequate public transportation and parking and accessibility to the public.

1—105. Procedures for meeting space needs in urban areas shall be consistent with the policies of this Order and shall include consideration of the following alternatives:

(a) Availability of existing Federally controlled facilities.

(b) Utilization of buildings of historic, architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2507, 40 U.S.C. 612a).

(c) Acquisition or utilization of existing privately owned facilities.

(d) Construction of new facilities.

(e) Opportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.

1—106. Site selection and space assignments shall take into account the management needs for consolidation of agencies or activities in common or adjacent space in order to improve administration and management and effect economies.

**1—2. Administrator of General Services.**

1—201. The Administrator of General Services shall develop programs to implement the policies of this Order through the efficient acquisition and utilization of Federally owned and leased space. In particular, the Administrator shall:

(a) Select, acquire, and manage Federal space in a manner which will foster the policies and programs of the Federal government and improve the management and administration of government activities.

(b) Issue regulations, standards, and criteria for the selection, acquisition, and management of Federally owned and leased space.

(c) Periodically undertakes surveys of space requirements and space utilization in the executive agencies.

(d) Ensure, in cooperation with the heads of Executive agencies, that their essential space requirements are met in a manner that is economically feasible and prudent.

(e) Make maximum use of existing Federally controlled facilities which, in his judgment, are adequate or economically adaptable to meeting the space needs of executive agencies.

(f) Annually submit long-range plans and programs for the acquisition, modernization, and use of space for approval by the President.

1—202. The Administrator is authorized to request from any Executive agency such information and assistance deemed necessary to carry out his functions under this Order. Each agency shall, to the extent not prohibited by law, furnish such information and assistance to the Administrator.

1—203. In the process of meeting Federal space needs in urban areas and implementing the policies of this Order, the Administrator shall:

(a) Consider the efficient performance of the missions and programs of the agencies, the nature and function of the facilities involved, the convenience of the public served, and the maintenance and improvement of safe and healthful working conditions for employees.

(b) Coordinate proposed programs and plans for facilities and space with the Director of the Office of Management and Budget.

(c) Consult with appropriate Federal, State, regional, and local government officials and consider their recommendations for and objections to a proposed selection site or space acquisition.

(d) Coordinate proposed programs and plans for facilities and space in a manner designed to implement the purposes of this Order.

(e) Prior to making a final determination concerning the location of Federal facilities, notify the concerned Executive agency of an intended course of action and take into account any additional information provided.

1—204. In ascertaining the social, economic, environmental and other impacts which site selection would have on a community, the Administrator shall, when appropriate, obtain the advice of interested agencies.

### **1—3. General Provisions.**

1—301. The heads of Executive agencies shall cooperate with the Administrator in implementing the policies of this Order and shall economize on their use of space. They shall ensure that the Administrator is given early notice of new or changing missions or organizational realignments which affect space requirements.

1—302. Executive agencies which acquire or utilize Federally owned or leased space under authority other than the Federal Property and Administrative Services Act of 1949,

as amended, shall conform to the provisions of this Order to the extent they have the authority to do so.

1—303. Executive Order No. 11512 of February 27, 1970, is revoked.

JIMMY CARTER

THE WHITE HOUSE,  
*August 16, 1978.*

**No. 12088**

October 13, 1978, 43 F.R. 47707

**FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS**

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j-6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418 (b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

**1-1. Applicability Of Pollution Control Standards**

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

- (a) Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).
- (b) Federal Water Pollution Control Act, as amended (33 U.S.C. 2601 *et seq.*).
- (c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).
- (d) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*).
- (e) Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*).
- (f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 *et seq.*).
- (g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X-Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978).
- (h) Marine Protection Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434).
- (i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

**1-2. Agency Coordination**

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with the State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control and abatement of environmental pollution.

**1-3. Technical Advice And Oversight**

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The Administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

**1-4. Pollution Control Plan**

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall develop guidelines for developing such plans.

1-402. In preparing its plan, the Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

**1-5. Funding**

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive Agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

**1-6. Compliance With Pollution Controls**

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statutes and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

**1-7. Limitation On Exemption**

1-701. Exemptions from applicable pollution control standards may only be granted under statutes cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

**1-8. General Provisions**

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Executive Order No. 11752 of December 17, 1973, is revoked.

JIMMY CARTER

THE WHITE HOUSE,  
*October 13, 1978.*

**No. 12291**

February 17, 1981, 46 F.R. 13193

**Federal Regulation**

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

**Section 1. Definitions.** For the purposes of this Order:

(a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:

(1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code:

(2) Regulations issued with respect to a military or foreign affairs function of the United States: or

(3) Regulations related to agency organization, management, or personnel

(b) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of \$100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions: or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(c) "Director" means the Director of the Office of Management and Budget.

(d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).

(e) "Task Force" means the Presidential Task Force on Regulatory Relief.

**Sec. 2. General Requirements.** In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

**Sec. 3. Regulatory Impact Analysis and Review.**

(a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.

(b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, provided that, the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.

(c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director at least 80 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 80 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed could not be adopted; and

(5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.

(e) (1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this Order.

(2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:

(A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);

(B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and

(C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).

(f) (1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

(i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

**Sec. 4. Regulatory Review.** Before approving any final major rule, each agency shall:

(a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the **Federal Register** at the time of promulgation a memorandum of law supporting that determination.

(b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

**Sec. 5. Regulatory Agendas.**

(a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.

(b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law:

(1) Require agencies to provide additional information in an agenda; and

(2) Require publication of the agenda in any form.

**Sec. 6. The Task Force and Office of Management and Budget.**

(a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to:

(1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;

(2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

(3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

(4) Waive the requirements of Sections 3, 4, or 7 of this Order with respect to any proposed or existing major rule;

(5) Identify duplicative, overlapping and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this Order, and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;

(6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;

(7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and

(8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.

(b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Plan Act of 1980, 44 U.S.C. 3501 *et seq.*

**Sec. 7. Pending Regulations.**

(a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:

(1) Major rules that cannot legally be postponed or suspended;

(2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.

(b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:

(1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or

(2) That the rule is not a major rule.

(c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in final form as of the date of this Order and that has not become effective; and

(2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.

(d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, *Provided that*, agencies shall report to the Director, no later than 15 days before any such rule is to be proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.

(e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.

(f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has not been considered under the terms of this Order:

(1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or

(2) That the rule is not a major rule in which case the agency shall submit to the Director a copy of the proposed rule.

(g) The Director, subject to the direction of the Task Force, is authorized to the extent permitted by law, to:

(1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order; and

(2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.

(h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:

(1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or

(2) Within 30 days of its report, in the case of any report under subsection (f).

(i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "Postponement of Pending Regulations", which shall remain in effect until March 30, 1981.

(j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

#### **Sec. 8. Exemptions.**

(a) The procedures prescribed by this Order shall not apply to:

(1) Any regulation that responds to an emergency situation, *Provided that*, any such regulation shall be reported to the Director as soon as is practicable, the agency shall publish in the **Federal Register** a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and

(2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statute or by judicial order, *Provided that*, any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the **Federal Register** a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.

(b) The Director, subject to the direction of the Task Force, may, in accordance with the purposes of this Order, exempt any class or category of regulations from any or all requirements of this Order.

**Sec. 9. Judicial Review.** This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. The determinations made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

**Sec. 10. Revocations.** Executive Orders No. 12044,<sup>4</sup> as amended, and No. 12174<sup>5</sup> are revoked.

RONALD REAGAN

THE WHITE HOUSE,  
*February 17, 1981.*

4. 5 U.S.C.A. § 553 nt.

5. 5 U.S.C.A. § 552 nt.

**No. 12316**

August 14, 1981, 46 F.R. 42237

**Responses to Environmental Damage**

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (94 Stat. 2796; 42 U.S.C. 9615), it is hereby ordered as follows:

**Section 1. National Contingency Plan.** (a) The National Contingency Plan, hereinafter referred to as the NCP and which was originally published pursuant to Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321), shall be amended to contain the implementing procedures for the coordination of response actions to releases of hazardous substances into the environment.

(b) The NCP shall contain a concept of a national response team composed of representatives of appropriate Executive agencies for the coordination of response actions. The national response team shall, in addition to representatives of other appropriate agencies, include representatives of the following: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, and United States Coast Guard.

(c) The responsibility for the amendment of the NCP and all of the other functions vested in the President by Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, hereinafter referred to as the Act (42 U.S.C. 9605), is delegated to the Administrator of the Environmental Protection Agency.

(d) In accord with Section 111(h)(1) of the Act and Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), the following shall be among those designated in the NCP as Federal trustees for natural resources:

- (1) Secretary of Defense.
- (2) Secretary of the Interior.
- (3) Secretary of Agriculture.
- (4) Secretary of Commerce.

(e) Amendments to the NCP shall be coordinated with members of the national response team prior to publication for notice and comment. Amendments shall also be coordinated with the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

(f) All amendments to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

**Sec. 2. Response Authorities.** (a) The functions vested in the President by the first sentence of Section 104(b) of the Act relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b)(1) The functions vested in the President by Section 101(24) of the Act, to the extent they require a determination by the President that "permanent relocation of residents and businesses and community facilities" is included within the terms "remedy" or "remedial action" as defined in Section 101(24) of the Act, are delegated to the Director of the Federal Emergency Management Agency.

(2) The functions vested in the President by Section 104(a) of the Act, to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(c) The functions vested in the President by Section 104 (a) and (b) of the Act are delegated to the Secretary of Defense with respect to releases from Department of Defense facilities or vessels, including vessels owned or bare-boat chartered and operated.

(d) Subject to subsections (a), (b), and (c) of this Section, the functions vested in the President by Sections 101(24) and 104 (a) and (b) of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating, hereinafter referred to as the Coast Guard, with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(e) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 101(24) and 104 (a) and (b) of the Act are delegated to the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator.

(f) The functions vested in the President by Section 104 (c), (d), (f), (g), and (h) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by subsections (a), (b), (d), and (e) of this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

(g) The functions vested in the President by Section 104(e)(2)(C) of the Act are delegated to the Administrator; all other functions vested in the President by Section 104(e) of the Act are delegated to the Secretary of Defense, the Secretary of Health and Human Services, the Coast Guard, the Director of the Federal Emergency Management Agency, and the Administrator of the Environmental Protection Agency, in order to carry out the functions delegated to them by this Section.

**Sec. 3. Abatement Action.** (a) The functions vested in the President by Section 106(a) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Section 106(a) of the Act are delegated to the Administrator.

**Sec. 4. Liability.** (a) The function vested in the President by Section 107(c)(1)(C) of the Act is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f) of the Act are delegated to each of the Federal trustees for natural resources set forth in Section 1(d) of this Order for resources under their trusteeship.

**Sec. 5. Financial Responsibility.** (a) The functions vested in the President by Section 107(k)(4)(B) of the Act are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b) The functions vested in the President by Section 108(a) of the Act are delegated to the Federal Maritime Commission. Notwithstanding Section 1(d) of Executive Order No. 12291, the regulations issued pursuant to this authority shall be issued in accordance with that Order. The Commission shall be responsible, in accord with Section 109 of the

Act, for the enforcement of civil penalties for violations of the regulations issued under Section 108(a) of the Act.

(c) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d) Subject to subsection (c) of this Section, the functions vested in the President by Section 108(b) of the Act are delegated to the Administrator.

**Sec. 6. Employee Protection and Notice to Injured.** (a) The functions vested in the President by Section 110(e) of the Act are delegated to the Secretary of Labor.

(b) The functions vested in the President by Section 111(g) of the Act are delegated to the Secretary of Defense with respect to releases from Department of Defense facilities or vessels, including vessels owned or bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

**Sec. 7. Management of the Hazardous Substance Response Trust Fund and Claims.** (a) The functions vested in the President by Section 111(a) of the Act are delegated to the Administrator, subject to the provisions of this Section and applicable provisions of this Order.

(b) The Administrator shall transfer, to transfer appropriation accounts for other agencies, from the Hazardous Substance Response Trust Fund, out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These allocations shall be consistent with the President's Budget, within the amounts approved by the Congress, unless a revised allocation is approved by the Director of the Office of Management and Budget.

(c) The Administrator shall chair a budget task force composed of representatives of agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit a budget for the Hazardous Substance Response Trust Fund which is based on recommended allocations developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request.

(d) The Administrator and each agency head to whom funds are allocated pursuant to this Section, with respect to funds allocated to them, are authorized in accordance with Section 111(f) of the Act to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act are delegated to the Administrator for all claims presented pursuant to Section 111.

**Sec. 8. General Provisions.** (a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial or quasi-judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the President's authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 301 of the Act are delegated as follows:

(1) With respect to subsection (a), to the Administrator in consultation with the Secretary of the Treasury.

(2) With respect to subsection (b), to the Secretary of the Treasury.

(3) With respect to subsection (c), to the Secretary of the Interior.

(4) With respect to subsection (f), to the Administrator.

(d) The Attorney General shall manage and coordinate the study provided for in Section 301(e) of the Act.

(e) The performance of any function under this Order shall be done in consultation with interested agencies represented on the national response team, as well as with any other interested agency.

(f) Certain functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any agency with his consent; those functions which may be redelegated are those set forth in Sections 2, 3, 4(b), 4(c), and 6(c) of this Order.

(g) Executive Order No. 12286<sup>46</sup> of January 19, 1981, is revoked.

RONALD REAGAN

THE WHITE HOUSE,  
*August 14, 1987.*

46. 1980 U.S. Code Cong. & Adm. News Bd.  
Vol.; p. 7920.

**No. 12342**

January 27, 1982, 47 F.R. 4223

**Environmental Safeguards for Animal Damage Control on  
Federal Lands**

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to permit effective predator control with environmental safeguards under Federal statutory programs, Executive Order No. 11643,<sup>11</sup> as amended, is hereby revoked.

RONALD REAGAN

THE WHITE HOUSE,  
*January 27, 1982.*

11. 42 U.S.C.A. § 4321 nt.

**No. 12348**

February 25, 1982, 47 F.R. 8547

**Federal Real Property**

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 205(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(a)), in order to improve management of Federal real property, it is hereby ordered as follows:

**Section 1.** (a) There is hereby established a Property Review Board.

(b) The members of the Board shall be the Counsellor to the President; Director, Office of Management and Budget; Chairman, Council of Economic Advisers; Assistant to the President for Policy Development; Chief of Staff and Assistant to the President; Assistant to the President for National Security Affairs; and such other officers or employees of the Executive branch as the President may from time to time designate. One of the members of the Board shall be designated by the President as Chairman.

(c) Staff, including an Executive Director, and other administrative support shall be provided from resources available to the President.

**Sec. 2.** The Board shall perform such functions as may be directed by the President, including the following:

(a) develop and review Federal real property acquisition, utilization, and disposal policies with respect to their relationship to other Federal policies;

(b) advise the Administrator of General Services with respect to such standards and procedures for executive agencies that are necessary to ensure that real property holdings no longer essential to their activities and responsibilities are promptly identified and released for appropriate disposition;

(c) review and examine prior disposals of surplus property for public benefit discount conveyances to ensure that the property is being used and maintained for the purpose for which it was conveyed;

(d) receive the surveys and reports made by or to the Administrator of General Services pursuant to Sections 3 and 4 of this Order as well as other reports on Federal real property that are requested by the Board, with particular attention to resolution of conflicting claims on, and alternate uses for, any property described in those reports, consistent with laws governing Federal real property;

(e) provide guidance to the Administrator of General Services in accord with Section a of this Order;

(f) establish for each Executive agency annually the target amount of its real property holdings to be identified as excess; and

(g) submit such recommendations and reports to the President as may be appropriate.

**Sec. 3.** (a) All Executive agencies shall periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services pursuant to Section 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 487), and this Order.

(b) The head of each Executive agency, within 60 days of the date of this Order, shall report to the Administrator of General Services and the Board the agency's real property holdings which, in his judgment, are not utilized, are underutilized, or are not being put to optimum use.

(c) The head of each Executive agency shall identify, and report to the Board, all those properties which can be considered for disposition in response to the targets established by the Board in subsection 2(f) of this Order.

**Sec. 4.** The Administrator of General Services in consultation with the Board shall issue standards and procedures, conduct surveys, and cause surveys to be conducted, to ensure that the real property holdings of Executive agencies shall continually be evaluated with special emphasis on the identification of properties that are not utilized, are underutilized, or are not being put to optimum use. The Administrator shall consult with the Board and appropriate Executive agencies in order to (a) identify real property that is excess or surplus to the needs of the Executive agencies, and (b) make such real property available for its most beneficial use under the various laws of the United States affecting such property.

**Sec. 5.** The Administrator of General Services shall report to the Board with respect to any property or portion thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator, is not utilized, is underutilized, or is not being put to optimum use, and which he recommends should be reported as excess property.

**Sec. 6.** Before the Administrator of General Services assigns or conveys property for public benefit discount conveyances, he shall first consult with the Board and consider such guidance as it may provide.

**Sec. 7.** The Administrator of General Services shall, to the extent permitted by law, provide necessary advice and assistance to the Board to accomplish the objectives of this Order.

**Sec. 8.** Executive Order No. 11954,<sup>15</sup> as amended, is revoked.

RONALD REAGAN

THE WHITE HOUSE,  
*February 25, 1982.*

15. 40 U.S.C.A. § 486 nt.

**No. 12501**

January 28, 1985, 50 F.R. 4191

**Arctic Research**

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Arctic Research and Policy Act of 1989 (Title I of Public Law 98-373) ("the Act"), it is hereby ordered as follows:

**Section 1. Establishment of Arctic Research Commission.** There is established the Arctic Research Commission.

**Sec. 2. Membership of the Commission.**

(a) The Commission shall be composed of five members appointed by the President, as follows:

(1) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(2) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resources development; and

(3) one member appointed from individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

The Director of the National Science Foundation shall serve as a nonvoting *ex officio* member of the Commission. The President shall designate a Chairperson from among the five voting members of the Commission.

(b) In making initial appointments to the Commission, the President shall designate one member to serve for a term of two years, two members to serve for terms of three years, and two members to serve for terms of four years as provided by Section 103(c) of the Act. Upon the expiration of these initial terms of office, the term of office of each member of the Commission shall be four years.

(c) Each of the Federal agencies represented on the Interagency Committee established by Section 7 of this Order may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities of their agencies relating to Arctic research.

**Sec. 3. Meetings of the Commission.** The Commission shall meet at the call of the Chairman or a majority of its members. The Commission annually shall conduct at least one public meeting in the State of Alaska.

**Sec. 4. Functions of the Commission.**

(a) The Commission shall:

(1) develop and recommend an integrated national Arctic research policy;

(2) assist, in cooperation with the Interagency Arctic Research Policy Committee established by Section 7 of this Order, in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Arctic Research Policy Committee as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska, and with agencies and organizations of that State which the Governor may designate, with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall:

(1) submit to the President and Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year; and

(2) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Arctic Research Policy Committee in the performance of its duties.

**Sec. 5. Responsibilities of Federal Agencies.**

(a) The heads of Executive agencies shall, to the extent permitted by law, and in accordance with Section 105 of the Act, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) The heads of Executive agencies shall, upon reimbursement to be agreed upon by the Commission and the agency head, permit the Commission to utilize their facilities and services to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy. The Commission shall take every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

**Sec. 6. Administration of the Commission.** Members of the Commission who are otherwise employed for compensation shall serve without compensation for their work on the Commission, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service. Members of the Commission who are not otherwise employed for compensation shall be compensated for each day the member is engaged in actual performance of duties as a member, not to exceed 90 days of service each calendar year, at a rate equal to the daily equivalent of the rate for GS-16 of the General Schedule.

**Sec. 7. Establishment of Interagency Arctic Research Policy Committee.** There is established the Interagency Arctic Research Policy Committee (the "Interagency Committee"). The National Science Foundation shall serve as lead agency on the Interagency Committee and shall be responsible for implementing Arctic research policy.

**Sec. 8. Membership of the Interagency Committee.** The Interagency Committee shall be composed of representatives of the following Federal agencies or their designees:

(a) National Science Foundation;

(b) Department of Commerce;

(c) Department of Defense;

(d) Department of Energy;

(e) Department of the Interior;

(f) Department of State;

(g) Department of Transportation;

(h) Department of Health and Human Services;

(i) National Aeronautics and Space Administration;

(j) Environmental Protection Agency;

(k) Office of Science and Technology Policy; and

(l) any other Executive agency that the Director of the National Science Foundation shall deem appropriate. The Director of the National Science Foundation or his designee shall serve as Chairperson of the Interagency Committee.

**Sec. 9. Functions of the Interagency Committee.** (a) The Interagency Committee shall:

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on:

(a) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(b) Arctic research programs of Federal agencies;

(c) recommendations of the Commission on future Arctic research; and

(d) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided in section 109 of the Act;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multi-agency budget request for Arctic research, as provided in section 110 of the Act;

(6) facilitate cooperation between the Federal government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under the Act; and

(9) promote Federal interagency coordination of all Arctic research activities, including:

(a) logistical planning and coordination; and

(b) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President a report concerning:

(1) its activities and accomplishments since its last report; and

(2) the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

**Sec. 10. Public Participation.** The Interagency Committee will provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

**Sec. 11. Administration of Interagency Committee.** Each agency represented on the Committee shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such administrative services, facilities, staff, and other support services as may be necessary for effective performance of its functions.

RONALD REAGAN

THE WHITE HOUSE,  
*January 28, 1985.*

**No. 12503**

January 28, 1985, 50 F.R. 4491

**Presidential Commission on Outdoor Recreation Resources  
Review**

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to create an advisory commission to review outdoor recreation resources, it is hereby ordered as follows:

**Section 1. Establishment.** (a) There is hereby established the Presidential Commission on Outdoor Recreation Resources Review.

(b) The Commission shall be composed of not more than 15 members appointed or designated by the President from among the private sector, the Legislative branch of the Federal government, recreational and other service organizations, and State and local governments. The President shall designate a Chairman and Vice Chairman from among the members of the Commission.

**Sec. 2. Functions.** (a) The Commission shall review existing public outdoor recreation policies, programs, and opportunities provided by the Federal government, State and local governments, and private organizations and entities and shall review privately provided outdoor recreation resources to the extent that they affect the demand for public outdoor recreation resources. The Commission shall, consistent with the need for fiscal economy at all levels of government, make recommendations to the President concerning the outdoor recreation resources, programs, and opportunities that will ensure the future availability of outdoor recreation for the American people. In making its recommendations, the Commission shall assess the budgetary and regulatory cost increases or cost savings of its proposals, and shall, to the extent possible, utilize such studies, data, and reports previously prepared or under preparation by Federal agencies, States, private organizations or other entities.

(b) In conducting its review, the Commission shall examine:

(1) existing outdoor recreation lands and resources and the land and resource base necessary for future outdoor recreation;

(2) the roles of the Federal, State, county, and municipal governments in providing outdoor recreation opportunities, protecting outdoor recreation resources, and meeting anticipated outdoor recreation conditions;

(3) the role of the private sector in meeting present and future outdoor recreation needs, and assess the potential for cooperation between the private sector and government in providing outdoor recreation opportunities and protecting outdoor recreation resources;

(4) the relationship between outdoor recreation and personal and public health, the economy, and the environment;

(5) the future needs of outdoor recreation management systems, including qualified personnel, technical information, and anticipated financial needs;

(6) the relationship of outdoor recreation to the broader range of recreation pursuits and its implications for the supply of and demand for outdoor recreation resources and opportunities;

(7) underlying social, economic, and technological factors that are likely to affect the demand for and supply of outdoor recreation resources, including trends in disposable income and demographic characteristics of the United States;

(8) the findings and recommendations of the National Urban Recreation Study (1978), the Third Nationwide Outdoor Recreation Plan (1979), the Forest and Rangeland Renewable Resources Planning Act—Assessment Supplement (1984), and other relevant Federal survey and planning activities.

(c) The Commission may conduct public hearings and otherwise secure information and expressions of public opinion on recreation issues, policies and programs, and anticipated national, regional, State, and local recreation needs and concerns.

(d) The Commission shall submit its report and recommendations to the President not later than twelve months after the date of this Order.

**Sec. 3. Administration.** (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission with such information as may be necessary for the effective performance of its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. Members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) The Secretary of the Interior shall, to the extent permitted by law, provide the Commission with such administrative services, facilities, staff, and other support services as may be necessary for the effective performance of its functions.

**Sec. 4. General.** (a) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Secretary of the Interior, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 30 days after submission of its report, or March 1, 1986, whichever sooner occurs.

RONALD REAGAN

THE WHITE HOUSE,  
*January 28, 1985.*

**No. 12512**

April 29, 1985, 50 F.R. 18453

**Federal Real Property Management**

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 486(a) of title 40 of the United States Code, and in order to ensure that Federal real property resources are treated in accordance with their value as national assets and in the best interests of the Nation's taxpayers, it is hereby ordered as follows:

**Section 1. General Requirements.** To ensure the effective and economical use of America's real property and public land assets, establish a focal point for the enunciation of clear and consistent Federal policies regarding the acquisition, management, and disposal of properties, and assure management accountability for implementing Federal real property management reforms, all Executive departments and agencies shall take immediate action to recognize the importance of such resources through increased management attention, establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate actions. Specifically:

(a) The Domestic Policy Council shall serve as the forum for approving government-wide real property management policies;

(b) All Executive departments and agencies shall establish internal policies and systems of accountability that ensure effective use of real property in support of mission-related activities, consistent with Federal policies regarding the acquisition, management, and disposal of such assets. All such agencies shall periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services. All such agencies shall also develop annual real property management improvement plans that include clear and concise goals and objectives related to all aspects of real property management, and identify sales, work space management, productivity, and excess property targets;

(c) The Director of the Office of Management and Budget shall review, through the management and budget review processes, the efforts of departments and agencies toward achieving the government-wide property management policies established pursuant to this Order. Savings achieved as a result of improved management shall be applied to reduce Federal spending and to support program delivery;

(d) The Office of Management and Budget and the General Services Administration shall, in consultation with the land managing agencies, develop legislative initiatives that seek to improve Federal real property management through the adoption of appropriate private sector management techniques; the elimination of duplication of effort among agencies; and the establishment of managerial accountability for implementing effective and efficient real property management practices; and

(e) The President's Council on Management Improvement, subject to the policy direction of the Domestic Policy Council, shall conduct such additional studies as are necessary to improve Federal real property management by appropriate agencies and groups.

**Sec. 2. Real Property.** The Administrator of General Services shall, to the extent permitted by law, provide government-wide policy oversight and guidance for Federal real property management; manage selected properties for agencies; conduct surveys;

delegate operational responsibility to agencies where feasible and economical; and provide leadership in the development and maintenance of needed property management information systems.

**Sec. 3. Public Lands.** In order to ensure that Federally owned lands, other than the real property covered by Section 2 of this Order, are managed in the most effective and economic manner, the Departments of Agriculture and the Interior shall take such steps as are appropriate to improve their management of public lands and National Forest System lands and shall develop appropriate legislative proposals necessary to facilitate that result.

**Sec. 4.** Executive Order No. 12348<sup>6</sup> of February 25, 1982, is hereby revoked.

RONALD REAGAN

THE WHITE HOUSE,  
*April 29, 1985.*

6. 1982 U.S. Code Cong. & Adm. News Bd.  
Vol. page B18.

**No. 12529**

August 14, 1985, 50 F.R. 33329

**President's Commission on Americans Outdoors**

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to revise the name of a presidential advisory commission to better describe its areas of responsibility, and to extend the date within which the commission must complete its responsibilities, it is hereby ordered that Executive Order No. 12503<sup>15</sup> is amended as follows:

The title of the Order and Section 1(a) are amended by deleting "Presidential Commission on Outdoor Recreation Resources Review" and inserting in lieu thereof "President's Commission on Americans Outdoors"; and Section 4(b) of the Order is revised to provide as follows: "The Commission shall submit its report no later than December 31, 1986, and shall terminate 30 days after its report."

RONALD REAGAN

THE WHITE HOUSE,

*August 14, 1985.*

15. 1985 U.S.Code Cong. & Adm.News Pamphlet No. 1, page B26.

**No. 12548**

February 14, 1986, 51 F.R. 5985

**Grazing Fees**

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to provide for establishment of appropriate fees for the grazing of domestic livestock on public rangelands, it is ordered as follows:

**Section 1. Determination of Fees.** The Secretaries of Agriculture and the Interior are directed to exercise their authority, to the extent permitted by law under the various statutes they administer, to establish fees for domestic livestock grazing on the public rangelands which annually equals the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the Statistical Reporting Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; *provided*, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and *provided further*, that the fee shall not be less than \$1.35 per animal unit month.

**Sec. 2. Definitions.** As used in this Order, the term:

(a) "Public rangelands" has the same meaning as in the Public Rangelands Improvement Act of 1978 (Public Law 95-514);

(b) "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the Statistical Reporting Service from the June Enumerative Survey) divided by \$3.65 and multiplied by 100;

(c) "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the Statistical Reporting Service) divided by \$22.04 per hundred weight and multiplied by 100; and

(d) "Prices Paid Index" means the following selected components from the Statistical Reporting Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

**Sec. 3.** Any and all existing rules, practices, policies, and regulations relating to the administration of the formula for grazing fees in section 6(a) of the Public Rangelands Improvement Act of 1978 shall continue in full force and effect.

**Sec. 4.** This Order shall be effective immediately.

RONALD REAGAN

THE WHITE HOUSE,  
February 14, 1986.

**No. 12553**

February 25, 1986, 51 F.R. 7237

**Revocation of Various Executive Orders**

By the authority vested in me as President by the Constitution and laws of the United States of America, and to eliminated Executive Orders that are no longer necessary, it is hereby ordered that the following Executive Orders, and any amendments thereto, are revoked:

No.	Subject
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11237	Prescribing regulations for coordinating planning and acquiring land under the Outdoor Recreation Program of the Department of the Interior and the Open Space Program of the Housing and Home Finance Agency
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RONALD REAGAN

THE WHITE HOUSE,  
*February 28, 1986.*

**No. 12555**

March 10, 1986, 51 F.R. 8475

**Protection of Cultural Property**

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Convention on Cultural Property Implementation Act (Title III of Public Law 97-446; hereinafter referred to as the "Act"), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

**Section 1.** *United States Information Agency.* The following functions conferred upon the President by the Act are hereby delegated to the Director of the United States Information Agency, acting in consultation with the Secretary of State and the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(1) concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements.

(b) The functions conferred by section 303(d) with respect to the determinations concerning the failure of other parties to an agreement to take any or satisfactory implementation action on their agreement; provided, however, that the Secretary of State will remain responsible for interpretation of the agreement.

(c) The functions conferred by section 303(e) relating to the determinations to be made prior to the initiation of negotiations for the extension of any agreement.

(d) The functions conferred by section 303(f) relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as the "Convention").

(e) The functions conferred by section 303(g)(1)(B) relating to the notification of Presidential action and the furnishing of reports to the Congress.

(f) The functions conferred by section 304(b) to the extent that they involve determinations by the President that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention, subject to the limitations of sections 304(c)(1), 304(c)(2), and 304(c)(3).

(g) The functions conferred by section 304(c)(3) to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the Cultural Property Advisory Committee by the President prior to extensions of emergency import restrictions.

(h) The functions conferred by sections 306(f)(6) and 306(g) relating to the receipt of reports prepared by the Cultural Property Advisory Committee.

(i) The functions conferred by section 306(h) relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee's proceedings.

**Sec. 2.** *Department of State.* The following functions conferred upon the President by the Act are hereby delegated to the Secretary of State, acting in consultation with and with the participation of the Director of the United States Information Agency and in consultation with the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(2) relating to the negotiation and conclusion of bilateral or multilateral agreements under the Act, subject to the restrictions of section 303(c).

(b) The functions conferred by section 303(a)(4) relating to obtaining a commitment on the exchange of archaeological and ethnological materials from a party to an agreement.

(c) The functions conferred by section 303(e) relating only to negotiation and conclusion of extensions of agreements under the Act.

(d) Except with respect to subsection 303(g)(1)(B), the functions conferred by section 303(g), relating to the notification of Presidential action and the furnishing of reports to the Congress.

(e) The functions conferred by section 304(c)(4) to the extent that they involve the negotiation and conclusion of agreements subject to advice and consent to ratification by the Senate.

**Sec. 3.** *Department of the Treasury.* The following functions conferred upon the President by the Act are hereby delegated to the Secretary of the Treasury, acting in consultation with the Director of the United States Information Agency and the Secretary of State:

(a) Subject to subsection (b) of Section 1 above, the functions conferred by section 303(d) to the extent that they involve the suspension of import restrictions.

(b) Subject to subsection (f) and (g) of Section 1 above, the functions conferred by section 304 to the extent that they involve the application of import restrictions set forth in section 307 and the extension of such import restrictions pursuant to section 304(c)(3).

**Sec. 4.** *Enforcement in Territories and Other Areas.* The Secretary of the Interior is designated to carry out the enforcement functions in section 314.

RONALD REAGAN

THE WHITE HOUSE,  
*March 10, 1986.*

**No. 12569**

October 16, 1986, 51 F.R. 37171

**Management of the Compact of Free Association With the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau**

By the authority vested in me as President by the Constitution and laws of the United States, including the Compact of Free Association (the Compact) and Public Law 99-239, (the Act), it is ordered as follows:

**Section 1. Responsibility of the Secretary of State.** The Secretary of State shall conduct the government-to-government relations of the United States with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (the "Freely Associated States"), including any subdivisions, officials or persons thereof, and may delegate or allocate such of his authority under this Order to such other United States officials as he may from time to time deem desirable. The authority of the Secretary of State shall include, consistent with Article V of Title One of the Compact and section 105(b)(1) of the Act, the establishment and maintenance of representative offices in the Freely Associated States and supervision of the United States representatives and their staff. The Secretary also shall provide, in accordance with applicable law, for appropriate privileges, immunities, and assistance to representatives to the United States designated by the Governments of the Freely Associated States, together with their officers and staff. In accordance with applicable law and the provisions of this Order, the Secretary also shall have the authority and responsibility to take such other actions as may be necessary and appropriate to ensure that the authorities and obligations of the United States set forth in the Compact and its related agreements and in the laws of the United States as they relate to the conduct of government-to-government relations with the Freely Associated States are carried out. The Secretary shall provide from appropriations made to the Department of State such funds as may be necessary to carry out the provisions of this Order in relation to the activities of the Department of State.

**Sec. 2. Responsibility of the Secretary of the Interior.** The Secretary of the Interior shall be responsible for seeking the appropriation of funds for and, in accordance with the laws of the United States, shall make available to the Freely Associated States the United States economic and financial assistance appropriated pursuant to Article I of Title Two of the Compact; the grant, service, and program assistance appropriated pursuant to Article II of Title Two of the Compact; and all other United States assistance appropriated pursuant to the Compact and its related agreements. The Secretary shall coordinate and monitor any program or any activity by any department or agency of the United States provided to the Freely Associated States and shall coordinate and monitor related economic development planning. This Section shall not apply to services provided by the Department of Defense to the Freely Associated States or to activities pursuant to Section 1 of this Order, including activities under the Peace Corps Act.

**Sec. 3. Interagency Group on Freely Associated State Affairs and the Office of Freely Associated State Affairs.**

(a) There is established an Interagency Group on Freely Associated State Affairs for the purpose of providing guidance and oversight with respect to the establishment and implementation of policy concerning the Compact and United States relations with the Freely Associated States.

(b) The Interagency Group shall consist of the Secretary of State or his designee, who shall chair the Group, and of the principal officers or their designees from the

Departments of the Interior, Defense, Commerce, Energy, and Justice, the Organization of the Joint Chiefs of Staff, the Office of Management and Budget, the National Security Council, and such other departments and agencies as may from time to time be appropriate.

(c) The Interagency Group shall make such recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States relations with the Freely Associated States. The Interagency Group also shall provide such guidance as it deems appropriate to departments and agencies delegated authority by this Order concerning administration of laws with respect to the Freely Associated States.

(d) If any department or agency charged by this Order with implementation of the Compact or other laws of the United States with respect to the Freely Associated States concludes that noncompliance sanctions pursuant to section 105(g) of the Act are appropriate, it shall make appropriate recommendations to the Interagency Group. The Interagency Group shall consider these recommendations and report its findings to the President for his review in making that determination.

(e)(1) There shall be in the Department of State an Office of Freely Associated State Affairs to conduct United States relations with the Freely Associated States and carry out related matters, as the Secretary of State shall direct or delegate, and provide appropriate support to the Interagency Group.

(2) The Office shall be headed by a Director designated by the Secretary of State, to whom the Secretaries of State, Defense, and the Interior may, to the extent permitted by law, delegate any or all of their respective authorities and responsibilities as described in this Order, including the authority to supervise the United States representatives referred to in Section 4 of this Order. The Director shall serve as Executive Secretary of the Interagency Group.

(3) Personnel additional to that provided by the Secretary of State may be detailed to the Office by the Executive departments and agencies that are members of the Interagency Group, and by other agencies as appropriate. Executive departments and agencies shall, to the extent permitted by law, provide such information, advice, and administrative services and facilities as may be necessary for the fulfillment of the functions of the Office.

**Sec. 4. United States Representatives to the Freely Associated States.** The United States Representative assigned to a Freely Associated State in accordance with Article V of Title One of the Compact shall represent the Government of the United States in an official capacity in that Freely Associated State, and shall supervise the actions of any Executive department or agency personnel assigned permanently or temporarily to that Freely Associated State.

**Sec. 5. Cooperation among Executive Departments and Agencies.** All Executive departments and agencies shall cooperate in the effectuation of the provisions of this Order. The Interagency Group and Office of Freely Associated State Affairs shall facilitate such cooperative measures. Nothing in this Order shall be construed to impair the authority and responsibility of the Secretary of Defense for security and defense matters in or relating to the Freely Associated States.

**Sec. 6. Delegation to the Secretary of the Interior.** The following authorities are delegated to the Secretary of the Interior:

(a) Reporting to the Congress on economic development plans prepared by the Government of the Federated States of Micronesia and the Government of the Marshall Islands, pursuant to sections 102(b) and 103(b) of the Act;

(b) The determination required by section 103(e) of the Act concerning the qualifications of the investment management firm selected by the Government of the Marshall Islands;

(c) Reporting to the Congress with respect to the impact of the Compact of Free Association on the United States territories and commonwealths and on the State of Hawaii, pursuant to section 104(e)(2) of the Act; and

(d) Causing an annual audit to be conducted of the annual financial statements of the Government of the Federated States of Micronesia and the Government of the Marshall Islands, pursuant to section 110(b) of the Act.

**Sec. 7. Delegation to the Secretary of State.** The following authorities are delegated to the Secretary of State:

(a) Reporting to the Congress on crimes in the Federated States of Micronesia and the Marshall Islands which have an impact upon United States jurisdictions, pursuant to sections 102(a)(4) and 103(a)(4) of the Act;

(b) Submitting the certification and report to the Congress for purposes of section 5 of the Fishermen's Protective Act of 1967, pursuant to section 104(f)(3) of the Act; and

(c) Reporting, with the concurrence of the Secretary of Defense, to the Congress on determinations made regarding security and defense, pursuant to section 105(q) of the Act.

**Sec. 8. Supersession and Saving Provisions.**

(a) Subject to the provisions of Section 9 of this Order, prior Executive orders concerning the former Trust Territory of the Pacific Islands are hereby superseded and rendered inapplicable, except that the authority of the Secretary of the Interior as provided in applicable provisions of Executive Order No. 11021, as amended, shall remain in effect, in a manner consistent with this Order and pursuant to section 105(c)(2) of the Act, to terminate the trust territory government and discharge its responsibilities, at which time the entirety of Executive Order No. 11021 shall be superseded.

(b) Nothing in this Order shall be construed as modifying the rights or obligations of the United States under the provisions of the Compact or as affecting or modifying the responsibility of the Secretary of State and the Attorney General to interpret the rights and obligations of the United States arising out of or concerning the Compact.

**Sec. 9. Effective Date.** This Order shall become effective with respect to a Freely Associated State simultaneously with the entry into force of the Compact for that State.

RONALD REAGAN

THE WHITE HOUSE,  
*October 16, 1986.*

**No. 12572**

November 3, 1986, 51 F.R. 40401

**Relations With the Northern Mariana Islands**

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that, consistent with the joint Resolution to approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," approved March 24, 1976 (Public Law 94-241; 90 Stat. 263), the relations of the United States with the Government of the Northern Mariana Islands shall, in all matters not the program responsibility of another Federal department or agency, be under the general administrative supervision of the Secretary of the Interior.

RONALD REAGAN

THE WHITE HOUSE,  
*November 3, 1986.*

**No. 12608**

September 9, 1987, 52 F.R. 34617

**Elimination of Unnecessary Executive Orders and Technical Amendments to Others**

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to eliminate certain Executive Orders that are no longer necessary, and to make technical amendments in others to correct outdated agency references or obsolete legal citations, it is hereby ordered as follows:

**Section 1.** The following Executive Orders are revoked:

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11911 Providing for preservation of endangered species

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RONALD REAGAN

THE WHITE HOUSE,  
*September 9, 1987.*

**No. 12612**

October 26, 1987, 52 F.R. 41685

**Federalism**

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to restore the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution and to ensure that the principles of federalism established by the Framers guide the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this Order:

(a) “Policies that have federalism implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) “State” or “States” refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

**Sec. 2. Fundamental Federalism Principles.** In formulating and implementing policies that have federalism implications, Executive departments and agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government.

(b) The people of the States created the national government when they delegated to it those enumerated governmental powers relating to matters beyond the competence of the individual States. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) In most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly. In Thomas Jefferson's words, the States are “the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies.”

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local

governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) In the absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with the individual States. Uncertainties regarding the legitimate authority of the national government should be resolved against regulation at the national level.

**Sec. 3. Federalism Policymaking Criteria.** In addition to the fundamental federalism principles set forth in section 2, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There should be strict adherence to constitutional principles. Executive departments and agencies should closely examine the constitutional and statutory authority supporting any Federal action that would limit the policymaking discretion of the States, and should carefully assess the necessity for such action. To the extent practicable, the States should be consulted before any such action is implemented. Executive Order No. 12372 (“Intergovernmental Review of Federal Programs”) remains in effect for the programs and activities to which it is applicable.

(b) Federal action limiting the policymaking discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope. For the purposes of this Order:

(1) It is important to recognize the distinction between problems of national scope (which may justify Federal action) and problems that are merely common to the States (which will not justify Federal action because individual States, acting individually or together, can effectively deal with them).

(2) Constitutional authority for Federal action is clear and certain only when authority for the action may be found in a specific provision of the Constitution, there is no provision in the Constitution prohibiting Federal action, and the action does not encroach upon authority reserved to the States.

(c) With respect to national policies administered by the States, the national government should grant the States the maximum administrative discretion possible. Intrusive, Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, Executive departments and agencies shall:

(1) Encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States.

(2) Refrain, to the maximum extent possible, from establishing uniform, national standards for programs and, when possible, defer to the States to establish standards.

(3) When national standards are required, consult with appropriate officials and organizations representing the States in developing those standards.

**Sec. 4. Special Requirements for Preemption.** (a) To the extent permitted by law, Executive departments and agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), Executive departments and agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rule-making only when the statute expressly authorizes issuance of preemptive

regulations or there is some other firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the department or agency the authority to issue regulations preempting State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) As soon as an Executive department or agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the department or agency shall consult, to the extent practicable, with appropriate officials and organizations representing the States in an effort to avoid such a conflict.

(e) When an Executive department or agency proposes to act through adjudication or rule-making to preempt State law, the department or agency shall provide all affected States notice and an opportunity for appropriate participation in the proceedings.

**Sec. 5. Special Requirements for Legislative Proposals.** Executive departments and agencies shall not submit to the Congress legislation that would:

(a) Directly regulate the States in ways that would interfere with functions essential to the States' separate and independent existence or operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions;

(b) Attach to Federal grants conditions that are not directly related to the purpose of the grant; or

(c) Preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

**Sec. 6. Agency Implementation.** (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring the implementation of this Order.

(b) In addition to whatever other actions the designated official may take to ensure implementation of this Order, the designated official shall determine which proposed policies have sufficient federalism implications to warrant the preparation of a Federalism Assessment. With respect to each such policy for which an affirmative determination is made, a Federalism Assessment, as described in subsection (c) of this section, shall be prepared. The department or agency head shall consider any such Assessment in all decisions involved in promulgating and implementing the policy.

(c) Each Federalism Assessment shall accompany any submission concerning the policy that is made to the Office of Management and Budget pursuant to Executive Order No. 12291 or OMB Circular No. A-19, and shall:

(1) Contain the designated official's certification that the policy has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of this Order;

(2) Identify any provision or element of the policy that is inconsistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order;

(3) Identify the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy; and

(4) Identify the extent to which the policy would affect the States' ability to discharge traditional State governmental functions, or other aspects of State sovereignty.

**Sec. 7. Government-wide Federalism Coordination and Review.** (a) In implementing Executive Order Nos. 12291 and 12498 and OMB Circular No. A-19, the

Office of Management and Budget, to the extent permitted by law and consistent with the provisions of those authorities, shall take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order.

(b) In submissions to the Office of Management and Budget pursuant to Executive Order No. 12291 and OMB Circular No. A-19, Executive departments and agencies shall identify proposed regulatory and statutory provisions that have significant federalism implications and shall address any substantial federalism concerns. Where the departments or agencies deem it appropriate, substantial federalism concerns should also be addressed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress.

**Sec. 8. Judicial Review.** This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN

THE WHITE HOUSE,  
*October 26, 1987.*

**No. 12630**

March 15, 1988, 53 F.R. 8859

**Governmental Actions and Interference with  
Constitutionally Protected Property Rights**

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

**Section 1. Purpose.** (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided for by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

**Sec. 2. Definitions.** For the purpose of this Order: (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs function (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

**Sec. 3. General Principles.** In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a

complete deprivation of all use and value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be a taking. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

**Sec. 4. Department and Agency Action.** In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

**Sec. 5. Executive Department and Agency Implementation.** (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of that department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress, stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

**Sec. 6. Judicial Review.** This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN

THE WHITE HOUSE,  
*March 15, 1988.*

**No. 12737**

December 12, 1990, 55 F.R. 51681

**President's Commission on Environmental Quality**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on environmental quality, it is hereby ordered as follows:

**Section 1. Establishment.** There is established the President's Commission on Environmental Quality ("Commission"). The Commission shall comprise not more than 25 members to be appointed by the President. One of the members shall be the Chairman of the Council on Environmental Quality. The remaining members shall be individuals from the private sector who have experience in various aspects of environmental and natural resources matters. The Chairman of the Council on Environmental Quality shall serve as Chairman of the Commission and shall report directly to the President.

**Sec. 2. Function.** (a) The Commission, through the Chairman, shall advise the President on matters involving environmental quality.

(b) The Chairman may, from time to time, invite experts to submit information to the Commission and may direct the members to investigate and report to the Commission on specific environmental issues of national consequence.

**Sec. 3. Administration.** (a) The heads of executive agencies shall, to the extent permitted by law, provide to the Commission such information with respect to environmental and natural resources matters as the Commission requires for the purpose of carrying out its functions.

(b) Members of the Commission shall serve without any compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707).

(c) Any expenses of the Commission shall be paid from the funds available for the expenses of the Council on Environmental Quality.

(d) The Office of Administration shall, on a reimbursable basis, provide such administrative services as may be required.

**Sec. 4. General.** Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Council on Environmental Quality in accord with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH

THE WHITE HOUSE,  
December 12, 1990.

**No. 12759**

April 17, 1991, 56 F.R. 16257

**Federal Energy Management**

By the authority bested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (Public Law 94-163, 89 Stat. 871, 42 U.S.C. 6201 *et seq.*), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 *et seq.*), section 205(a) of the Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(a)), and section 301 of the title 3 of the United States Code, it is hereby ordered as follows:

**Section 1. *Federal Energy Efficiency Goals for Buildings.*** Each agency shall develop and implement a plan to meet the 1995 energy management goals of the National Energy Conservation Policy Act, as amended, 42 U.S.C. 8251 *et seq.*, and by the year 2000 reduce overall energy use if Btu's per gross square foot of the Federal buildings it operates, taking into account utilization, by 20 percent from 1985 energy use levels, to the extent that these measures minimize life cycle costs and are cost-effective in accordance with 10 CFR Part 436.

**Sec. 2. *Federal Energy Efficiency Goals for Other Facilities.*** Each agency will prescribe policies under which its industrial facilities in the aggregate increase energy efficiency by at least 20 percent in fiscal year 2000 in comparison to fiscal year 1985, to the extent that these measures minimize life cycle costs and are cost-effective in accordance with 10 CFR Part 436. Each agency shall establish appropriate indicators of energy efficiency to comply with this section.

**Sec. 3. *Minimization of Petroleum Use in Federal Facilities.*** Each agency using petroleum products for facilities operations or building purposes shall seek to minimize such use through switching to an alternative energy source if it is estimated to minimize life cycle costs and which will not violate Federal, State, or local clean air standards. In addition, each agency shall survey its buildings and facilities to determine where the potential for a dual fuel capability exists and shall provide dual fuel capability where practicable.

**Sec. 4. *Implementation Strategies.*** (a) Except as provided by paragraph (b) and (c) if this section, each agency shall adopt an implementation strategy, consistent with the provisions of this order, to achieve the goals established in sections 1, 2, and 3. That strategy should include, but not be limited to, changes in procurement practices, acquisition of real property, participation in demand side management services and shared savings agreements offered by private firms, and investment in energy efficiency measures. The mix and balance among such measures shall be established in a manner most suitable to the available resources and particular circumstances in each agency.

(b) The Secretary of Defense may, if he determines it to be in the national interest, issue regulations exempting from compliance with the requirements of this order, any weapons, equipment, aircraft, vehicles, or other classes or categories of real or personal property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature.

(c) The Secretary of the Treasury and the Attorney General, consistent with their protective and law enforcement responsibilities, shall determine the extent to which the requirements of this order shall apply to the protective and law enforcement activities of the respective agencies.

**Sec. 5. *Procurement of Energy Efficient Goods and Products.*** In order to assure the purchase of energy efficient goods and products, each agency shall select for procurement those energy consuming goods or products which are the most life cycle cost-effective, pursuant to the requirements of the *Federal Acquisition Regulation*. The extent practicable, each agency shall require vendor of goods to provide appropriate data that can be used to assess the life cycle costs of each good or product, including building energy system components, lighting systems, office equipment, and other energy using equipment.

**Sec. 6. *Participation of Energy Efficient Goods and Products.*** Each agency shall review its procedures used to acquire utility and other related services, and to the extent practicable and consistent with its strategy established pursuant to section 4, remove any impediments to receiving, utilizing, and taking demand side management services, incentives, and rebates offered by utilities and other private sector energy service providers.

**Sec. 7. *Energy Efficiency Requirement for Current Federal Building Space.*** Each agency occupying space in Federal buildings shall implement the applicable rules and regulations regarding Federal property and energy management.

**Sec. 8. *Energy Efficiency Requirements for Newly Constructed Federal Buildings.*** Each agency responsible for the construction of a new Federal building shall ensure that the building is designed and constructed to comply with the energy performance standards applicable to Federal residential and commercial buildings as set forth in 10 CFR Part 435. Each agency shall establish certification procedures to implement this requirement.

**Sec. 9. *Vehicle Fuel Efficiency Outreach Programs.*** Each agency shall implement outreach programs including, but not limited to, ride sharing and employee awareness programs to reduce the petroleum fuel usage by Federal employees at Government-owned contractor-operated facilities.

**Sec. 10. *Federal Vehicle Fuel Efficiency.*** Consistent with its mission requirements, each agency operating 300 or more commercially designed motor vehicles domestically shall develop a plan to reduce motor vehicle gasoline and diesel consumptions by at least 10 percent by 1995 in comparison with fiscal year 1991. The Administrator of General Services, in consultation with the Secretary of Energy, shall issue appropriate guidance to assist agencies in meeting this goal. This guidance shall include guidance concerning vehicles to be covered, the use of alternative/blended fuels, initiatives to improve fuel efficiency of the existing fleet, the use of modified energy life cycle coasting consistent with life cycle costing methods in 10 CFR 436, and limitations on vehicle type and engine size to be to be acquired. Each agency electing to use alternative fuel motor vehicles shall receive credit for such use.

**Sec. 11. *Procurement of Alternative Fueled Vehicles.*** The Secretary of Energy, with the cooperation of other appropriate agencies, and consistent with other Federal law, shall ensure that the maximum number practicable of vehicles acquired annually are alternative fuel vehicles as required by the Alternative Motor Fuels Act of 1988 (42 U.S.C. 6374.) Subject to availability of appropriations for this purpose, the maximum number practicable of alternative fuel vehicles produced by original equipment vehicle manufacturers shall be acquired by the end of model year 1995.

**Sec. 12. *Federal Funding.*** Within approved agency budget totals, each agency head shall work to achieve the goals set forth in this order. To the extent that available resources fall short of requirements, agency heads shall rank energy efficiency investments in descending order of the savings-to-investment ratios, or their adjusted internal rate of return to establish priority.

**Sec. 13. *Annual Reports.*** The head of each agency shall report annually to the secretary of Energy, in a format specified by the Secretary after consultation with the heads of affected agencies, on progress in achieving the goals of this Executive order with respect to Federal buildings, facilities, and vehicles subject to this order. The Secretary of Energy will prepare a consolidated report to the President annually on the implementation of this order.

**Sec. 14. *Definitions.*** For the purpose of this order—

(a) the term “energy use” means the energy that is used at a building or facility and measured in terms of energy delivered to the building or facility;

(b) the term “Federal building” means any building in the United States which is controlled by the Federal Government for its use.

GEORGE BUSH

THE WHITE HOUSE

*April 17, 1991.*

**No. 12777**

October 18, 1991, 56 F.R. 54757

**IMPLEMENTATION OF SECTION 311 OF THE FEDERAL  
WATER POLLUTION CONTROL ACT OF OCTOBER 18, 1972,  
AS AMENDED, AND THE OIL POLLUTION ACT OF 1990**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 311 of the Federal Water Pollution Control Act, ("FWPCA") (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 (Public Law 101-380) ("OPA"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. National Contingency Plan. Area Committees and Area Contingency Plans. (a) section 1 of Executive Order No. 12580<sup>1</sup> of January 23, 1987, is amended to read as follows:

"Section 1. National Contingency Plan. (a)(l) The National Contingency Plan ("the NPC"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts of the NRT for planning and coordination of regional preparedness and response actions.

"(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of state, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United states Coast Guard, and the Nuclear Regulatory Commission.

"(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman, and the representative of the United states Coast Guard shall be the vice chairman, of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

"(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the states), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

"(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act, by section 311(d) (1) of the Federal Water Pollution Control Act, and by Section 4201(c) of the Oil Pollution Act of 1990 is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

“(2) The function vested in the President by section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) (“SARA”) is delegated to the Administrator.

“(c) In accord with Section 107(f)(2)(A) of the Act, section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)) and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990, the following shall be among those designated in the NCP as Federal trustees for natural resources:

- (1) Secretary of Defense;
- (2) Secretary of the Interior;
- (3) Secretary of Agriculture;
- (4) Secretary of Commerce;
- (5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

“(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

“(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director or the Office of Management and Budget (“OMB”).”

(b) The functions vested in the President by Section 311(j)(4) of FWPCA, and Section 4202(b) (1) of OPA, respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency (“Administrator”) for the inland zone and the secretary of the Department in which the Coast Guard is operating for the coastal zone (inland and coastal zones are defined in the NCP).

Sec. 2. National Response System. (a) The functions vested in the President by section 311(j)(1)(A) of FWPCA, respecting the establishment of methods and procedures for the removal of discharged oil and hazardous substances, and by Section 311(j)(1)(B) of FWPCA respecting the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, are delegated to the Administrator for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

(b)(l) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports Act of 1974 (“DPA”), are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous

substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(c) The functions vested in the President by section 311 (j)(1)(D) of FWPCA, respecting the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes, are delegated to the secretary of the Department in which the Coast Guard is operating.

(d)(1) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of non-transportation-related onshore facilities to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of non-transportation-related onshore facilities to operate without approved response plans, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b) (4) of OPA, respecting the issuance of regulations requiring the owners or operators of tank vessels, transportation-related onshore facilities and deepwater ports subject to the OPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA to operate without approved response plans are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b) (4) of OPA, respecting the issuance of regulations requiring the owners or operators of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to operate without approved response plans, are delegated to the Secretary of the Interior.

(e)(1) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by section 311(j) (6) (A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges on vessels, and at transportation-related onshore facilities and deepwater ports subject to the CPA, are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(f) The functions vested in the President by section 311(j)(6)(B) of FWPCA, respecting requirements for vessels to carry appropriate removal equipment, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(g) (1) The functions vested in the President by section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for onshore and offshore facilities located in the inland zone, and the publishing of annual reports on those drills, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for tank vessels, and for onshore and offshore facilities located in the coastal zone, and the publishing of

annual reports on those drills, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) No provision of Section 2 of this order, including, but not limited to, any delegation or assignment of any function hereunder, shall in any way affect, or be construed or interpreted to affect the authority of any Department or agency, or the head of any Department or agency under any provision of law other than Section 311(j) of FWPCA or section 4202(b) (4) of OPA.

(i) The functions vested in the President by Section 311(j) of FWPCA or Section 4202(b)(4) of OPA which have been delegated or assigned by Section 2 of this order may be redelegated to the head of any Executive department or agency with his or her consent.

Sec. 3. Removal. The functions vested in the President by Section 311(c) of FWPCA and Section 1011 of OPA, respecting an effective and immediate removal or arrangement for removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil or a hazardous substance, the direction and monitoring of all Federal, State and private actions, the removal and destruction of a vessel, the issuance of directions, consulting with affected trustees, and removal completion determinations, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

Sec. 4. Liability Limit Adjustment. (a) The functions vested in the President by Section 1004(d) of OPA, respecting the establishment of limits of liability, with respect to classes or categories of non-transportation-related onshore facilities, the reporting to Congress on the desirability of adjusting limits of liability with respect to non-transportation-related onshore facilities, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to non-transportation-related onshore facilities, are delegated to the Administrator, acting in consultation with the secretary of Transportation, the Secretary of Energy, and the Attorney General.

(b) The functions vested in the President by Section 1004(d) of OPA, respecting the establishment of limits of liability, with respect to classes or categories of transportation-related onshore facilities, the reporting to Congress on the desirability of adjusting limits of liability, with respect to vessels or transportation-related onshore facilities and deepwater ports subject to the DPA, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to vessels or transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of Transportation.

(c) The functions vested in the President by Section 1004(d) of OPA, respecting the reporting to Congress on the desirability of adjusting limits of liability with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

Sec. 5. Financial Responsibility. (a)(1) The functions vested in the President by Section 1016(e) of OPA, respecting (in the case of offshore facilities other than deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Interior.

(2) The functions vested in the President by Section 1016(e) of OPA, respecting (in the case of deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of Transportation.

(b)(1) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving vessels) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(2) The functions vested in the president by section 4303 of OPA, respecting (in cases involving offshore facilities other than deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Interior.

(3) The functions vested in the President by section 4303 of OPA, respecting (in cases involving deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the secretary of Transportation.

Sec. 6. Enforcement. (a) The functions vested in the President by Section 311(m) (1) of PWPCA, respecting the enforcement of Section 311 with respect to vessels, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b) The functions vested in the President by Section 311(e) of FWPCA, respecting determinations of imminent and substantial threat, requesting the Attorney General to secure judicial relief, and other action including issuing administrative orders, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

Sec. 7. Management of the Oil Spill Liability Trust Fund and Claims. (a)(1)(A) The functions vested in the President by Section 1012(a) (1), (3), and (4) of OPA respecting payment of removal costs and claims and determining consistency with the National Contingency Plan (NCP) are delegated to the Secretary of the Department in which the Coast Guard is operating.

(B) The functions vested in the President by Section 6002(b) of the OPA respecting making amounts, not to exceed \$50,000,000 and subject to normal budget controls, in any fiscal year, available from the Fund (i) to carry out Section 311(c) of FWPCA, and (ii) to initiate the assessment of natural resources damages required under section 1006 of OPA are delegated to the Secretary of the Department in which the Coast Guard is operating. Such Secretary shall make amounts available from the Fund to initiate the assessment of natural resources damages exclusively to the Federal trustees designated in the NCP. Such Federal trustees shall allocate such amounts among all trustees required to assess natural resources damages under Section 1006 of OPA.

(2) The functions vested in the President by Section 1012(a)(2) of OPA, respecting the payment of costs and determining consistency with the NCP, are delegated to the Federal trustees designated in the NCP.

(3) The functions vested in the President by Section 1012(a)(5) of OPA, respecting the payment of costs and expenses of departments and agencies having responsibility for the implementation, administration, and enforcement of the Oil Pollution Act of 1990 and subsections (b), (c), (d), (j) and (1) of section 311 of FWPCA, are delegated to each head of such department and agency.

(b) The functions vested in the President by Section 1012(c) of OPA, respecting designation of Federal officials who may obligate money, are delegated to each head of the departments and agencies to whom functions have been delegated under section 7(a) of this order for the purpose of carrying out such functions.

(c)(1) The functions vested in the President by Section 1012(d) and (e) of OPA, respecting the obligation of the Trust Fund on the request of a Governor or pursuant to

an agreement with a state, entrance into agreements with states, agreement upon terms and conditions, and the promulgation of regulations concerning such obligation and entrance into such agreement, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Administrator.

(2) The functions vested in the President by Section 1013(e) of OPA, respecting the promulgation and amendment of regulations for the presentation, filing, processing, settlement, and adjudication of claims under OPA against the Trust Fund, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Attorney General.

(3) The functions vested in the President by Section 1012(a) of OPA, respecting the payment of costs, damages, and claims, delegated herein to the Secretary of the Department in which the Coast Guard is operating, include, inter alia, the authority to process, settle, and administratively adjudicate such costs, damages, and claims, regardless of amount.

(d) (1) The Coast Guard is designated the "appropriate agency" for the purpose of receiving the notice of discharge of oil or hazardous substances required by Section 311(b)(5) of FWPCA:" and the Secretary of the Department in which the Coast Guard is operating is authorized to issue regulations implementing this designation.

(2) The functions vested in the President by Section 1014 of OPA, respecting designation of sources of discharges or threats, notification to responsible parties, promulgation of regulations respecting advertisements, the advertisement of designation, and notification of claims procedures, are delegated to the Secretary of the Department in which the Coast Guard is operating.

Sec. 8. Miscellaneous. (a) The functions vested in the President by Section 311(b) (3) and (4) of FWPCA, as amended by the Oil Pollution Act of 1990, respecting the determination of quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment and the determinations of quantities, time, locations, circumstances, or conditions which are not harmful, are delegated to the Administrator.

(b) The functions vested in the President by Section 311(d)(2) (G) of FWPCA, respecting schedules of dispersant, chemical, and other spill mitigating devices or substances, are delegated to the Administrator.

(c) The functions vested in the President by Section 1006(b) (3) and (4) of OPA respecting the receipt of designations of state and Indian tribe trustees for natural resources are delegated to the Administrator.

(d) The function vested in the President by Section 3004 of OPA, with respect to encouraging the development of an international inventory of equipment and personnel, is delegated to the Secretary of the Department of which the Coast Guard is operating, in consultation with the secretary of state.

(e) The functions vested in the President by Section 411 of OPA, respecting a study on the use of liners or other secondary means of containment for onshore facilities, and the implementation of the recommendations of the study, are delegated to the Administrator.

(f) The function vested in the President by Section 5002(c)(2)(D) of OPA, respecting the designating of an employee of the Federal Government who shall represent the Federal Government on the Oil Terminal Facilities and Oil Tanker Operations Associations, is delegated to the secretary of Transportation.

(g) The functions vested in the President by Section 5002(o) of OPA, respecting the annual certification of alternative voluntary advisory groups, are delegated to the Secretary of Transportation.

(h) The function vested in the President by Section 7001(a)(3) of OPA, respecting the appointment of Federal agencies to membership on the Interagency Coordinating Committee on Oil Pollution Research, is delegated to the Secretary of Transportation.

(i) Executive Order No. 11735 of August 3, 1973, Executive Order No. 12123 of February 26, 1979, Executive Order No. 12418<sup>2</sup> of May 5, 1983 and the memorandum of August 24, 1990, delegating certain authorities of the President under the Oil Pollution Act of 1990 are revoked.

Sec. 9. Consultation. Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the, Secretaries of departments and the heads, of agencies with statutory responsibilities which may be significantly affected; including, but not limited to, the Department of Justice.

Sec. 10. Litigation. (a) Notwithstanding any other provision of this order, any representation pursuant to or under this order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the oil Pollution Act of 1990 shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this order, the authority under the Oil Pollution Act of 1990 to require the Attorney General to commence litigation is retained by the President.

(c) Notwithstanding any other provision of this order, the Secretaries of the Departments of Transportation, Commerce, Interior, Agriculture, and/or the Administrator of the Environmental Protection Agency may request that the Attorney General commence litigation under the Oil Pollution Act of 1990.

(d) The Attorney General, in his discretion, is authorized to require that, with respect to a particular oil spill, an agency refrain from taking administrative enforcement action without first consulting with the Attorney General.

GEORGE BUSH

THE WHITE HOUSE,  
*October 18, 1991.*

1. 42 U.S.C.A. § 9615 nt.
2. 33 U.S.C.A. § 1321 nt,
3. 43 U.S.C.A. § 1811 nt.

**No. 12780**

October 31, 1991, 56 F.R. 56289

**Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy**

WHEREAS, this Administration is determined to secure for future generations of Americans their rightful share of our Nation's natural resources, as well as a clean and healthful environment in which to enjoy them; and

WHEREAS, two goals of this Administration's environmental policy, cost-effective pollution prevention and the conservation of natural resources, can be significantly advanced by reducing waste and recycling the resources used by this generation of Americans; and

WHEREAS, the Federal Government, as one of the largest generators of solid waste, is able through cost-effective waste reduction and recycling resources to conserve local government disposal capacity; and

WHEREAS, the Federal Government, as the Nation's largest single consumer, is able through affirmative procurement practices to encourage the development of economically efficient markets for products manufactured with recycled materials;

NOW, THEREFORE, I, GEORGE BUSH, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, P.L. 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act ("RCRA"), Public Law 94-580, 90 Stat. 2795 (1976), hereby order as follows:

**PART 1 — PREAMBLE**

**Section 101.** The purpose of this Executive order is to:

(a) Require that Federal agencies promote cost-effective waste reduction and recycling of reusable materials from wastes generated by Federal Government activities.

(b) Encourage economically efficient market demand for designated items produced using recovered materials by directing the immediate implementation of cost-effective Federal procurement preference programs favoring the purchase of such items.

(c) Provide a forum for the development and study of policy options and procurement practices that will promote environmentally sound and economically efficient waste reduction and recycling of our Nation's resources.

(d) Integrate cost-effective waste reduction and recycling programs into all Federal agency waste management programs in order to assist in addressing the Nation's solid waste disposal problems.

(e) Establish Federal Government leadership in addressing the need for efficient State and local solid waste management through implementation of environmentally sound and economically efficient recycling.

**Sec. 102.** Consistent with section 6002(c)(1) of RCRA (42 U.S.C. 6962(c)(1)), activities and operations of the executive branch shall be conducted in an environmentally responsible manner, and waste reduction and recycling opportunities shall be utilized to the maximum extent practicable, consistent with economic efficiency.

**Sec. 103.** Consistent with section 6002(c)(2) of RCRA (42 U.S.C. 6962(c)(2)), agencies that generate energy from fossil fuel in systems that have the technical capacity of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

**PART 2 —DEFINITIONS**

For purposes of this order:

**Sec. 201.** “Federal agency” means any department, agency, or other instrumentality of the executive branch.

**Sec. 202.** “Procurement” and “acquisition” are used interchangeably to refer to the processes through which Federal agencies purchase products.

**Sec. 203.** “Recovered materials” is used as defined in sections 1004(19) and 6002(h) of the Resource Conservation and Recovery Act (42 U.S.C. 6903(19) and 6962(h), as amended).

**Sec. 204.** “Recycling” means the diversion of materials from the solid waste stream and the beneficial use of such materials. Recycling is further defined as the result of a series of activities by which materials that would become or otherwise remain waste, are diverted from the solid waste stream by collection, separation and processing and are used as raw materials in the manufacture of goods sold or distributed in commerce or the reuse of such materials as substitutes for goods made of virgin materials.

**Sec. 205.** “Waste reduction” means any change in a process, operation, or activity that results in the economically efficient reduction in waste material per unit of production without reducing the value output of the process, operation, or activity, taking into account the health and environmental consequences of such change.

**PART 3—SOLID WASTE RECYCLING PROGRAMS**

**Sec. 301. Recycling Programs.** Each Federal agency that has not already done so shall initiate a program to promote cost-effective waste reduction and recycling of reusable materials in all of its operations and facilities. These programs shall foster (a) practices that reduce waste generation, and (b) the recycling of recyclable materials such as paper, plastic, metals, glass, used oil, lead acid batteries, and tires and the composting of organic materials such as yard waste. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements.

**Sec. 302. Contractor Operated Facilities.** Every contract that provides for contractor operation of a Government-owned or leased facility, awarded more than 210 days after the effective date of this Executive order, shall include provisions that obligate the contractor to comply with the requirements of this Part as fully as though the contractor were a Federal agency.

**PART 4—VOLUNTARY STANDARDS**

**Sec. 401. Amendment of OMB Circular No. A-119.** The Director of the Office of Management and Budget (“OMB”) shall amend, as appropriate, OMB Circular No. A-119, “Federal Participation in the Development and Use of Voluntary Standards,” to encourage Federal agencies to participate in the development of environmentally sound and economically efficient standards and to encourage Federal agency use of such standards.

**PART 5 —PROCUREMENT OF RECOVERED MATERIALS**

**Sec. 501. Adoption of Affirmative Procurement Programs.** Within 180 days after the effective date of this order, each Federal agency shall provide a report to the Administrator of the Environmental Protection Agency regarding the Agency's adoption of an affirmative procurement program; such programs are required by section 6002(i) of RCRA (42 U.S.C. 6962(i)). Within 1 year of the issuance of this order, the Administrator of the Environmental Protection Agency shall report to the President regarding the compliance of each Federal agency with this requirement.

**Sec. 502. Annual Review of Affirmative Procurement Program.** In accordance with section 6902(i) of RCRA (42 U.S.C. 6962(i)), each Federal agency shall review annually the effectiveness of its affirmative procurement program and shall provide a report regarding its findings to the Environmental Protection Agency and to the Office of Federal Procurement Policy, beginning with a report covering fiscal year 1992. Such report shall be transmitted by December 15 each year. Reports required by this section shall be made available to the public.

**PART 6—RECYCLING COORDINATORS AND THE COUNCIL ON FEDERAL RECYCLING AND PROCUREMENT POLICY**

**Sec. 601. Federal Recycling Coordinator.** Within 90 days after the effective date of this order, the Administrator of the Environmental Protection Agency shall designate a senior official of that Agency to serve as the Federal Recycling Coordinator. The Federal Recycling Coordinator shall review and report annually to OMB, at the time of agency budget submissions, the actions taken by the agencies to comply with the requirements of this order.

**Sec. 602. Designation of Recycling Coordinators.** Within 90 days after the effective date of this order, the head of each Federal agency shall designate an agency employee to serve as Agency Recycling Coordinator. The Agency Recycling Coordinator shall be responsible for:

(a) coordinating the development of an effective agency waste reduction and recycling program that complies with the comprehensive implementation plan developed by the Council on Federal Recycling and Procurement Policy;

(b) coordinating agency action to develop benefits, costs, and savings data measuring the effectiveness of the agency program; and

(c) coordinating the development of agency reports required by this Executive order and providing copies of such reports to the Environmental Protection Agency.

**Sec. 603. The Council on Federal Recycling and Procurement Policy.** (a) A Council on Federal Recycling and Procurement Policy is hereby established. It shall comprise the Federal Recycling Coordinator, the Chairman of the Council on Environmental Quality, the Administrator of the Office of Federal Procurement Policy, and the Agency Recycling Coordinator and the Procurement Executive of each of the following agencies: the Environmental Protection Agency, the Department of Defense, the General Services Administration, the National Aeronautics and Space Administration, the Department of Energy, the Department of Commerce, and the Department of the Interior. The Federal Recycling Coordinator shall serve as Chair of the Council.

(b) Duties. The Council on Federal Recycling and Procurement Policy shall:

(1) identify and recommend, to OMB, initiatives that will promote the purposes of this order, including:

(A) the development of appropriate incentives to encourage the economically efficient acquisition by the Federal Government of products that reduce waste and of products produced with recycled materials;

(B) the development of appropriate incentives to encourage active participation in economically efficient Federal waste reduction and recycling programs; and

(C) the development of guidelines for cost-effective waste reduction and recycling activities by Federal agencies;

(2) review Federal agency specifications and standards and recommend changes that will enhance Federal procurement of products made from recycled and recyclable materials, taking into account the costs and performance requirements of each agency;

(3) collect and disseminate Federal agencies' information concerning methods to reduce wastes, types of materials that can be recycled, the costs and savings associated

with recycling, and the current market sources and prices of products that reduce waste and of products produced with recycled materials;

(4) assist the development of cost-effective waste reduction and recycling programs pursuant to this order by developing guidelines for agency waste reduction and recycling programs and by identifying long-range goals for Federal waste reduction and recycling programs;

(5) provide meaningful data to measure the effectiveness and progress of Federal waste reduction and recycling programs;

(6) provide guidance and assistance to the Agency Recycling Coordinators in setting up and reporting on agency programs; and

(7) review Federal agency compliance with section 103 of this order.

#### **PART 7—LIMITATION**

**Sec. 701.** This order is intended only to improve the internal management of the executive branch and shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any other person.

**Sec. 702.** Section 502 and Part 6 of this order shall be effective for 5 years only, beginning on the effective date of this order.

**Sec. 703.** This order shall be effective immediately.

GEORGE BUSH

THE WHITE HOUSE,

*October 31, 1991.*

**No. 12843**

April 21, 1993, 58 F.R. 21881

**Procurement Requirements and Policies for Federal Agencies  
for Ozone-Depleting Substances**

WHEREAS, the essential function of the stratospheric ozone layer is shielding the Earth from dangerous ultraviolet radiation; and

WHEREAS, the production and consumption of substances that cause the depletion of stratospheric ozone are being rapidly phased out on a worldwide basis with the support and encouragement of the United States; and

WHEREAS, the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the United States is a signatory, calls for a phaseout of the production and consumption of these substances; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through affirmative procurement practices to reduce significantly the use of these substances and to provide leadership in their phaseout; and

WHEREAS, the use of alternative substances and new technologies to replace these ozone-depleting substances may contribute positively to the economic competitiveness on the world market of U.S. manufacturers of these innovative safe alternatives;

NOW, THEREFORE, I, WILLIAM JEFFERSON CLINTON, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the 1990 amendments to the Clean Air Act ("Clean Air Act Amendments"), Public Law 101-549, and in order to reduce the Federal Government's procurement and use of substances that cause stratospheric ozone depletion, do hereby order as follows:

**Section 1. Federal Agencies.** Federal agencies shall, to the extent practicable:

(a) conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deal with stratospheric ozone protection;

(b) maximize the use of safe alternatives to ozone-depleting substances;

(c) evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials and evaluate their use of and plans for recycling;

(d) revise their procurement practices and implement cost-effective programs both to modify specifications and contracts that require the use of ozone-depleting substances and to substitute non-ozone-depleting substances to the extent economically practicable; and

(e) exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

**Sec. 2. Definitions.** (a) "Federal agency" means any executive department, military department, or independent agency within the meaning of 5 U.S.C. 101, 102, or 104(1), respectively.

(b) "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products and services.

(c) "Procurement regulations, policies and procedures" encompasses the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

(d) "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes both Class I and Class II substances as follows:

(i) "Class I substance" means any substance designated as Class I in the **Federal Register** notice of July 30, 1992 (57 Fed. Reg. 33753), including chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform and any other substance so designated by the Environmental Protection Agency ("EPA") by regulation at a later date; and

(ii) "Class II substance" means any substance designated as Class B in the **Federal Register** notice of July 30, 1992 (57 Fed. Reg. 33753), including hydrochlorofluorocarbons and any other substances so designated by EPA by regulation at a later date.

(e) "Recycling" is used to encompass recovery and reclamation, as well as the reuse of controlled substances.

**Sec. 3. Policy.** It is the policy of the Federal Government that Federal agencies: (i) implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and (ii) give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, prior to final promulgation of EPA regulations on Federal procurement, Federal agencies shall begin conforming their procurement policies to the general requirements of Title VI of the Clean Air Act Amendments by:

(a) minimizing, where economically practicable, the procurement of products containing or manufactured with Class I substances in anticipation of the phaseout schedule to be promulgated by EPA for Class I substances, and maximizing the use of safe alternatives. In developing their procurement policies, agencies should be aware of the phaseout schedule for Class II substances;

(b) amending existing contracts, to the extent permitted by law and where practicable, to be consistent with the phaseout schedules for Class I substances. In awarding contracts, agencies should be aware of the phaseout schedule for Class II substances in awarding contracts;

(c) implementing policies and practices that recognize the increasingly limited availability of Class I substances as production levels capped by the Montreal Protocol decline until final phaseout. Such practices shall include, but are not limited to:

(i) reducing emissions and recycling ozone-depleting substances;

(ii) ceasing the purchase of nonessential products containing or manufactured with ozone-depleting substances; and

(iii) requiring that new contracts provide that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

**Sec. 4. Responsibilities.** Not later than 6 months after the effective date of this Executive order, each Federal agency, where feasible, shall have in place practices that, where economically practicable, minimize the procurement of Class I substances. Agencies also shall be aware of the phaseout schedule for Class II substances. Agency practices may include, but are not limited to:

- (a) altering existing equipment and/or procedures to make use of safe alternatives;
- (b) specifying the use of safe alternatives and of goods and services where available, that do not require the use of Class I substances in new procurements and that limit the use of Class II substances consistent with section 612 of the Clean Air Act Amendments; and
- (c) amending existing contracts, to the extent permitted by law and where practicable, to require the use of safe alternatives.

**Sec. 5. Reporting Requirements.** Not later than 6 months after the effective date of this Executive order, each Federal agency shall submit to the Office of Management and Budget a report regarding the implementation of this order. The report shall include a certification by each agency that its regulations and procurement practices are being amended to comply with this order.

**Sec. 6. Exceptions.** Exceptions to compliance with this Executive order may be made in accordance with section 604 of the Clean Air Act Amendments and with the provisions of the Montreal Protocol.

**Sec. 7. Effective Date.** This Executive order is effective 30 days after the date of issuance. Although full implementation of this order must await revisions to the Federal Acquisition Regulations ("FAR"), it is expected that Federal agencies will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

**Sec. 8. Federal Acquisition Regulatory Councils.** Pursuant to section 6(a) of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this order is issued.

**Sec. 9. Judicial Review.** This order does not create any right or benefit, substantive or procedural, enforceable by a non-Federal party against the United States, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*April 21, 1993.*

**No. 12844**

April 21, 1993, 58 F.R. 21885

**Federal Use of Alternative Fueled Vehicles**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 *et seq.*), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 *et seq.*), the Energy Policy Act of 1992 (Public Law 102-486), and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1. Federal Leadership and Goals.** The use of alternative fueled motor vehicles can, in some applications, substantially reduce pollutants in the atmosphere, create significant domestic economic activity and stimulate jobs creation, utilize domestic fuel sources as defined by the Energy Policy Act of 1992, and reduce vehicle maintenance costs. Moreover, Federal action can provide a significant market impetus for the development and manufacture of alternative fueled vehicles, and for the expansion of the fueling infrastructure necessary to support large numbers of privately owned alternative fueled vehicles. The Federal Government can exercise leadership in the use of alternative fueled vehicles. To that end, each agency shall adopt aggressive plans to substantially exceed the alternative fueled vehicle purchase requirements established by the Energy Policy Act of 1992.

**Sec. 2. Alternative Fueled Vehicle Requirements.** The Federal Government shall acquire, subject to the availability of funds and considering life cycle costs, alternative fueled vehicles in numbers that exceed by 50 percent the requirements for 1993 through 1995 set forth in the Energy Policy Act of 1992. The Federal fleet vehicle acquisition program shall be structured with the objectives of: (a) continued reduction in the incremental cost associated with specific vehicle and fuel combinations; (b) long-term movement toward increasing availability of alternative fueled vehicles produced as standard manufacturers' models; and (c) minimizing life cycle costs in the acquisition of alternative fueled vehicles. In addition, there is established, for a period not to exceed 1 year, the Federal Fleet Conversion Task Force, a Federal interagency implementation committee to be constituted by the Secretary of Energy, in consultation with a Task Force Chairman to be named by the President. The Task Force will advise on the implementation of this Executive order. The Task Force will issue a public report within 90 days, setting forth a recommended plan and schedule of implementation and, no later than 1 year from the date of this order, in cooperation with the Secretary of Energy, file a report on the status of the conversion effort.

**Sec. 3. Alternative Fueled Vehicle Acquisition Assistance.** Within available appropriations, and as required by the Energy Policy Act of 1992, the Secretary of Energy shall provide assistance to other agencies that acquire alternative fueled vehicles. This assistance includes payment of incremental costs of alternative fueled vehicles, including any incremental costs associated with acquisition and disposal. All vehicles, whether conversions or purchases as original equipment manufacturer models, shall comply with all applicable Federal and State emissions and safety standards, consistent with those requirements placed on original equipment manufacturers, including years and mileage.

**Sec. 4. Alternative Fueled Vehicle Purchase and Use Incentives.** The Administrator of the General Services Administration, to the extent allowed by law, may provide incentives to purchase alternative fueled vehicles, including priority processing of procurement requests, and, with the Secretary of Energy, provide any other technical or

administrative assistance aimed at accelerating the purchase and use of Federal alternative fueled vehicles.

**Sec. 5. Cooperation with Industry and State and Local Authorities on Alternative Fueled Vehicle Refueling Capabilities.** The Secretary of Energy shall coordinate Federal planning and siting efforts with private industry fuel suppliers, and with State and local governments, to ensure that adequate private sector refueling capabilities exist or will exist wherever Federal fleet alternative fueled vehicles are sited. Each agency's fleet managers are expected to work with appropriate organizations at their respective locations on initiatives to promote alternative fueled vehicle use.

**Sec. 6. Reporting.** The head of each agency shall report annually to the Secretary of Energy on actions and progress under this order, consistent with guidance provided by the Secretary. The Secretary shall prepare a consolidated annual report to the President and to the Congress on the implementation of this order. As part of the report, the Secretary and the Director of the Office of Management and Budget shall complete a thorough, objective evaluation of alternative fueled vehicles. The evaluation shall consider operating and acquisition costs, fuel economy, maintenance, and other factors as appropriate.

**Sec. 7. Definitions.** For the purpose of this order, the terms "agency" and "alternative fueled vehicle" have the same meanings given such terms in sections 151 and 301 of the Energy Policy Act of 1992, respectively.

**Sec. 8. Exceptions.** The Secretary of Defense, the Secretary of the Treasury, and the Attorney General, consistent with the national security and protective and law enforcement activities of their respective agencies, shall determine the extent to which the requirements of this order apply to the national security and protective and law enforcement activities of their respective agencies.

**Sec. 9. Judicial Review.** This order is not intended to create any right or benefit, substantive or procedural, enforceable by a non-Federal party against the United States, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*April 21, 1993.*

**No. 12845**

April 21, 1993, 58 F.R. 21887

**Requiring Agencies To Purchase Energy Efficient Computer Equipment**

WHEREAS, the Federal Government should set an example in the energy efficient operation of its facilities and the procurement of pollution preventing technologies;

WHEREAS, the Federal Government should minimize its operating costs, make better use of taxpayer-provided dollars, and reduce the Federal deficit; and

WHEREAS, the Federal Government is the largest purchaser of computer equipment in the world and therefore has the capacity to greatly accelerate movement toward energy efficient computer equipment;

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 381 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6361), section 205 of the Federal Property and Administrative Services Act, as amended (40 U.S.C. 486), section 152 of the Energy Policy Act of 1992 (Public Law 102-486), and section 301 of title 3, United States Code, and to ensure the energy efficient operation of the Federal Government's facilities and to encourage the procurement of pollution preventing technologies that will save taxpayer money, reduce the Federal deficit, and accelerate the movement to energy efficient designs in standard computer equipment, it is hereby ordered as follows:

**Section 1. Procurement of Computer Equipment that Meets EPA Energy Star Requirements for Energy Efficiency.** (a) The heads of Federal agencies shall ensure that, within 180 days from the date of this order, all acquisitions of microcomputers, including personal computers, monitors, and printers, meet "EPA Energy Star" requirements for energy efficiency. The heads of Federal agencies may grant, on a case-by-case basis, exemptions to this directive for acquisitions, based upon the commercial availability of qualifying equipment, significant cost differential of the equipment, the agency's performance requirements, and the agency's mission.

(b) Within 180 days from the date of this order, agencies shall specify that microcomputers, including personal computers, monitors, and printers, acquired by the agency shall be equipped with the energy efficient low-power standby feature as defined by the EPA Energy Star computers program. This feature shall be activated when the equipment is shipped and shall be capable of entering and recovering from the low-power state unless the equipment meets Energy Star efficiency levels at all times. To the extent permitted by law, agencies shall include this specification in all existing and future contracts, if both the Government and the contractor agree, and if any additional costs would be offset by the potential energy savings.

(c) Agencies shall ensure that Federal users are made aware of the significant economic and environmental benefits of the energy efficient low-power standby feature and its aggressive use by including this information in routine computer training classes.

(d) Each agency shall report annually to the General Services Administration on acquisitions exempted from the requirements of this Executive order, and the General Services Administration shall prepare a consolidated annual report for the President.

**Sec. 2. Definition.** For purposes of this order, the term “agency” has the same meaning given it in section 151 of the Energy Policy Act of 1992.

**Sec. 3. Judicial Review.** This order does not create any right or benefit, substantive or procedural, enforceable by a non-Federal party against the United States, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*April 21, 1993.*

**No. 12852**

June 29, 1993, 58 F.R. 35841

**President's Council on Sustainable Development**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1. Establishment.** There is established the "President's Council on Sustainable Development" ("Council"). The Council shall consist of not more than 25 members to be appointed by the President from the public and private sectors and who represent industrial, environmental, governmental, and not-for-profit organizations with experience relating to matters of sustainable development. The President shall designate from among the Council members such official or officials to be chairperson, chairpersons, vice-chairperson, or vice-chairpersons of the Council as he shall deem appropriate. The Council shall coordinate with and report to such officials of the executive branch as the President or the Director of the White House Office on Environmental Policy shall from time to time determine.

**Sec. 2. Functions.** (a) The Council shall advise the President on matters involving sustainable development. "Sustainable development" is broadly defined as economic growth that will benefit present and future generations without detrimentally affecting the resources or biological systems of the planet.

(b) The Council shall develop and recommend to the President a national sustainable development action strategy that will foster economic vitality.

(c) The chairperson or chairpersons may, from time to time, invite experts to submit information to the Council and may form subcommittees of the Council to review and report to the Council on the development of national and local sustainable development plans.

**Sec. 3. Administration.** (a) The heads of executive agencies shall, to the extent permitted by law, provide to the Council such information with respect to sustainable development as the Council requires to carry out its functions.

(b) Members of the Council shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707).

(c) The White House Office on Environmental Policy shall obtain funding for the Council from the Department of the Interior or such other sources (including other Federal agencies) as may lawfully contribute to such activities. The funding received shall provide for the administrative and financial support of the Council.

(d) The Office of Administration in the Executive Office of the President shall, on a reimbursable basis, provide such administrative services for the Council as may be required.

**Sec. 4. General.** (a) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Office of Administration in the Executive Office of the President in accord with the guidelines and procedures established by the Administrator of General Services.

(b) The Council shall exist for a period of 2 years from the date of this order, unless the Council's charter is subsequently extended.

(c) Executive Order No. 12737,<sup>1</sup> which established the President's Commission on Environmental Quality, is revoked.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*June 29, 1993.*

1. 42 U.S.C.A. § 4321 nt.

**No. 12855**

July 19, 1993, 58 F.R. 39107

**Amendment to Executive Order No. 12852**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to amend Executive Order No. 12852,<sup>1</sup> it is hereby ordered that Executive Order No. 12852 is amended by deleting the text of Section 3(d) of that order and inserting in lieu thereof the following text: "The Department of the Interior shall, on a reimbursable basis, provide such administrative services for the Council as may be required" and by deleting the words "Office of Administration in the Executive Office of the President" in Section 4 of that order and inserting the "Department of the Interior" in lieu thereof.

WILLIAM J. CLINTON

THE WHITE HOUSE,

*July 19, 1993.*

1. 1993 U.S. Code Cong. & Adm. News Bd. Vol. page B50.

**No. 12856**

August 3, 1993, 58 F.R. 41981

**Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements**

WHEREAS, the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) (EPCRA) established programs to provide the public with important information on the hazardous and toxic chemicals in their communities, and established emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances;

WHEREAS, the Federal Government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals;

WHEREAS, the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) (PPA) established that it is the national policy of the United States that, whenever feasible, pollution should be prevented or reduced at the source; that pollution that cannot be prevented should be recycled in an environmentally safe manner; that pollution that cannot be prevented or recycled should be treated in an environmentally safe manner; and that disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner;

WHEREAS, the PPA required the Administrator of the Environmental Protection Agency (EPA) to promote source reduction practices in other agencies;

WHEREAS, the Federal Government should become a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies;

WHEREAS, the environmental, energy, and economic benefits of energy and water use reductions are very significant; the scope of innovative pollution prevention programs must be broad to adequately address the highest-risk environmental problems and to take full advantage of technological opportunities in sectors other than industrial manufacturing; the Energy Policy Act of 1992 (Public Law 102-486 of October 24, 1992) requires the Secretary of Energy to work with other Federal agencies to significantly reduce the use of energy and reduce the related environmental impacts by promoting use of energy efficiency and renewable energy technologies; and

WHEREAS, as the largest single consumer in the Nation, the Federal Government has the opportunity to realize significant economic as well as environmental benefits of pollution prevention;

**AND IN ORDER TO:**

Ensure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated or disposed of in a manner protective of public health and the environment; require Federal agencies to report in a public manner toxic chemicals entering any wastestream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification; and help

encourage markets for clean technologies and safe alternatives to extremely hazardous substances or toxic chemicals through revisions to specifications and standards, the acquisition and procurement process, and the testing of innovative pollution prevention technologies at Federal facilities or in acquisitions;

NOW THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the EPCRA, the PPA, and section 301 of title 5, United States Code, it is hereby ordered as follows:

**Section 1. Applicability.**

1-101. As delineated below, the head of each Federal agency is responsible for ensuring that all necessary actions are taken for the prevention of pollution with respect to that agency's activities and facilities, and for ensuring that agency's compliance with pollution prevention and emergency planning and community right-to-know provisions established pursuant to all implementing regulations issued pursuant to EPCRA and PPA.

1-102. Except as otherwise noted, this order is applicable to all Federal agencies that either own or operate a "facility" as that term is defined in section 329(4) of EPCRA, if such facility meets the threshold requirements set forth in EPCRA for compliance as modified by section 3-304(b) of this order ("covered facilities"). Except as provided in section 1-103 and section 1-104 below, each Federal agency must apply all of the provisions of this order to each of its covered facilities, including those facilities which are subject, independent of this order, to the provisions of EPCRA and PPA (e.g., certain Government-owned/contractor-operated facilities (GOCO's), for chemicals meeting EPCRA thresholds). This order does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad.

1-103. Nothing in this order alters the obligations which GOCO's and Government corporation facilities have under EPCRA and PPA independent of this order or subjects such facilities to EPCRA or PPA if they are otherwise excluded. However, consistent with section 1-104 below, each Federal agency shall include the releases and transfers from all such facilities when meeting all of the Federal agency's responsibilities under this order.

1-104. To facilitate compliance with this order, each Federal agency shall provide, in all future contracts between the agency and its relevant contractors, for the contractor to supply to the Federal agency all information the Federal agency deems necessary for it to comply with this order. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, Federal agencies shall take practical steps to obtain the information needed to comply with this order from such contractors.

**Sec. 2-2. Definitions.**

2-201. All definitions found in EPCRA and PPA and implementing regulations are incorporated in this order by reference, with the following exception: for the purposes of this order, the term "person", as defined in section 329(7) of EPCRA, also includes Federal agencies.

2-202. *Federal agency* means an Executive agency, as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-203. *Pollution Prevention* means "source reduction," as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

2-204. *GOCO* means a Government-owned/contractor-operated facility which is owned by the Federal Government but all or portions of which are operated by private contractors.

2-205. *Administrator* means the Administrator of the EPA.

2-206. *Toxic Chemical* means a substance on the list described in section 313(c) of EPCRA.

2-207. *Toxic Pollutants*. For the purposes of section 3-302(a) of this order, the term “toxic pollutants” shall include, but is not necessarily limited to, those chemicals at a Federal facility subject to the provisions of section 313 of EPCRA as of December 1, 1993. Federal agencies also may choose to include releases and transfers of other chemicals, such as “extremely hazardous chemicals” as defined in section 329(3) of EPCRA, hazardous wastes as defined under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6986) (RCRA), or hazardous air pollutants under the Clean Air Act Amendments (42 U.S.C. 7403-7626); however, for the purposes of establishing the agency's baseline under 3-302(c), such “other chemicals” are in addition to (not instead of) the section 313 chemicals. The term “toxic pollutants” does not include hazardous waste subject to remedial action generated prior to the date of this order.

### **Sec. 3-3. Implementation.**

3-301. *Federal Agency Strategy*. Within 12 months of the date of this order, the head of each Federal agency must develop a written pollution prevention strategy to achieve the requirements specified in sections 3-302 through 3-305 of this order for that agency. A copy thereof shall be provided to the Administrator. Federal agencies are encouraged to involve the public in developing the required strategies under this order and in monitoring their subsequent progress in meeting the requirements of this order. The strategy shall include, but shall not be limited to, the following elements:

(a) A pollution prevention policy statement, developed by each Federal agency, designating principal responsibilities for development, implementation, and evaluation of the strategy. The statement shall reflect the Federal agency's commitment to incorporate pollution prevention through source reduction in facility management and acquisition, and it shall identify an individual responsible for coordinating the Federal agency's efforts in this area.

(b) A commitment to utilize pollution prevention through source reduction, where practicable, as the primary means of achieving and maintaining compliance with all applicable Federal, State, and local environmental requirements.

3-302. *Toxic Chemical Reduction Goals*. (a) The head of each Federal agency subject to this order shall ensure that the agency develops voluntary goals to reduce the agency's total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal from facilities covered by this order by 50 percent by December 31, 1999. To the maximum extent practicable, such reductions shall be achieved by implementation of source reduction practices.

(b) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal for each Federal agency shall be the first year in which releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic chemicals reported in the baseline year for all of that Federal agency's facilities meeting the threshold applicability requirements set forth in section 1-102 of this order. In no event shall the baseline be later than the 1994 reporting year.

(c) Alternatively, a Federal agency may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the Federal agency shall delineate the scope of its reduction program in the written pollution prevention strategy that is required by section

3-301 of this order. The baseline for measuring reductions for purposes of achieving the 50 percent reduction requirement for each Federal agency shall be the first year in which releases of toxic pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that Federal agency's facilities encompassed by section 3-301. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the agency in the baseline year. For any toxic pollutants included by the agency in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the agency shall report on such toxic pollutants annually under the provisions of section 3-304 of this order, if practicable, or through an agency report that is made available to the public.

(d) The head of each Federal agency shall ensure that each of its covered facilities develops a written pollution prevention plan no later than the end of 1995, which sets forth the facility's contribution to the goal established in section 3-302(a) of this order. Federal agencies shall conduct assessments of their facilities as necessary to ensure development of such plans and of the facilities' pollution prevention programs.

3-303. *Acquisition and Procurement Goals.* (a) Each Federal agency shall establish a plan and goals for eliminating or reducing the unnecessary acquisition by that agency of products containing extremely hazardous substances or toxic chemicals. Similarly, each Federal agency shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. Priorities shall be developed by Federal agencies, in coordination with EPA, for implementing this section.

(b) Within 24 months of the date of this order, the Department of Defense (DOD) and the General Services Administration (GSA), and other agencies, as appropriate, shall review their agency's standardized documents, including specifications and standards, and identify opportunities to eliminate or reduce the use by their agency of extremely hazardous substances and toxic chemicals, consistent with the safety and reliability requirements of their agency mission. The EPA shall assist agencies in meeting the requirements of this section, including identifying substitutes and setting priorities for these reviews. By 1999, DOD, GSA and other affected agencies shall make all appropriate revisions to these specifications and standards.

(c) Any revisions to the Federal Acquisition Regulation (FAR) necessary to implement this order shall be made within 24 months of the date of this order.

(d) Federal agencies are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, Government laboratories, academia, and others to assess and deploy innovative environmental technologies for domestic use and for markets abroad.

3-304. *Toxics Release Inventory/Pollution Prevention Act Reporting.* (a) The head of each Federal agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA.

(b) The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases, transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in section 3-304(a) of this order.

(c) The first year of compliance shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

3-305. *Emergency Planning and Community Right-to-Know Reporting Responsibilities.* The head of each Federal agency shall comply with the provisions set forth in sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of any applicable guidance as provided by EPA. Effective dates for compliance shall be: (a) With respect to the provisions of section 302 of EPCRA, emergency planning notification shall be made no later than 7 months after the date of this order.

(b) With respect to the provisions of section 303 of EPCRA, all information necessary for the applicable Local Emergency Planning Committee (LEPC's) to prepare or revise local Emergency Response Plans shall be provided no later than 1 year after the date of this order.

(c) To the extent that a facility is required to maintain Material Safety Data Sheets under any provisions of law or Executive order, information required under section 311 of EPCRA shall be submitted no later than 1 year after the date of this order, and the first year of compliance with section 312 shall be no later than the 1994 calendar year, with reports due on or before March 1, 1995.

(d) The provisions of section 304 of EPCRA shall be effective beginning January 1, 1994.

(e) These compliance dates are not intended to delay implementation of earlier timetables already agreed to by Federal agencies and are inapplicable to the extent they interfere with those timetables.

**Sec. 4-4. Agency Coordination.**

4-401. By February 1, 1994, the Administrator shall convene an Interagency Task Force composed of the Administrator, the Secretaries of Commerce, Defense, and Energy, the Administrator of General Services, the Administrator of the Office of Procurement Policy in the Office of Management and Budget, and such other agency officials as deemed appropriate based upon lists of potential participants submitted to the Administrator pursuant to this section by the agency head. Each agency head may designate other senior agency officials to act in his/her stead, where appropriate. The Task Force will assist the agency heads in the implementation of the activities required under this order.

4-402. Federal agencies subject to the requirements of this order shall submit annual progress reports to the Administrator beginning on October 1, 1995. These reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including the pollution reductions requirements. This reporting requirement shall expire after the report due on October 1, 2001.

4-403. *Technical Advice.* Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to foster full compliance with this order. In addition, to the extent practicable, all Federal agencies subject to this order shall provide technical assistance, if requested, to LEPC's in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities.

4-404. Federal agencies shall place high priority on obtaining funding and resources needed for implementing all aspects of this order, including the pollution prevention strategies, plans, and assessments required by this order, by identifying, requesting, and allocating funds through line-item or direct funding requests. Federal agencies shall make such requests as required in the Federal Agency Pollution Prevention and Abatement Planning Process and through agency budget requests as outlined in Office of Management and Budget (OMB) Circulars A-106 and A-11, respectively. Federal agencies

should apply, to the maximum extent practicable, a life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this order.

4-405. *Federal Government Environmental Challenge Program.* The Administrator shall establish a "Federal Government Environmental Challenge Program" to recognize outstanding environmental management performance in Federal agencies and facilities. The program shall consist of two components that challenge Federal agencies; (a) to agree to a code of environmental principles to be developed by EPA, in cooperation with other agencies, that emphasizes pollution prevention, sustainable development and state-of-the-art environmental management programs, and (b) to submit applications to EPA for individual Federal agency facilities for recognition as "Model Installations." The program shall also include a means for recognizing individual Federal employees who demonstrate outstanding leadership in pollution prevention.

**Sec. 5-5. Compliance.**

5-501. By December 31, 1993, the head of each Federal agency shall provide the Administrator with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and this order.

5-502. The head of each Federal agency is responsible for ensuring that such agency take all necessary actions to prevent pollution in accordance with this order, and for that agency's compliance with the provisions of EPCRA and PPA. Compliance with EPCRA and PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person. Nothing in this order shall be construed as making the provisions of sections 325 and 326 of EPCRA applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provisions. EPA shall consult with Federal agencies, if requested, to determine the applicability of this order to particular agency facilities.

5-503. Each Federal agency subject to this order shall conduct internal reviews and audits, and take such other steps, as may be necessary to monitor compliance with sections 3-304 and 3-305 of this order.

5-504. The Administrator, in consultation with the heads of Federal agencies, may conduct such reviews and inspections as may be necessary to monitor compliance with sections 3-304 and 3-305 of this order. Except as excluded under section 6-601 of this order, all Federal agencies are encouraged to cooperate fully with the efforts of the Administrator to ensure compliance with sections 3-304 and 3-305 of this order.

5-505. Federal agencies are further encouraged to comply with all state and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

5-506. Whenever the Administrator notifies a Federal agency that it is not in compliance with an applicable provision of this order, the Federal agency shall achieve compliance as promptly as is practicable.

5-507. The EPA shall report annually to the President on Federal agency compliance with the provisions of section 3-304 of this order.

5-508. To the extent permitted by law and unless such documentation is withheld pursuant to section 6-601 of this order, the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under this order by the agency preparing the strategy, plan, or report. When the reports are submitted to EPA, EPA shall compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public.

**Sec. 6-6. Exemption.**

6-601. In the interest of national security, the head of a Federal agency may request from the President an exemption from complying with the provisions of any or all aspects of this order for particular Federal agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed. To the maximum extent practicable, and without compromising national security, all Federal agencies shall strive to comply with the purposes, goals, and implementation steps set forth in this order.

**Sec. 7-7. General Provisions.**

7-701. Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*August 3, 1993.*

**No. 12866**

September 30, 1993, 58 F.R. 51735

**Regulatory Planning and Review**

The American people deserve a regulatory system that works for them, not against them; a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies. Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. Statement of Regulatory Philosophy and Principles.** (a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user

fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive, impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

**Sec. 2. Organization.** An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people:

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency.

The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

**Sec. 3. Definitions.** For purposes of this Executive order: (a) “Advisors” refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) “Agency,” unless otherwise indicated, means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) “Director” means the Director of OMB.

(d) “Regulation” or “rule” means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) “Regulatory action” means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

**Sec. 4. Planning Mechanism.** In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) *Agencies' Policy Meeting.* Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information, required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences.* The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

**Sec. 5. Existing Regulations.** In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive

order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

**Sec. 6. Centralized Review of Regulations.** The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA

may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably-feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to a agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

**Sec. 7. Resolution of Conflicts.** To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents. Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested. During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

**Sec. 8. Publication.** Except to the extent required by law, an agency shall not publish in the **Federal Register** or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

**Sec. 9. Agency Authority.** Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

**Sec. 10. Judicial Review.** Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

**Sec. 11. Revocations.** Executive Orders Nos. 12291 and 12498;<sup>1</sup> all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*September 30, 1993.*

1. 5 U.S.C.A. § 601 nt.

**No. 12869**

September 30, 1993, 58 F.R. 51751

**Continuance of Certain Federal Advisory Committees**

By the authority vested in me as President by the Constitution and laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.C.S. App.), it is hereby ordered as follows:

**Section 1.** Each advisory committee listed below is continued until September 30, 1995:

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior):

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**Sec. 3.** Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in sections 1 and 2 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

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WILLIAM J. CLINTON

THE WHITE HOUSE,  
*September 30, 1993.*

**No. 12873**

October 20, 1993, 58 F.R. 54911

**Federal Acquisition, Recycling, and Waste Prevention**

WHEREAS, the Nation's interest is served when the Federal Government can make more efficient use of natural resources by maximizing recycling and preventing waste wherever possible;

WHEREAS, this Administration is determined to strengthen the role of the Federal Government as an enlightened, environmentally conscious and concerned consumer;

WHEREAS, the Federal Government should—through cost-effective waste prevention and recycling activities—work to conserve disposal capacity, and serve as a model in this regard for private and other public institutions; and

WHEREAS, the use of recycled and environmentally preferable products and services by the Federal Government can spur private sector development of new technologies and use of such products, thereby creating business and employment opportunities and enhancing regional and local economies and the national economy;

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act ("RCRA"), Public Law 94-580, 90 Stat. 2795 as amended (42 U.S.C. 6901-6907), and section 301 of title 3, United States Code, hereby order as follows:

**PART 1—PREAMBLE**

**Section 101.** Consistent with the demands of efficiency and cost effectiveness; the head of each Executive agency shall incorporate waste prevention and recycling in the agency's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products.

**Sec. 102.** Consistent with policies established by Office of Federal Procurement Policy ("OFPP") Policy Letter 92-4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

**Sec. 103.** This order creates a Federal Environmental Executive and establishes high-level Environmental Executive positions within each agency to be responsible for expediting the implementation of this order and statutes that pertain to this order.

**PART 2—DEFINITIONS**

For purposes of this order:

**Sec. 201.** "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

**Sec. 202.** "Executive agency" or "agency" means an Executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

**Sec. 203.** "Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed

its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material".

**Sec. 204.** "Acquisition" means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**Sec. 205.** "Recovered materials" means waste materials and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

**Sec. 206.** "Recyclability" means the ability of a product or material be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

**Sec. 207.** "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

**Sec. 208.** "Waste prevention," also known as "source reduction," means any change in the design, manufacturing, purchase or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

**Sec. 209.** "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

**Sec. 210.** "Life Cycle Cost" means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs and disposal costs discounted over the lifetime of the product.

**Sec. 211.** "Life Cycle Analysis" means the comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

### **PART 3—THE ROLE OF THE FEDERAL ENVIRONMENTAL EXECUTIVE AND AGENCY ENVIRONMENTAL EXECUTIVES**

**Sec. 301. Federal Environmental Executive.** (a) A Federal Environmental Executive shall be designated by the President and shall be located within the Environmental Protection Agency ("EPA"). The Federal Environmental Executive shall take all actions necessary to ensure that the agencies comply with the requirements of this order and shall generate an annual report to the Office of Management and Budget ("OMB"), at the time of agency budget submissions, on the actions taken by the agencies to comply with the requirements of this order. In carrying out his or her functions, the Federal Environmental Executive shall consult with the Director of the White House Office on Environmental Policy.

(b) *Staffing.* A minimum of four (4) full time staff persons are to be provided by the agencies listed below to assist the Federal Environmental Executive, one of whom shall have experience in specification review and program requirements, one of whom shall have experience in procurement practices, and one of whom shall have experience in solid waste prevention and recycling. These four staff persons shall be appointed and replaced as follows:

(1) a representative from the Department of Defense shall be detailed for not less than one year and no more than two years;

(2) a representative from the General Services Administration ("GSA") shall be detailed for not less than one year and no more than two years;

(3) a representative from EPA shall be detailed for not less than one year and no more than two years; and

(4) a representative from one other agency determined by the Federal Environmental Executive shall be detailed on a rotational basis for not more than one year.

(c) *Administration.* Agencies are requested to make their services, personnel and facilities available to the Federal Environmental Executive to the maximum extent practicable for the performance of functions under this order.

(d) *Committees and Work Groups.* The Federal Environmental Executive shall establish committees and work groups to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the Federal Environmental Executive. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, waste prevention, and recycling, and others as needed to staff and work on the initiatives of the Executive.

(e) *Duties.* The Federal Environmental Executive, in consultation with the Agency Environmental Executives, shall:

(1) identify and recommend initiatives for government-wide implementation that will promote the purposes of this order, including:

(A) the development of a federal plan for agency implementation of this order and appropriate incentives to encourage the acquisition of recycled and environmentally preferable products by the Federal Government;

(B) the development of a federal implementation plan and guidance for instituting economically efficient federal waste prevention, energy and water efficiency programs, and recycling programs within each agency; and

(C) the development of a plan for making maximum use of available funding assistance programs;

(2) collect and disseminate information electronically concerning methods to reduce waste, materials that can be recycled, costs and savings associated with waste prevention and recycling, and current market sources of products that are environmentally preferable or produced with recovered materials;

(3) provide guidance and assistance to the agencies in setting up and reporting on agency programs and monitoring their effectiveness; and

(4) coordinate appropriate government-wide education and training programs for agencies.

**Sec. 302. Agency Environmental Executives.** Within 90 days after the effective date of this order, the head of each Executive department and major procuring agency shall designate an Agency Environmental Executive from among his or her staff, who serves at a level no lower than at the Deputy Assistant Secretary level or equivalent. The Agency Environmental Executive will be responsible for:

(a) coordinating all environmental programs in the areas of procurement and acquisition, standards and specification review, facilities management, waste prevention and recycling, and logistics;

(b) participating in the interagency development of a Federal plan to:

(1) create an awareness and outreach program for the private sector to facilitate markets for environmentally preferable and recycled products and services, promote new technologies, improve awareness about federal efforts in this area, and expedite agency efforts to procure new products identified under this order;

- (2) establish incentives, provide guidance and coordinate appropriate educational programs for agency employees; and
- (3) coordinate the development of standard agency reports required by this order;
- (c) reviewing agency programs and acquisitions to ensure compliance with this order.

#### **PART 4—ACQUISITION PLANNING AND AFFIRMATIVE PROCUREMENT PROGRAMS**

**Sec. 401. Acquisition Planning.** In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider the following factors: elimination of virgin material requirements; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal, as appropriate. These factors should be considered in acquisition planning for all procurements and is the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

**Sec. 402. Affirmative Procurement Programs.** The head of each Executive agency shall develop and implement affirmative procurement programs in accordance with RCRA section 6002 (42 U.S.C. 6962) and this order. Agencies shall ensure that responsibilities for preparation, implementation and monitoring of affirmative procurement programs are shared between the program personnel and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other Federal agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance and availability considerations, and shall adjust bid solicitation guidelines as necessary in order to accomplish this goal.

(a) Agencies shall establish affirmative procurement programs for all designated EPA guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within one year from the date EPA designated the new items.

(b) For the currently designated EPA guideline items, which are: (i) concrete and cement containing fly ash; (ii) recycled paper products; (iii) re-refined lubricating oil; (iv) retread tires; and (v) insulation containing recovered materials; and for all future guideline items, agencies shall ensure that their affirmative procurement programs require that 100 percent of their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

(c) The Agency Environmental Executives will track agencies' purchases of designated EPA guideline items and report agencies' purchases of such guideline items to the Federal Environmental Executive. Agency Environmental Executives will be required to justify to the Federal Environmental Executive as to why the item(s) have not been purchased or submit a plan for how the agencies intend to increase their purchases of the designated item(s).

(d) Agency affirmative procurement programs, to the maximum extent practicable, shall encourage that:

- (1) documents be transferred electronically,
- (2) all government documents printed internally be printed double-sided, and
- (3) contracts, grants, and cooperative agreements issued after the effective date of this order include provisions that require documents to be printed double-sided on recycled paper meeting or exceeding the standards established in this order or in future EPA guidelines.























available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

**Sec. 5-5. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION.** (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

**Sec. 6-6. GENERAL PROVISIONS.**

**6-601. Responsibility for Agency Implementation.** The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

**6-602. Executive Order No. 12250.** This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

**6-603. Executive Order No. 12875.** This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

**6-604. Scope.** For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

**6-605. Petitions for Exemptions.** The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

**6-606. Native American Programs.** Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

**6-607. Costs.** Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

**6-608. General.** Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

**6-609.** *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*February 11, 1994.*

**No. 12902**

March 8, 1994, 59 F.R. 11463

**Energy Efficiency and Water Conservation at Federal Facilities**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat. 871, 42 U.S.C. 6201 *et seq.*) as amended by the Energy Policy Act of 1992 (Public Law 102-486, 106 Stat. 2776) and section 301 of title 3, United States Code, I hereby order as follows:

**PART 1—DEFINITIONS**

For the purposes of this order:

**Section 101.** The “Act” means the Federal energy management provisions of the Energy Policy and Conservation Act, as amended by the Energy Policy Act of 1992.

**Sec. 102.** The term “comprehensive facility audit” means a survey of a building or facility that provides sufficiently detailed information to allow an agency to enter into energy or water savings performance contracts or to invite inspection and bids by private upgrade specialists for direct agency-funded energy or water efficiency investments. It shall include information such as the following:

(a) the type size, energy use, and performance of the major energy using systems and their interaction with the building envelope, the climate and weather influences, usage patterns, and related environmental concerns;

(b) appropriate energy and water conservation maintenance and operating procedures;

(c) recommendations for the acquisition and installation of energy conservation measures including solar and other renewable energy and water conservation measures; and

(d) a strategy to implement the recommendations.

**Sec. 103.** The term “cost-effective” means providing a payback period of less than 10 years, as determined by using the methods and procedures developed pursuant to 42 U.S.C. 8254 and 10 CFR 436.

**Sec. 104.** The term “demand side management” refers to utility-sponsored programs that increase energy efficiency and water conservation or the management of demand. The term includes load management techniques.

**Sec. 105.** The term “energy savings performance contracts” means contracts that provide for the performance of services for the audit, design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair of an identified energy or water conservation measure or series of measures at one or more locations.

**Sec. 106.** The term “agency” means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

**Sec. 107.** The term “Federal building” means any individual building, structure, or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government and which consumes energy or water. In any provision of this order, the term “Federal building” shall also include any building leased in whole or in part for use by the Federal Government where the term of the lease exceeds 5 years and the lease does not prohibit implementation of the provision in question.

**Sec. 108.** The term “Federal facility” means any building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation. In any provision of this order, the term “Federal facility” shall also include any building leased in whole or in part for use by the Federal Government where the term of the lease exceeds 5 years and the lease does not prohibit implementation of the provision in question.

**Sec. 109.** The term “franchising” means that an agency would provide the services of its employees to other agencies on a reimbursable basis.

**Sec. 110.** The term “gainsharing” refers to incentive systems that allocate some portion of savings resulting from gains in productivity to the workers who produce those gains.

**Sec. 111.** The term “industrial facilities” means any fixed equipment, building, or complex for the production of goods that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the hot water energy load requirements of the building.

**Sec. 112.** The term “life cycle cost” refers to life cycle cost calculated pursuant to the methodology established by 10 CFR 436.11.

**Sec. 113.** The term “prioritization survey” means a rapid assessment that will be used by an agency to identify those facilities with the highest priority projects based on the degree of cost effectiveness and to schedule comprehensive facility audits prior to project implementation. The prioritization survey shall include information such as the following:

(a) the type, size, energy and water use levels of the major energy and water using systems in place at the facility; and

(b) the need, if any, for acquisition and installation of cost-effective energy and water conservation measures, including solar and other renewable energy resource measures.

**Sec. 114.** The term “shared energy savings contract” refers to a contract under which the contractor incurs the cost of implementing energy savings measures (including, but not limited to, performing the audit, designing the project, acquiring and installing equipment, training personnel, and operating and maintaining equipment) and in exchange for providing these services, the contractor gains a share of any energy cost savings directly resulting from implementation of such measures during the term of the contract.

**Sec. 115.** The term “solar and other renewable energy sources” includes, but is not limited to, agriculture and urban waste, geothermal energy, solar energy, and wind energy.

**Sec. 116.** The term “utility” means any person, State, or agency that is engaged in the business of producing or selling electricity or engaged in the local distribution of natural gas or water to any ultimate consumer.

## **PART 2—INTERAGENCY COORDINATION**

**Sec. 201. Interagency Coordination.** The Department of Energy (“DOE”) shall take the lead in implementing this order through the Federal Energy Management Program (“FEMP”). The Interagency Energy Policy Committee (“656 Committee”) and the Interagency Energy Management Task Force (“Task Force”) shall serve as forums to

coordinate issues involved in implementing energy efficiency, water conservation, and solar and other renewable energy the Federal sector.

### **PART 3—AGENCY GOALS AND REPORTING REQUIREMENTS FOR ENERGY AND WATER EFFICIENCY IN FEDERAL FACILITIES**

**Sec. 301. Energy Consumption Reduction Goals.** (a) Each agency shall develop and implement a program with the intent of reducing energy consumption by 30 percent by the year 2005, based on energy consumption per-gross-square-foot of its buildings in use, to the extent that these measures are cost-effective. The 30 percent reductions shall be measured relative to the agency's 1985 energy use. Each agency's implementation program shall be designed to speed the introduction of cost-effective, energy-efficient technologies into Federal facilities, and to meet the goals and requirements of the Act and this order.

(b) Each agency shall develop and implement a program for its industrial facilities in the aggregate with the intent of increasing energy efficiency by at least 20 percent by the year 2005 as compared to the 1990 benchmark, to the extent these measures are cost-effective, and shall implement all cost-effective water conservation projects. DOE, in coordination with the 656 Committee, shall establish definitions and appropriate indicators of energy and water efficiency, and energy and water consumption and costs, in Federal industrial facilities for the purpose of establishing a base year of 1990.

**Sec. 302. Energy and Water Surveys and Audits of Federal Facilities.** (a) *Prioritization Survey.* Each agency responsible for managing Federal facilities shall conduct a prioritization survey, within 18 months of the date of this order, on each of the facilities the agency manages. The surveys shall be used to establish priorities for conducting comprehensive facility audits.

(b) *Comprehensive Facility Audits.* Each agency shall develop and begin implementing a 10-year plan to conduct or obtain comprehensive facility audits, based on prioritization surveys performed under section 302(a) of this order.

(1) Implementation of the plan shall ensure that comprehensive facility audits of approximately 10 percent of the agency's facilities are completed each year. Agencies responsible for managing less than 100 Federal facilities shall plan and execute approximately 10 comprehensive facility audits per year until all facilities have been audited.

(2) Comprehensive audits of facilities performed within the last 3 years may be considered current for the purposes of implementation.

(3) "No-cost" audits, such as those outlined in section 501(c) of this order, shall be utilized to the extent practicable.

(c) *Exempt Facilities.* Because the mission within facilities exempt from the energy and water reduction requirements under the Act may not allow energy efficiency and water conservation in certain operations, actions shall be taken to reduce all other energy and water waste using the procedures described in the Act and this order. Each agency shall develop and implement a plan to improve energy and water efficiency in such exempt facilities. The prioritization surveys are intended to allow agencies to refine their designation of facilities as "exempt" or "industrial," so that only individual buildings in which industrial or energy-intensive operations are conducted remain designated as "exempt" or "industrial." Within 21 months of the date of this order, each agency shall report to FEMP and to the Office of Management and Budget ("OMB") the redesignations that the agency is making as a result of the prioritization surveys. Agencies may seek exemptions for their facilities pursuant to the Energy Policy and Conservation Act, as amended.

(d) *Leased Facilities.* Agencies shall conduct surveys and audits of leased facilities to the extent practicable and to the extent that the recommendations of such surveys and audits could be implemented under the terms of the lease.

**Sec. 303. Implementation of Energy Efficiency and Water Conservation Projects.** (a) *Implementation of New Audit Recommendations.* Within 1 year of the date of this order, agencies shall identify, based on preliminary recommendations from the prioritization surveys required under section 302 of this order, high priority facilities to audit and shall complete the first 10 percent of the required comprehensive facility audits. Within 180 days of the completion of the comprehensive facility audit of each facility, agencies shall begin implementing cost-effective recommendations for installation of energy efficiency, water conservation, and renewable energy technologies for that facility.

(b) *Implementation of Existing Audits.* Within 180 days of the date of this order, agencies shall begin to implement cost-effective recommendations from comprehensive audits of facilities performed within the past 3 years, for installation of energy efficiency, water conservation, and renewable energy technologies.

**Sec. 304. Solar and Other Renewable Energy.** The goal of the Federal Government is to significantly increase the use of solar and other renewable energy sources. DOE shall develop a program for achieving this goal cost-effectively and, within 210 days of the date of this order, submit the program to the 656 Committee for review. DOE shall lead the effort to assist agencies in meeting this goal.

**Sec. 305. Minimization of Petroleum-Based Fuel Use in Federal Buildings and Facilities.** All agencies shall develop and implement programs to reduce the use of petroleum in their buildings and facilities by switching to a less-polluting and nonpetroleum-based energy source, such as natural gas or solar and other renewable energy sources. Where alternative fuels are not practical or cost-effective, agencies shall strive to improve the efficiency with which they use the petroleum. Each agency shall survey its buildings and facilities that utilize petroleum-based fuel systems to determine where the potential for a dual-fuel capability exists and shall provide dual-fuel capability where cost-effective and practicable.

**Sec. 306. New Space.** (a) *New Federal Facility Construction.* Each agency involved in the construction of a new facility that is to be either owned by or leased to the Federal Government shall:

(1) design and construct such facility to minimize the life cycle cost of the facility by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies;

(2) ensure that the design and construction of facilities meet or exceed the energy performance standards applicable to Federal residential or commercial buildings as set forth in 10 CFR 435, local building standards, or a Btu-per-gross-square-foot ceiling as determined by the Task Force within 120 days of the date of this order, whichever will result in a lower life cycle cost over the life of the facility;

(3) establish and implement, within 270 days of the date of this order, a facility commissioning program that will ensure that the construction of such facilities meets the requirements outlined in this section before the facility is accepted into the Federal facility inventory; and

(4) utilize passive solar design and adopt active solar technologies where they are cost-effective.

(b) *New Leases For Existing Facilities.* To the extent practicable and permitted by law, agencies entering into leases, including the renegotiation or extension of existing leases, shall identify the energy and water consumption of those facilities and seek to incorporate provisions into each lease that minimize the cost of energy and water under a

life cycle analysis, while maintaining or improving occupant health and safety. These requirements may include renovation of proposed space prior to or within the first year of each lease. Responsible agencies shall seek to negotiate the cost of the lease, taking into account the reduced energy and water costs during the term of the lease.

(c) *Government-Owned Contractor-Operated Facilities.* All Government-owned contractor-operated facilities shall comply with the goals and requirements of this order. Energy and water management goals shall be incorporated into their management contracts.

**Sec. 307. Showcase Facilities.** (a) *New Building Showcases.* When an agency constructs at least five buildings in a year, it shall designate at least one building, at the earliest stage of development, to be a showcase highlighting advanced technologies and practices for energy efficiency, water conservation, or use of solar and other renewable energy.

(b) *Demonstrations in Existing Facilities.* Each agency shall designate one of its major buildings to become a showcase to highlight energy or water efficiency and also shall attempt to incorporate cogeneration, solar and other renewable energy technologies, and indoor air quality improvements. Selection of such buildings shall be based on considerations such as the level of nonfederal visitors, historic significance, and the likelihood that visitors will learn from displays and implement similar projects. Within 180 days of the date of this order, each agency shall develop and implement plans and work in cooperation with DOE and, where appropriate, in consultation with the General Services Administration (“GSA”), the Environmental Protection Agency (“EPA”) and other appropriate agencies, to determine the most effective and cost-effective strategies to implement these demonstrations.

**Sec. 308. Annual Reporting Requirements.** (a) As required under the Act, the head of each agency shall report annually to the Secretary of Energy and OMB, in a format specified by the Secretary and OMB after consulting with the 656 Committee. The report shall describe the agency's progress in achieving the goals of this order.

(b) The Secretary of Energy shall report to the President and the Congress annually on the implementation of this order. The report should provide information on energy and water use and cost data and shall provide the greatest level of detail practicable for buildings and facilities by energy source.

**Sec. 309. Report on Full Fuel Cycle Analysis.** DOE shall prepare a report on the issues involved in instituting life cycle analysis for Federal energy and product purchases that address the full fuel cycle costs, including issues concerning energy exploration, development, processing, transportation storage, distribution, consumption, and disposal, and related impacts on the environment. The report shall examine methods for conducting life cycle analysis and implementing such analysis in the Federal sector and shall make appropriate recommendations. The report shall be forwarded to the President for review.

**Sec. 310. Agency Accountability.** One year after the date of this order, and every 2 years thereafter, the President's Management Council shall report to the President about efforts and actions by agencies to meet the requirements of this order. In addition, each agency head shall designate a senior official, at the Assistant Secretary level or above, to be responsible for achieving the requirements of this order and shall appoint such official to the 656 Committee. The 656 Committee shall also work to ensure the implementation of this order. The agency senior official and the 656 Committee shall coordinate implementation with the Federal Environmental Executive and Agency Environmental Executives established under Executive Order No. 12873.

**PART 4—USE OF INNOVATIVE FINANCING AND CONTRACTUAL MECHANISMS**

**Sec. 401. Financing Mechanisms.** In addition to available appropriations, agencies shall utilize innovative financing and contractual mechanisms, including, but not limited to, utility demand side management programs, shared energy savings contracts, and energy savings performance contracts, to meet the goals and requirements of the Act and this order.

**Sec. 402. Workshop for Agencies.** Within a reasonable time of the date of this order, the Director of OMB, or his or her designee, and the Task Force shall host a workshop for agencies regarding financing and contracting for energy efficiency, water efficiency, and renewable technology projects. Based on the results of that meeting, the Administrator, Office of Procurement Policy (“OFPP”), shall assist the Administrator of General Services and the Secretary of Energy in eliminating unnecessary regulatory and procedural barriers that slow the utilization of such audit, financing, and contractual mechanisms or complicate their use. All actions that are cost-effective shall be implemented through the process required in section 403 of this order.

**Sec. 403. Elimination of Barriers.** Agency heads shall work with their procurement officials to identify and eliminate internal regulations, procedures, or other barriers to implementation of the Act and this order. DOE shall develop a model set of recommendations that will be forwarded to the Administrator of OFPP in order to assist agencies in eliminating the identified barriers.

**PART 5—TECHNICAL ASSISTANCE, INCENTIVES, AND AWARENESS**

**Sec. 501. Technical Assistance.** (a) To assist Federal energy managers in implementing energy efficiency and water conservation projects, DOE shall, within 180 days of the date of this order, develop and make available through the Task Force:

(1) guidance explaining the relationship between water use and energy consumption and the energy savings achieved through water conservation measures;

(2) a model solicitation and implementation guide for innovative funding mechanisms referenced in section 401 of this order;

(3) a national list of companies providing water services in addition to the list of qualified energy service companies as required by the Act;

(4) the capabilities and technologies available through the national energy laboratories; and

(5) an annually-updated guidance manual for Federal energy managers that includes, at a minimum, new sample contracts or contract provisions, position descriptions, case studies, recent guidance, and success stories.

(b) The Secretary of Energy, in coordination with the Administrator of General Services, shall make available through the Task Force, within 180 days of the date of this order:

(1) the national list of qualified water and energy efficiency contractors for inclusion on a Federal schedule; and

(2) a model provision on energy efficiency and water conservation, for inclusion in new leasing contracts.

(c) Within 180 days of the date of this order, the Administrator of General Services shall:

(1) contact each utility that has an area-wide contract with GSA to determine which of those utilities will perform "no-cost" audits for energy efficiency and water conservation

and potential solar and other renewable energy sources that comply with Federal life cycle costing procedures set forth in Subpart A, 10 CFR 436;

(2) for each energy and water utility serving the Federal Government, determine which of those utilities offers demand-side management services and incentives and obtain a list and description of those services and incentives; and

(3) prepare a list of those utilities and make that list available to all Federal property management agencies through the Task Force.

(d) Within 18 months of the date of this order, the Administrator of General Services, in consultation with the Secretary of Energy, shall develop procurement techniques, methods, and contracts to speed the purchase and installation of energy, water, and renewable energy technologies in Federal facilities. Such techniques, methods, and contracts shall be designed to utilize both direct funding by the user agency, including energy savings performance contracting, and utility rebates. To the extent permitted by law, the Administrator of OFPP shall assist the Administrator of General Services and the Secretary of Energy by eliminating unnecessary regulatory and procedural barriers that would slow the implementation of such methods, techniques, or contracts or complicate their use.

(e) Agencies are encouraged to seek technical assistance from DOE to develop and implement solar and other renewable energy projects.

(f) DOE shall conduct appropriate training for Federal agencies to assist them in identifying and funding cost-effective projects. This training shall include providing software and other technical tools to audit facilities and identify opportunities. To the extent that resources are available, DOE shall work with utilities and the private sector to encourage their participation in federal sector programs.

(g) DOE, in coordination with EPA, GSA, and the Department of Defense ("DOD"), shall develop technical assistance services for agencies to help identify energy efficiency, water conservation, indoor air quality, solar and other renewable energy projects, new building design, fuel switching, and life cycle cost analysis. These services shall include, at a minimum, a help line, computer bulletin board, information and education materials, and project tracking methods. Agencies shall identify technical assistance needed to meet the goals and requirements of the Act and this order and seek such assistance from DOE.

(h) The Secretary of Energy and the Administrator of General Services shall explore ways to stimulate energy efficiency, water conservation; and use of solar and other renewable energy sources and shall study options such as new building performance guidelines, life cycle value engineering, and designer/builder incentives such as award fees. The studies shall be completed within 270 days of the date of this order. The OFPP will issue guidance to agencies on life cycle value engineering within 6 months of the completion of the studies.

(i) The Secretary of Energy and the Administrator of General Services shall develop and distribute through the Task Force a model building commissioning program within 270 days of the date of this order.

(j) The lists, guidelines, and services in this section of the order shall be updated periodically.

**Sec. 502. Retention of Savings and Rebates.** (a) Within a reasonable time after the date of this order, the Director of OMB, along with the Secretary of Energy, the Secretary of Defense, and the Administrator of General Services, to the extent practicable and permitted by law, shall develop guidelines and implement procedures to allow agencies, in fiscal year 1995 and beyond, to retain utility rebates and incentives received by the agency and savings from energy efficiency and water conservation efforts as provided in section 152 of the Energy Policy Act of 1992 and 10 U.S.C. 2865 and 2866.

**Sec. 503. Performance Evaluations.** To recognize the responsibilities of facility managers, designers, energy managers, their superiors, and, to the extent practicable and appropriate, others critical to the implementation of this order, heads of agencies shall include successful implementation of energy efficiency, water conservation, and solar and other renewable energy projects in their position descriptions and performance evaluations.

**Sec. 504. Incentive Awards.** Agencies are encouraged to review employer incentive programs to ensure that such programs appropriately reward exceptional performance in implementing the Act and this order. Such awards may include monetary incentives such as Quality Step Increases, leave time awards and productivity gainsharing, and nonmonetary and honor awards such as increased authority, additional resources, and a series of options from which employees or teams of employees can choose.

**Sec. 505. Project Teams/Franchising.** (a) Agencies are encouraged to establish Energy Efficiency and Environmental Project Teams (“Project Teams”) to implement energy efficiency, water conservation, and solar and other renewable energy projects within their respective agencies. DOE shall develop a program to train and support the Project Teams, which should have particular expertise in innovative financing, including shared energy savings and energy savings performance contracting. The purpose of the program is to enable project teams to implement projects quickly and effectively in their own agencies.

(b) Agencies are encouraged to franchise the services of their Project Teams. The ability to access the services of other agencies' teams will foster excellence in project implementation through competition among service providers, while providing an alternative method to meet or exceed the requirements of the Act and this order for agencies that are unable to devote sufficient personnel to implement projects.

**Sec. 506. FEMP Account Managers.** FEMP shall develop a customer service program and assign account managers to agencies or regions so that each project may have a designated account manager. When requested by an agency, the account manager shall start at the audit phase and follow a project through commissioning, evaluation and reporting. The account manager shall provide technical assistance and shall have responsibility to see that all actions possible are taken to ensure success of the project.

**Sec. 507. Procurement of Energy Efficient Products by Federal Agencies.** (a) *“Best Practice” Technologies.* Agencies shall purchase energy-efficient products in accordance with the guidelines issued by OMB, in consultation with the Defense Logistics Agency (“DLA”), DOE, and GSA, under section 161 of the Energy Policy Act of 1992. The guidelines shall include listings of energy-efficient products and practices used in the Federal Government. At a minimum, OMB shall update the listings annually. DLA, DOE, and GSA shall update the portions of the listings for which they have responsibility as new products become available and conditions change.

(1) Each agency shall purchase products listed as energy-efficient in the guidelines whenever practicable, and whenever they meet the agency's specific performance requirements and are cost-effective. Each agency shall institute mechanisms to set targets and measure progress.

(2) To further encourage a market for highly-energy-efficient products, each agency shall increase, to the extent practicable and cost-effective, purchases of products that are in the upper 25 percent of energy efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets Federal standards. This requirement shall apply wherever such information is available, either through Federal or industry-approved testing and rating procedures.

(3) GSA and DLA, in consultation with DOE, other agencies, States, and industry and other nongovernment organizations, shall provide all agencies with information on

specific products that meet the energy-efficiency criteria of this section. Product information should be made available in both printed and electronic formats.

(b) *Federal Market Opportunities*. DOE, after consultation with industry, utilities and other interested parties, shall identify advanced energy-efficient and water-conserving technologies that are technically and commercially feasible, but not yet available on the open market. These technologies may include, but are not limited to, the advanced appliance technologies referenced in section 127 of the Energy Policy Act of 1992. DOE, in cooperation with OMB, GSA, DOD, the National Institute of Standards and Technology (“NIST”), and EPA, shall issue a “Federal Procurement Challenge” inviting each Federal agency to commit a specified fraction of their purchases within a given time period to advanced, high-efficiency models of products, provided that these anticipated future products can meet the agency's energy performance functionality, and cost requirements.

(c) *Accelerated Retirement of Inefficient Equipment*. DOE, in consultation with GSA and other agencies, shall establish guidelines for the cost-effective early retirement of older, inefficient appliances and other energy and water-using equipment in Federal facilities. Such guidelines may take into account significant improvements in energy efficiency and water conservation, opportunities to down-size or otherwise optimize the replacement equipment as a result of associated improvements in building envelope, system, or industrial process efficiency and reductions in pollutant emissions, use of chlorofluorocarbons, and other environmental improvements.

(d) *Review of Barriers*. Each agency shall review and revise Federal or military specifications, product descriptions, and standards to eliminate barriers to, and encourage Federal procurement of, products that are energy-efficient or water conserving.

## **PART 6—WAIVERS**

**Sec. 601. Waivers.** Each agency may determine whether certain requirements in this order are inconsistent with the mission of the agency and seek a waiver of the provision from the Secretary of Energy. Any waivers authorized by the Secretary of Energy shall be included in the annual report on Federal energy management required under the Act.

## **PART 7—REVOCATION, LIMITATION, AND IMPLEMENTATION**

**Sec. 701.** Executive Order No. 12759,<sup>1</sup> of April 17, 1991, is hereby revoked, except that sections 3, 9, and 10 of that order shall remain effective and shall not be revoked.

**Sec. 702.** This order is intended only to improve the internal management of the executive branch and is not intended to, and does not create, any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

**Sec. 703.** This order shall be effective immediately.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*March 8, 1994.*

1. 42 U.S.C.A. § 6201 nt.

**No. 12915**

May 13, 1994, 59 F.R. 25775

**Federal Implementation of the North American Agreement on Environmental Cooperation**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103-182; 107 Stat. 2057 ("NAFTA Implementation Act"), and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1. Policy.** (a) The North American Agreement on Environmental Cooperation ("Environmental Cooperation Agreement") shall be implemented consistent with United States policy for the protection of human, animal or plant life or health, and the environment. The Environmental Cooperation Agreement shall also be implemented to advance sustainable development, pollution prevention, environmental justice, ecosystem protection, and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement ("NATA") and the Environmental Cooperation Agreement.

(b) Effective implementation of the Environmental Cooperation Agreement is essential to the realization of the environmental objectives of NAFTA and the NAFTA Implementation Act and promotes cooperation on trade and environmental issues between the United States, Canada, and Mexico.

**Sec. 2. Implementation Of The Environmental Cooperation Agreement.**

(a) *Policy Priorities.* In accordance with Article 10(2) of the Environmental Cooperation Agreement, it is the policy of the United States to promote consideration of, with a view towards developing recommendations and reaching agreement on, the following priorities within the Council of the Commission for Environmental Cooperation ("Council"):

(1) pursuant to Article 10(2)(m), the environmental impact of goods throughout their life cycles, including the environmental effects of processes and production methods and the internalization of environmental costs associated with products from raw material to disposal;

(2) pursuant to Articles 10(2)(b), (g), (i), (j), and (k), pollution prevention techniques and strategies, transboundary and border environmental issues, the conservation and protection of wild flora and fauna (including endangered species), their habitats and specially protected natural areas, and environmental emergency preparedness and response activities;

(3) pursuant to Articles 10(3) and 10(4), implementation of Environmental Cooperation Agreement provisions and the exchange of information among the United States, Canada, and Mexico concerning the development, continuing improvement, and effective enforcement of, and compliance with, environmental laws, policies, incentives, regulations, and other applicable standards;

(4) pursuant to Article 10(5)(a), public access to environmental information held by public authorities of each party to the Environmental Cooperation Agreement, including information on hazardous materials and activities in its communities, and the opportunity to participate in decision-making processes related to such public access;

(5) pursuant to Article 10(2)(1), environmental matters as they relate to sustainable development; and

(6) other priorities as appropriate or necessary.

(b) *United States Representation on the Council.* The Administrator of the Environmental Protection Agency (“EPA”) shall be the representative of the United States on the Council. The policies and positions of the United States in the Council shall be coordinated through applicable inter-agency procedures.

(c) *Environmental Effects of the NAFTA.* Pursuant to Article 10(6)(d) of the Environmental Cooperation Agreement, the Administrator of the EPA shall work actively within the Council to consider on an ongoing basis the environmental effects of the NAFTA and review progress toward the objectives of the Environmental Cooperation Agreement.

(d) *Transparency and Public Participation.* The United States, as appropriate, shall endeavor to ensure the transparency and openness of, and opportunities for the public to participate in, activities under the Environmental Cooperation Agreement.

(1) To the greatest extent practicable, pursuant to Articles 15(1) and 15(2), where the Secretariat of the Commission for Environmental Cooperation (“Secretariat”) informs the Council that a factual record is warranted, the United States shall support the preparation of such factual record.

(2) To the greatest extent practicable, the United States shall support public disclosure of all nonconfidential and nonproprietary elements of reports, factual records, decisions, recommendations, and other information gathered or prepared by the Commission for Environmental Cooperation (“Commission”). Where requested information is not made available, the United States shall endeavor to have the Commission state in writing to the public its reasons for denial of the request.

(3) The United States shall provide public notice of the opportunity to apply for inclusion on a roster of qualified individuals available to serve on arbitral panels under the Environmental Cooperation Agreement.

(4) The United States shall seek to ensure that the Model Rules of Procedure for dispute settlement established pursuant to Articles 28(1) and 28(2) of the Environmental Cooperation Agreement provide for the preparation of public versions of written submissions and arbitral reports not otherwise made publicly available, and for public access to arbitral hearings.

(5) Consistent with the Environmental Cooperation Agreement the EPA Administrator shall develop procedures to inform the public of arbitral proceedings and Commission activities under the Environmental Cooperation Agreement, and to provide appropriate mechanisms for receiving public comment with respect to such arbitral proceedings and Commission activities involving the United States.

(6) As a disputing party, the United States shall seek to ensure, pursuant to Article 30 of the Environmental Cooperation Agreement, that the arbitral panels consult with appropriate experts for information and technical advice.

(e) *Consultation with States.* (1) Pursuant to Article 18 of the Environmental Cooperation Agreement, the EPA Administrator shall establish a governmental committee to furnish advice regarding implementation and further elaboration of the Agreement. Through this committee, or through other means as appropriate, the EPA Administrator and other relevant Federal agencies shall:

(A) inform the States on a continuing basis of matters under the Environmental Cooperation Agreement that directly relate to, or will potentially leave a direct impact on, the States, including: (i) dispute settlement proceedings and other matters involving enforcement by the States of environmental laws; and (ii) implementation of the Environmental Cooperation Agreement, including Council, committee, and working group activities, in any area in which the States exercise concurrent or exclusive legislative, regulatory, or enforcement authority;

(B) provide the States with an opportunity to submit information and advice with respect to the matters identified in section 2(e)(1)(A) of this order; and

(C) involve the States to the greatest extent practicable at each stage of the development of United States positions regarding matters identified in section 2(e)(1)(A) of this order that will be addressed by the Council, committees, subcommittees, or working groups established under the Environmental Cooperation Agreement, or through dispute settlement processes prescribed under the Environmental Cooperation Agreement (including involvement through the inclusion of appropriate representatives of the States).

(2) When formulating positions regarding matters identified in section 2(e)(1)(A) of this order, the United States shall take into account the information and advice received from States.

(3) The United States, where appropriate, shall include representatives of interested States as Members of the United States delegations to the Council and other Commission bodies, including arbitral panels.

**Sec. 3. National Advisory Committee.** The EPA Administrator shall utilize a National Advisory Committee as provided under Article 17 of the Environmental Cooperation Agreement.

**Sec. 4. United States Contributions To The Commission For Environmental Cooperation.** In accordance with section 532(a)(2) of the NAFTA Implementation Act, the EPA is designated as the agency authorized to make the contributions of the United States from funds available for such contributions to the annual budget of the Commission for Environmental Cooperation.

**Sec. 5. Judicial Review.** This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*May 13, 1994.*

**No. 12916**

May 13, 1994, 59 F.R. 25779

**Implementation of the Border Environment Cooperation Commission and the North American Development Bank**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103-182; 107 Stat. 2057 ("NAFTA Implementation Act"), and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1.** The Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank ("Agreement") shall be implemented consistent with United States policy for the protection of human, animal or plant life or health, and the environment. The Agreement shall also be implemented to advance sustainable development, pollution prevention, environmental justice, ecosystem protection, and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement and the Agreement.

**Sec. 2.** (a) The Administrator of the Environmental Protection Agency and the United States Commissioner, International Boundary and Water Commission, United States and Mexico ("Commissioner"), shall represent the United States as Members of the Board of Directors of the Border Environment Cooperation Commission in accordance with the Agreement.

(b) The policies and positions of the United States in the Border Environment Cooperation Commission shall be coordinated through applicable inter-agency procedures, which shall include participation by the Department of State, the Department of the Treasury, the Department of Housing and Urban Development, the Department of the Interior, the Agency for International Development, the Environmental Protection Agency, and, as appropriate, other Federal agencies.

(c) The Commissioner shall promote cooperation, as appropriate, between the International Boundary and Water Commission and the Border Environment Cooperation Commission in planning, developing, carrying out border sanitation, and other environmental activities.

**Sec. 3.** (a) The United States Government representatives to the Board of the North American Development Bank shall be the Secretary of the Treasury, the Secretary of State, and the Administrator of the Environmental Protection Agency.

(b) For purposes of loans or guarantees for projects certified by the Border Environment Cooperation Commission, the representatives shall be instructed in accordance with the procedures of the National Advisory Council on International Monetary and Financial Policies ("Council") as established by Executive Order No. 11269. For purposes of this section only, the membership of the Council shall be expanded to include the Secretary of the Department of Housing and Urban Development, the Secretary of the Interior, and the Administrator of the Environmental Protection Agency.

(c) For purposes of loans or guarantees for projects certified by the Border Environment Cooperation Commission, the representatives shall consult with the Community Adjustment and Investment Program Advisory Committee ("Advisory Committee"), established pursuant to section 543(b) of the NAFTA Implementation Act concerning community adjustment and investment aspects of such loans or guarantees.

(d) For purposes of loans, guarantees, or grants endorsed by the United States for community adjustment and investment, the representatives shall be instructed by the Secretary of the Treasury in accordance with procedures established by the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order.

**Sec. 4.** The functions vested in the President by section 543(a)(1) of the NAFTA Implementation Act are delegated to the Secretary of the Treasury.

**Sec. 5.** The functions vested in the President by section 543(a)(2) and (3) of the NAFTA Implementation Act are delegated to the Secretary of the Treasury, who shall exercise such functions in accordance with the recommendations of the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order.

**Sec. 6.** The functions vested in the President by section 543(a)(5) and section 543(d) of the NAFTA Implementation Act are delegated to the Community Adjustment and investment Program Finance Committee established pursuant to section 7 of this order, which shall exercise such functions in consultation with the Advisory Committee.

**Sec. 7.** (a) There is hereby established a Community Adjustment and Investment Program Finance Committee ("Finance Committee").

(b) The Finance Committee shall be composed of representatives from the Department of the Treasury, the Department of Agriculture, the Department of Housing and Urban Development, the Small Business Administration, and any other Federal agencies selected by the Chair of the Finance Committee to assist in carrying out the community adjustment and investment program pursuant to section 543(a)(3) of the NAFTA Implementation Act.

(c) The Department of the Treasury representative shall serve as Chair of the Finance Committee. The chair shall be responsible for presiding over the meetings of the Finance Committee, ensuring that the views of all other Members are taken into account, coordinating with other appropriate United States Government agencies in carrying out the community adjustment and investment program, and requesting meetings of the Advisory Committee pursuant to section 543(b)(4)(C) of the NAFTA Implementation Act.

**Sec. 8.** Any advice or conclusions of reviews provided to the President by the Advisory Committee pursuant to section 543(b)(3) of the NAFTA Implementation Act shall be provided through the Finance Committee.

**Sec. 9.** Any summaries of public comments or conclusions of investigations and audits provided to the President by the ombudsman pursuant to section 543(c)(1) of the NAFTA Implementation Act shall be provided through the Finance Committee.

**Sec. 10.** The authority of the President under section 6 of Public Law 102-532; 7 U.S.C. 5404, to establish an advisory board to be known as the Good Neighbor Environmental Board is delegated to the Administrator of the Environmental Protection Agency.

**Sec. 11.** This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,

*May 13, 1994.*

**No. 12962**

June 7, 1995, 60 F.R. 30769

**Recreational Fisheries**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-d, and e-j), the Fish and Wildlife Coordination Act (16U.S.C. 661-666c), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1882), and other pertinent statutes, and in order to conserve, restore, and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide, it is ordered as follows:

**Section 1. Federal Agency Duties.** Federal agencies shall, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by: (a) developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities:

(b) identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable; healthy, and, where feasible, self-sustaining recreational fisheries;

(c) fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries;

(d) providing access to and promoting awareness of opportunities for public participation and enjoyment of U.S. recreational fishery resources;

(e) supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic systems;

(f) implementing laws under their purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries;

(g) establishing cost-share programs, under existing authorities, that match or exceed Federal funds with nonfederal contributions;

(h) evaluating the effects of Federally funded, permitted, or authorized actions on aquatic systems and recreational fisheries and document those effects relative to the purpose of this order; and

(i) assisting private landowners to conserve and enhance aquatic resources on their lands.

**Sec. 2. National Recreational Fisheries Coordination Council.** A National Recreational Fisheries Coordination Council ("Coordination Council") is hereby established. The Coordination Council shall consist of seven members, one member designated by each of the following Secretaries-Interior, Commerce, Agriculture, Energy, Transportation, and Defense-and one by the Administrator of the Environmental Protection Agency. The Coordination Council shall: (a) ensure that the social and economic values of healthy aquatic systems that support recreational fisheries are considered by Federal agencies in the course of their actions;

(b) reduce duplicative and cost-inefficient programs among Federal agencies involved in conserving or managing recreational fisheries;

(c) share the latest resource information and management technologies to assist in the conservation and management of recreational fisheries;

(d) assess the implementation of the Conservation Plan required under section 3 of this order; and

(e) develop a biennial report of accomplishments of the Conservation Plan.

The representatives designed by the Secretaries of Commerce and the Interior shall cochair the Coordination Council.

**Sec. 3. Recreational Fishery Resources Conservation Plan.** (a) Within 12 months of the date of this order, the Coordination Council, in cooperation with Federal agencies, States, and Tribes, and after consulting with the Federally chartered Sport Fishing and Boating Partnership Council, shall develop a comprehensive Recreational Fishery Resources Conservation Plan ("Conservation Plan").

(b) The Conservation Plan will set forth a 5-year agenda for Federal agencies identified by the Coordination Council. In so doing, the Conservation Plan will establish, to the extent permitted by law and where applicable; (1) measurable objectives to conserve and restore aquatic systems that support viable and healthy recreational fishery resources, (2) actions to be taken by the identified Federal agencies, (3) a method of ensuring the accountability of such Federal agencies, and (4) a comprehensive mechanism to evaluate achievements. The Conservation Plan will, to the extent practicable, be integrated with existing plans and programs, reduce duplication, and will include recommended actions for cooperation with States, Tribes, conservation groups, and the recreational fisheries community.

**Sec. 4. Joint Policy for Administering the Endangered Species Act of 1973.** All Federal agencies will aggressively work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the Endangered Species Act of 1973 ("ESA") (16 U.S.C. 1531 et seq.). Within 6 months of the date of this order, the Fish and Wildlife Service and the National Marine Fisheries Service will promote compatibility and reduce conflicts between the administration of the ESA and recreational fisheries by developing a joint agency policy that will: (1) ensure consistency in the administration of the ESA between and within the two agencies, (2) promote collaboration with other Federal, State, and Tribal fisheries managers, and (3) improve and increase efforts to inform nonfederal entities of the requirements of the ESA.

**Sec. 5. Sport Fishing and Boating Partnership Council.** To assist in the implementation of this order, the Secretary of the Interior shall expand the role of the Sport Fishing and Boating Partnership Council to: (a) monitor specific Federal activities affecting aquatic systems and the recreational fisheries they support;

(b) review and evaluate the relation of Federal policies and activities to the status and conditions of recreational fishery resources; and

(c) prepare an annual report of its activities, findings, and recommendations for submission to the Coordination Council.

**Sec. 6. Judicial Review.** This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit or trust responsibility, substantive or procedure, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*June 7, 1995.*

**No. 12969**

August 8, 1995, 60 F.R. 40989

**Federal Acquisition and Community Right-To-Know**

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (“EPCRA”) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (“PPA”) established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land, and water in their communities by manufacturing facilities.

The Toxics Release Inventory (“TRI”) established pursuant to section 313(j) of EPCRA, 42 U.S.C. 11023(j), based on information required to be reported under section 313 of EPCRA and section 6607 of PPA, 42 U.S.C. 13106, provides the public, industry, and Federal, State, and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals, that can have significant adverse effects on human health and the environment. TRI data allow the public, industry, and government to gauge the progress of industry and government efforts to reduce toxic chemical wastes.

Sharing vital TRI information with the public has provided a strong incentive for reduction in the generation, and, ultimately, release into the environment, of toxic chemicals. Since the inception of the TRI program, reported releases to the environment under TRI have decreased significantly.

The efficiency of the Federal Government is served when it purchases high quality supplies and services that have been produced with a minimum impact on the public health and environment of communities surrounding government contractors. Savings associated with reduced raw materials usage, reduced use of costly, inefficient end-of-pipeline pollution controls, and reduced liability and remediation costs from worker and community claims all serve to increase the economic and efficient provision of essential supplies and services to the government. As a result of TRI reporting, many manufacturers have learned of previously unrecognized significant efficiencies and cost savings in their production processes.

The Federal Government’s receipt of timely and quality supplies and services is also served by the general enhancement of relations between government contractors and the communities in which they are situated, as well as the cooperative working relationship between employers and employees who may be subject to exposure to toxic materials.

Information concerning chemical release and transfer can assist the government to purchase efficiently produced, lower cost, and higher quality supplies and services that also have a minimum adverse impact on community health and the environment.

NOW, THEREFORE, to promote economy and efficiency in government procurement of supplies and services, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including EPCRA, 42 U.S.C. 11001 et seq., PPA, 42 U.S.C. 13101 et seq., 40 U.S.C. 471 and 486(a), and 3 U.S.C. 301, it is hereby ordered as follows:

**Section 1. Policy.** It is the policy of the executive branch in procuring supplies and services that, to ensure the economical and efficient procurement of Federal Government contracts, Federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals released to the environment.

**Sec. 2. Definitions.** 2–201. All definitions found in EPCRA and PPA and implementing regulations are incorporated into this order by reference, with the following exceptions for purposes of this order.

2–202. “*Federal agency*” means an “Executive agency,” as defined in 5 U.S.C. 105. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2–203. “*Acquisition*” means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when the Federal department or agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

2–204. “*Toxic chemical*” means a substance on the list described in section 313(c) of EPCRA, 42 U.S.C. 11023(c), as it exists on the effective date of this order.

2–205. “*Administrator*” means the Administrator of the United States Environmental Protection Agency (“EPA”).

2–206. “*Federal contractor*” means an entity that has submitted the successful bid or proposal in response to a competitive acquisition solicitation.

**Sec. 3. Applicability.** 3–301. Each Federal agency shall, to the maximum extent practicable, include in contract solicitations as an eligibility criterion for the award of competitive acquisition contracts expected to equal or exceed \$100,000 with the Federal contractors described in subsection 3–302, the requirement that such contractors must file (and continue to file for the life of the contract) a Toxic Chemical Release Form (“Form R”), as described in sections 313(a) and (g) of EPCRA, 42 U.S.C. 11023(a) and (g), for each toxic chemical manufactured, processed, or otherwise used by the Federal contractor at a facility, as described in section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106.

3–302. The Federal contractors subject to the eligibility criterion described in subsection 3–301 above are those who currently report to the TRI pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A), that is, manufacturers having Standard Industrial Classification Code (“SIC”) designations of 20 through 39 (as in effect on July 1, 1985).

3–303. Each Federal agency shall find that a prospective Federal contractor has satisfied the requirement in subsection 3–301 if the contractor certifies in a solicitation that it:

(a) Does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(b) Does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(c) Does not meet the reporting thresholds established under section 313(f) of the EPCRA, 42 U.S.C. 11023(f); or

(d) Has complied fully with the reporting requirements of subsection 4–404.

3–304. Each Federal agency shall require the filings described in subsection 3–301 above to include information on all chemicals identified by the Administrator pursuant to section 313(c) of EPCRA, 42 U.S.C. 11023(c), as of the date of this order.

3–305. Each Federal agency may amend existing contracts, to the extent permitted by law and where practicable, to require the reporting of information specified in subsection 3–301 above.

3–306. As consistent with Title IV of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, and section 4(11) of the Office of Federal Procurement

Policy Act, 41 U.S.C. 403(11), the requirements of this order are only applicable to competitive acquisition contracts expected to equal or exceed \$100,000.

**Sec. 4. Implementation.** 4-401. Not later than September 30, 1995, the EPA shall publish in the **Federal Register** guidance for compliance with this order, including applicability with respect to subcontractors.

4-402. Within 30 days of the issuance of the guidance provided for in subsection 4-401 above, each Federal agency shall include in all acquisition solicitations issued on or after the effective date of this order, the provisions necessary to effect this order.

4-403. For all contracts expected to exceed \$500,000, each Federal agency shall consult with the Administrator or the Administrator's designee when the agency believes it is not practicable to include the eligibility requirement of section 3-301 in the contract solicitation or award.

4-404. Each Federal agency shall require each Federal contractor designated in subsection 3-302 above to:

(a) Have included in its response to the contract solicitation a certification, as specified in the guidelines published pursuant to subsection 4-401 of this order, that it will (if awarded the contract) comply with the requirements of subsection 3-301; and

(b) File with the Administrator and each appropriate State pursuant to section 313(a) of EPCRA, 42 U.S.C. 11023(a), the information required by subsection 3-301, beginning on the next July 1 after the date on which the contract is awarded.

4-405. Information submitted to the EPA pursuant to subsection 4-404(b) above shall be subject to the trade secret protections provided by section 322 of EPCRA, 42 U.S.C. 11042. Information that is not trade secret shall be made available to the public pursuant to sections 313(h) and (j) of EPCRA, 42 U.S.C. 11023(h) and (j). The Administrator is directed to review reports submitted pursuant to this order to determine the appropriateness of any claims for trade secret protection.

4-406. When the Administrator determines that a Federal contractor has not filed the necessary forms or complete information as required by subsection 3-301 above, the Administrator or the Administrator's designee may recommend termination of the contract for convenience. The Administrator shall transmit that recommendation to the head of the contracting agency, and that agency shall consider the recommendation and determine whether to terminate the contract. In carrying out this responsibility, the Administrator may investigate any subject Federal contractor to determine the adequacy of compliance with the provisions of this order and the Administrator's designee may hold such hearings, public or private, as the Administrator deems advisable to assist in the Administrator's determination of compliance.

4-407. Each contracting agency shall cooperate with the Administrator and provide such information and assistance as the Administrator may require in the performance of the Administrator's functions under this order.

4-408. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to assist in full compliance with this order.

**Sec 5. General Provisions.** 5-501. The requirements of this order shall be implemented and incorporated in acquisition regulations, including the Federal Acquisition Regulations (FAR), within 90 days after the effective date of this order.

5-502. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

5-503. This order shall be effective immediately and shall continue to be in effect until revoked.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*August 8, 1995.*

**No. 12980**

November 17, 1995, 60 F.R. 57819

**Further Amendment to Executive Order No. 12852, as Amended**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to add four more members to the President's Council on Sustainable Development, it is hereby ordered that Executive Order No. 12852, as amended, is further amended by deleting the number "25" in section 1 of the order and inserting the number "29" in lieu thereof.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*November 17, 1995.*

**No. 12986**

January 18, 1996, 61 F.R. 1693

**International Union for Conservation of Nature and Natural Resources**

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including sections 1 and 14 of the International Organizations Immunities Act (22 U.S.C. 288 *et seq.*, as amended by section 426 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103-236), I hereby extend to the International Union for Conservation of Nature and Natural Resources the privileges and immunities that provide or pertain to immunity from suit. To this effect, the following sections of the International Organizations Immunities Act shall not apply to the International Union for Conservation of Nature and Natural Resources:

—Section 2(b), 22 U.S.C. 288a(b), that provides international organizations and their property and assets with the same immunity from suit and judicial process as is enjoyed by foreign governments.

—Section 2(c), 22 U.S.C. 288a(c), that provides that the property and assets of international organizations shall be immune from search and confiscation and that their archives shall be inviolable.

—Section 7(b), 22 U.S.C. 288d(b), that provides the representatives of foreign governments in or to international organizations and the officers and employees of such organizations with immunity from suit and legal process relating to acts performed by them in their official capacity and falling within their functions.

This designation is not intended to abridge in any respect privileges, exemptions, or immunities that the International Union for Conservation of Nature and Natural Resources may have acquired or may acquire by international agreements or by congressional action.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*January 18, 1996.*

**No. 12995**

March 25, 1996, 61 F.R. 13645

**Amendment to Executive Order No. 12873**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to assist paper mills in their procurement of recovered materials to use as raw materials, it is hereby ordered that Executive Order No. 12873<sup>1</sup> is amended as follows:

**Section 1.** Section 504(a) of Executive Order No. 12873 shall read: “(a) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes and for other uncoated printing and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be no less than 20 percent postconsumer materials beginning December 31, 1994. This minimum content standard shall be increased to 30 percent beginning on December 31, 1998.”

**Sec. 2.** Section 504(b) of Executive Order No. 12873 shall be deleted and section 504(c) of that order shall be redesignated as section 504(b) and shall read: “(b) As an alternative to meeting the standards in section 504(a), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product which would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.”

**Sec. 3.** The last sentence of section 301(a) of Executive Order No. 12873 shall read “In carrying out his or her functions, the Federal Environmental Executive shall consult with the Chairman of the Council on Environmental Quality.”

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*March 25, 1996.*

1. 42 U.S.C.A. § 6961 nt.

**No. 13006**

May 21, 1996, 61 F.R. 26071

**Locating Federal Facilities on Historic Properties in Our Nation's Central Cities**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505), and in furtherance of and consistent with Executive Order No. 12072 of August 16, 1978, and Executive Order No. 11593 of May 13, 1971, it is hereby ordered as follows:

**Section 1. Statement of Policy.** Through the Administration's community empowerment initiatives, the Federal Government has undertaken various efforts to revitalize our central cities, which have historically served as the centers for growth and commerce in our metropolitan areas. Accordingly, the Administration hereby reaffirms the commitment set forth in Executive Order No. 12072 to strengthen our Nation's cities by encouraging the location of Federal facilities in our central cities. The Administration also reaffirms the commitments set forth in the National Historic Preservation Act to provide leadership in the preservation of historic resources, and in the Public Buildings Cooperative Use Act of 1976 to acquire and utilize space in suitable buildings of historic, architectural, or cultural significance. To this end, the Federal Government shall utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in our central business areas. When implementing these policies, the Federal Government shall institute practices and procedures that are sensible, understandable, and compatible with current authority and that impose the least burden on, and provide the maximum benefit to, society.

**Sec. 2. Encouraging the Location of Federal Facilities on Historic Properties in Our Central Cities.** When operationally appropriate and economically prudent, and subject to the requirements of section 601 of title VI of the Rural Development Act of 1972, as amended (42 U.S.C. 3122), and Executive Order No. 12072, when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Any rehabilitation or construction that is undertaken pursuant to this order must be architecturally compatible with the character of the surrounding historic district or properties.

**Sec. 3. Identifying and Removing Regulatory Barriers.** Federal agencies with responsibilities for leasing, acquiring, locating, maintaining, or managing Federal facilities or with responsibilities for the planning for, or managing of, historic resources shall take steps to reform, streamline, and otherwise minimize regulations, policies, and procedures that impede the Federal Government's ability to establish or maintain a presence in historic districts or to acquire historic properties to satisfy Federal space needs, unless such regulations, policies, and procedures are designed to protect human health and safety or the environment. Federal agencies are encouraged to seek the assistance of the Advisory Council on Historic Preservation when taking these steps.

**Sec. 4. Improving Preservation Partnerships.** In carrying out the authorities of the National Historic Preservation Act, the Secretary of the Interior, the Advisory Council on Historic Preservation, and each Federal agency shall seek appropriate partnerships

with States, local governments, Indian tribes, and appropriate private organizations with the goal of enhancing participation of these parties in the National Historic Preservation Program. Such partnerships should embody the principles of administrative flexibility, reduced paperwork, and increased service to the public.

**Sec. 5. Judicial Review.** This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*May 21, 1996.*

**No. 13007**

May 24, 1996, 61 F.R. 26771

**Indian Sacred Sites**

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

**Section 1. Accommodation of Sacred Sites.**

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order: (i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands; (ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and (iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

**Sec. 2. Procedures.**

(a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

**Sec. 3.** Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal

lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

**Sec. 4.** This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*May 24, 1996.*

**No. 13031**

December 13, 1996, 61 F.R. 66529

**Federal Alternative Fueled Vehicle Leadership**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 *et seq.*), the Energy Policy Act of 1992 (Public Law 102-486) (“the Act”), and section 301 of title 3, United States Code, and with the knowledge that the use of alternative fueled motor vehicles will, in many applications, reduce the Nation’s dependence on oil, and may create jobs by providing an economic stimulus for domestic industry, and may improve the Nation’s air quality by reducing pollutants in the atmosphere, it is hereby ordered as follows:

**Section 1. Federal Leadership and Goals.** (a) The purpose of this order is to ensure that the Federal Government exercise leadership in the use of alternative fueled vehicles (AFVs). To that end, each Federal agency shall develop and implement aggressive plans to fulfill the alternative fueled vehicle acquisition requirements established by the Act. The Act generally requires that, of the vehicles acquired by each agency for its fleets, subject to certain conditions specified in section 303(b)(1) of the Act, 25 percent should be AFVs in fiscal year (FY) 1996, 33 percent in FY 1997, 50 percent in FY 1998, and 75 percent in FY 1999 and thereafter. These requirements apply to all agencies, regardless of whether they lease vehicles from the General Services Administration (GSA) or acquire them elsewhere. That section also defines which Federal agency vehicles are covered by the AFV acquisition requirements; this order applies to the same vehicles, which are primarily general-use vehicles located in metropolitan statistical areas with populations of 250,000 or more.

(b) To the extent practicable, agencies shall use alternative fuels in all vehicles capable of using them. Agencies shall continue to work together in interagency committees recommended by the Federal Fleet Conversion Task Force established by Executive Order 12844 of April 21, 1993, to coordinate their vehicle acquisitions and placement.

**Sec. 2. Submission of Agency Plans and Reports on Statutory Compliance.**

(a) Sixty (60) days after the date of this Executive order, and annually thereafter as part of its budget submission to the Director of the Office of Management and Budget, each agency shall submit a report on its compliance with sections 303 and 304 of the Act. A copy of the report shall also be submitted to the Secretary of Energy and to the Administrator of General Services. The report shall state whether the agency is in compliance with the Act, and substantiate that statement with quantitative data including numbers and types of vehicles acquired and the level of their use. At a minimum, the report shall indicate the number of vehicles acquired or converted for each fuel type and vehicle class, and the total number of vehicles of each fuel type operated by the agency. The Director of the Office of Management and Budget shall issue further reporting guidance as necessary.

(b) If an agency has failed to meet the statutory requirements, it shall include in its report an explanation for such failure and a plan, consistent with the agency’s current and requested budgets, for achieving compliance with the Act. The plan shall include alternative sources of suitable AFVs if the agency’s primary vehicle supplier is unable to meet the AFV requirements.

(c) The Secretary of the Department of Energy and the Administrator of General Services shall cooperatively analyze the agency AFV reports and acquisition plans, and

shall submit jointly a summary report to the Director of the Office of Management and Budget.

**Sec. 3. Exceptions for Law-Enforcement, Emergency, and National Defense Vehicles.** Section 303 of the Act allows exemptions to the acquisition requirements for law-enforcement, emergency, and vehicles acquired and used for military purposes that the Secretary of Defense has certified must be exempt for national security reasons. Law enforcement vehicles shall include vehicles used for protective activities. Each agency that acquires or utilizes any such vehicles shall include in its report an explanation of why an exemption is claimed with respect to such vehicles.

**Sec. 4. Fulfilling the Acquisition Requirement.** (a) Agencies may acquire alternative fueled vehicles to meet the requirements of this order through lease from GSA, acquisition of original equipment manufacturer models, commercial lease, conversion of conventionally fueled vehicles, or any combination of these approaches. All vehicles, including those converted for alternative fuel use, shall comply with all applicable Federal and State emissions and safety standards.

(b) Based on its own plans and the plans and reports submitted by other agencies, the Administrator of General Services shall provide planning information to potential AFV suppliers to assist in production planning. After consulting with AFV suppliers, the Administrator of General Services shall provide to Federal agencies information on the production plans of AFV suppliers well in advance of budget and ordering cycles.

(c) As required by section 305 of the Act, the Secretary of Energy, in cooperation with the Administrator of General Services, shall continue to provide technical assistance to other Federal agencies that acquire alternative fueled vehicles and shall facilitate the coordination of the Federal Government's alternative fueled vehicle program.

**Sec. 5. Vehicle Reporting Credits.** The gains in air quality and energy security that this order seeks to achieve will be even larger if medium- and heavy-duty vehicles are operated on alternative fuels, and if "zero-emissions vehicles" (ZEVs) are used. Therefore, for the purposes of this order, agencies may acquire medium- or heavy-duty dedicated alternative fueled vehicles or ZEVs to meet their AFV acquisition requirements, and they shall be given credits for compliance with their AFV targets as follows. Each medium-duty and ZEV shall count the same as two light-duty AFVs, and each dedicated alternative fueled heavy-duty vehicle shall count as three light-duty AFVs. The ZEV credits may be combined with vehicle size credits.

The Director of the Office of Management and Budget, in consultation with the Secretary of Energy, shall issue detailed guidance on the classification and reporting of medium-duty, heavy-duty, and ZEVs. In the reports mandated in section 2 of this order, medium- and heavy-duty AFVs and ZEVs shall be identified separately from light-duty vehicles.

**Sec. 6. Funding Alternative Fueled Vehicle Acquisition.** (a) The Department of Energy will no longer request or require specific appropriations to fund the incremental costs of alternative fueled vehicles, including any incremental costs associated with acquisition and disposal, for other agencies. Agencies shall formulate their compliance plans based on existing and requested funds, but shall not be exempt from the requirements of the Act or this order due to limited appropriations.

(b) An exception regarding funding assistance shall be made for electric vehicles, which are in an earlier stage of development than other alternative fueled vehicles. The Secretary of Energy shall establish a program beginning in FY 1997 to provide partial funding assistance for agency purchases of electric vehicles. Up to \$10,000 or one-half the incremental cost over a comparable gasoline-powered vehicle, whichever is less, may be provided as funding assistance for each electric vehicle, subject to the availability of funds.

**Sec. 7. Agency Cooperation with Stakeholders on Alternative Fueled Vehicle Placement and Refueling Capabilities.** The Secretary of Energy shall work with agencies procuring AFVs to coordinate the placement of their vehicles with the placement of similar vehicles by nonfederal alternative fuel stakeholders. Federal planning and acquisition efforts shall be coordinated with the efforts of the Department of Energy's "Clean Cities" participants, private industry fuel suppliers, and fleet operators, and State and local governments to ensure that adequate private sector refueling capabilities exist or will exist wherever Federal fleet alternative fueled vehicles are located. Each agency's fleet managers shall work with appropriate organizations at their respective locations, whether in a "Clean Cities" location or not, on initiatives to promote alternative fueled vehicle use and expansion of refueling infrastructure.

**Sec. 8. Definitions.** For the purpose of this order, the terms "agency," "alternative fueled vehicle," and "alternative fuel" have the same meaning given such terms in sections 151 and 301 of the Act.

**Sec. 9. Executive Order 12844.** This order supersedes Executive Order 12844.<sup>1</sup>

**Sec. 10. Judicial Review.** This order is not intended to, and does not, create any right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*December 13, 1996.*

1. 42 U.S.C.A. § 13212 nt.

**No. 13061**

September 11, 1997, 62 F.R. 48445

**Federal Support of Community Efforts Along American Heritage Rivers**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969 (Public Law 91-190), and in order to protect and restore rivers and their adjacent communities, it is hereby ordered as follows:

**Section 1. Policies.**

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

(b) Executive agencies ("agencies"), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

(c) Agencies shall develop plans to bring increased efficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.

(d) In accordance with Executive Order 12630, agencies shall act with due regard for the protection of private property provided for by the Fifth Amendment to the United States Constitution. No new regulatory authority is created as a result of the American Heritage Rivers initiative. This initiative will not interfere with matters of State, local, and tribal government jurisdiction.

(e) In furtherance of these policies, the President will designate rivers that meet certain criteria as "American Heritage Rivers."

(f) It is the policy of the Federal Government that communities shall nominate rivers as American Heritage Rivers and the Federal role will be solely to support community-based efforts to preserve, protect, and restore these rivers and their communities.

(g) Agencies should, to the extent practicable, help identify resources in the private and nonprofit sectors to aid revitalization efforts.

(h) Agencies are encouraged, to the extent permitted by law, to develop partnerships with State, local, and tribal governments and community and nongovernmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local, and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

(i) Agencies shall establish a method for field offices to assess the success of the American Heritage River initiative and provide a means to recommend changes that will improve the delivery and accessibility of Federal services and programs. Agencies are directed, where appropriate, to reduce and make more flexible procedural requirements and paperwork related to providing assistance to communities along designated rivers.

(j) Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions,

take into account the communities' goals and objectives and ensure that actions are compatible with the overall character of these communities. Agencies shall seek to ensure that their help for one community does not adversely affect neighboring communities. Additionally, agencies are encouraged to develop formal and informal partnerships to assist communities. Local Federal facilities, to the extent permitted by law and consistent with the agencies' missions and resources, should provide public access, physical space, technical assistance, and other support for American Heritage River communities.

(k) In addition to providing support to designated rivers, agencies will work together to provide information and services to all communities seeking support.

**Sec. 2. Process for Nominating an American Heritage River.**

(a) *Nomination.* Communities, in coordination with their State, local, or tribal governments, can nominate their river, river stretch, or river confluence for designation as an American Heritage River. When several communities are involved in the nomination of the same river, nominations will detail the coordination among the interested communities and the role each will play in the process. Individuals living outside the community may not nominate a river.

(b) *Selection Criteria.* Nominations will be judged based on the following:

(1) the characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of the river that render it distinctive or unique;

(2) the effectiveness with which the community has defined its plan of action and the extent to which the plan addresses, either through planned actions or past accomplishments, all three American Heritage Rivers objectives, which are set forth in section 1(a) of this order;

(3) the strength and diversity of community support for the nomination as evidenced by letters from elected officials; landowners; private citizens; businesses; and especially State, local, and tribal governments. Broad community support is essential to receiving the American Heritage River designation; and

(4) willingness and capability of the community to forge partnerships and agreements to implement their plan to meet their goals and objectives.

(c) *Recommendation Process.* The Chair of the Council on Environmental Quality ("CEQ") shall develop a fair and objective procedure to obtain the views of a diverse group of experts for the purpose of making recommendations to the President as to which rivers shall be designated. These experts shall reflect a variety of viewpoints, such as those representing natural, cultural, and historic resources; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management. The Chair of the CEQ will ensure that the rivers recommended represent a variety of stream sizes, diverse geographical locations, and a wide range of settings from urban to rural and ensure that relatively pristine, successful revitalization efforts are considered as well as degraded rivers in need of restoration.

(d) *Designation.* (1) The President will designate certain rivers as American Heritage Rivers. Based on the receipt of a sufficient number of qualified nominations, ten rivers will be designated in the first phase of the initiative.

(2) The Interagency Committee provided for in section 3 of this order shall develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

(3) Upon a determination by the Chair of the CEQ that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

**Sec. 3. Establishment of an Interagency Committee.** There is hereby established the American Heritage Rivers Interagency Committee (“Committee”). The Committee shall have two co-chairs. The Chair of the CEQ shall be a permanent co-chair. The other co-chair will rotate among the heads of the agencies listed below.

(a) The Committee shall be composed of the following members or their designees at the Assistant Secretary level or equivalent:

- (1) The Secretary of Defense;
- (2) The Attorney General;
- (3) The Secretary of the Interior;
- (4) The Secretary of Agriculture;
- (5) The Secretary of Commerce;
- (6) The Secretary of Housing and Urban Development;
- (7) The Secretary of Transportation;
- (8) The Secretary of Energy;
- (9) The Administrator of the Environmental Protection Agency;
- (10) The Chair of the Advisory Council on Historic Preservation;
- (11) The Chairperson of the National Endowment for the Arts; and
- (12) The Chairperson of the National Endowment for the Humanities.

The Chair of the CEQ may invite to participate in meetings of the Committee, representatives of other agencies, as appropriate.

(b) The Committee shall:

- (1) establish formal guidelines for designation as an American Heritage River;
- (2) periodically review the actions of agencies in support of the American Heritage Rivers;
- (3) report to the President on the progress, accomplishments, and effectiveness of the American Heritage Rivers initiative; and
- (4) perform other duties as directed by the Chair of the CEQ.

**Sec. 4. Responsibilities of the Federal Agencies.** Consistent with Title I of the National Environmental Policy Act of 1969, agencies shall:

(a) identify their existing programs and plans that give them the authority to offer assistance to communities involved in river conservation and community health and revitalization;

(b) to the extent practicable and permitted by law and regulation, refocus programs, grants, and technical assistance to provide support for communities adjacent to American Heritage Rivers;

(c) identify all technical tools, including those developed for purposes other than river conservation, that can be applied to river protection, restoration, and community revitalization;

(d) provide access to existing scientific data and information to the extent permitted by law and consistent with the agencies mission and resources;

(e) cooperate with State, local, and tribal governments and communities with respect to their activities that take place in, or affect the area around, an American Heritage River;

(f) commit to a policy, as set forth in section 1(j) of this order, in making decisions affecting the quality of an American Heritage River;

(g) select from among all the agencies a single individual called the “River Navigator,” for each river that is designated an American Heritage River, with whom the communities can communicate goals and needs and who will facilitate community-agency interchange;

(h) allow public access to the river, for agencies with facilities along American Heritage Rivers, to the extent practicable and consistent with their mission; and

(i) cooperate, as appropriate, with communities on projects that protect or preserve stretches of the river that are on Federal property or adjacent to a Federal facility.

**Sec. 5. Responsibilities of the Committee and the Council on Environmental Quality.** The CEQ shall serve as Executive agent for the Committee, and the CEQ and the Committee shall ensure the implementation of the policies and purposes of this initiative.

**Sec. 6. Definition.** For the purposes of this order, Executive agency means any agency on the Committee and such other agency as may be designated by the President.

**Sec. 7. Judicial Review.** This order does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*September 11, 1997.*

**No. 13080**

April 7, 1998, 63 F.R. 17667

**American Heritage Rivers Initiative Advisory Committee**

By the authority vested in me as President by the Constitution and the laws of the United States, the Federal Advisory Committee Act, 5 U.S.C. App., as amended, it is hereby ordered as follows:

**Section 1. Establishment.** There is established the American Heritage Rivers Initiative Advisory Committee ("Committee"). The Committee shall consist of up to 20 members appointed by the President from the public and private sectors. Each member of the Committee shall be a person who, as a result of his or her training, experience, and attainments, is well qualified to appraise the quality of nominations for selection of rivers as American Heritage Rivers submitted by communities across the country. The expertise of members of the Committee shall be in areas such as natural, cultural, and historic resources; water quality; public health; scenic and recreation interests; tourism and economic development interests; industry; and agriculture. The President shall designate a Chair from among the members of the Committee.

**Sec. 2.** (a) The Committee shall review nominations from communities and recommend to the President up to 20 rivers for consideration for designation as American Heritage Rivers. From the rivers recommended for consideration, the President shall designate ten as American Heritage Rivers.

(b) In its review of nomination submitted by communities the Committee shall provide its assessment of:

- (1) The scope of each nomination's application and the adequacy of its design to achieve the community's goals;
- (2) Whether the natural, economic (including agricultural), scenic, historic, cultural, and/or recreational resources featured in the application are distinctive or unique;
- (3) The extent to which the community's plan of action is clearly defined and the extent to which the plan addresses all three American Heritage Rivers objectives-natural resource and environmental protection, economic revitalization, and historic and cultural preservation-either through planned actions or past accomplishments, as well as any other characteristics of the proposals that distinguish a nomination, as well as any other characteristics of the proposals that distinguish a nomination, such as:
  - (A) Community vision and partnership;
  - (B) Sustainability of products and projects, including project maintenance;
  - (C) Resources, both committed and anticipated, including means of generating additional support from both private and public sources;
  - (D) Anticipated Federal role as defined by the applicants;
  - (E) Schedule or timeline;
  - (F) Citizen involvement;
  - (G) Public education relating to the designation of the river;
  - (H) Logistical support, operating procedures, and policies
  - (I) Prior accomplishments, if relevant, and relationship to existing plans and projects in the area; and
  - (J) Measures of performance.

(4) The strength and diversity of support for the nomination and plan of action as evidenced by letters from local and State governments, Indian tribes, elected officials, any and all parties who participate in the life and health of the area to be nominated, or who have an interest in the economic life and cultural and environmental vigor of the involved community.

(c) the Committee also should seek to recommend the selection of rivers that as a group:

(1) resent the natural, historic, cultural, social, economic, and agricultural diversity of American rivers;

(2) Showcase a variety of stream sizes and an assortment of urban, rural, and mixed settings from around the country, including both relatively pristine and degraded rivers;

(3) Highlight a variety of innovative programs in such areas as historic preservation, sustainable development through tourism, wildlife management, fisheries restoration, recreation, community revitalization, agricultural practices, and flood plain and watershed management;

(4) Include community efforts in early stages of development as well as those that are more well established; and

(5) Stand to benefit from targeted Federal assistance.

(d) The Committee shall report its recommendations for selection of rivers as American Heritage Rivers to the President through the Chair of the Council on Environmental Quality.

**Sec. 3. Administration.** (a) The heads of executive departments and agencies shall provide the Committee, to the extent practicable and permitted by law, such information with respect to river revitalization as the Committee requires to fulfill its functions.

(b) The Committee shall be supported both administratively and financially by the Secretary of Defense, acting through the Assistant Secretary of the Army for Civil Works.

**Sec. 4. General.** The Committee shall terminate no later than 2 years from the date of this order. The Chair of the Committee, with the approval of the designated Federal officer, shall call meetings of the American Heritage Rivers Initiative Advisory Committee.

WILLIAM J. CLINTON

THE WHITE HOUSE,

*April 7, 1998.*

**No. 13083**

May 14, 1998, 63 F.R. 27651

**Federalism**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities, embodied in the Constitution, between the Federal Government and the States that was intended by the Framers and application of those principles by the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this order:

(a) “State” or “States” refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) “Policies that have federalism implications” refers to Federal regulations, proposed legislation, and other policy statements or actions that have substantial direct effects on the States or on the relationship, or the distribution of power and responsibilities, between the Federal Government and the States.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

**Sec. 2. Fundamental Federalism Principles.** In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) The structure of government established by the Constitution is premised upon a system of checks and balances.

(b) The Constitution created a Federal Government of supreme, but limited, powers. The sovereign powers not granted to the Federal Government are reserved to the people or to the States, unless prohibited to the States by the Constitution.

(c) Federalism reflects the principle that dividing power between the Federal Government and the States serves to protect individual liberty. Preserving State authority provides an essential balance to the power of the Federal Government, while preserving the supremacy of Federal law provides an essential balance to the power of the States.

(d) The people of the States are at liberty, subject only to the limitations in the Constitution itself or in Federal law, to define the moral, political, and legal character of their lives.

(e) Our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. States and local governments are often uniquely situated to discern the sentiments of the people and to govern accordingly.

(f) Effective public policy is often achieved when there is competition among the several States in the fashioning of different approaches to public policy issues. The search for enlightened public policy is often furthered when individual States and local governments are free to experiment with a variety of approaches to public issues. Uniform, national approaches to public policy problems can inhibit the creation of effective solutions to those problems.

(g) Policies of the Federal Government should recognize the responsibility of—and should encourage opportunities for—States, local governments, private associations,

neighborhoods, families, and individuals to achieve personal, social, environmental, and economic objectives through cooperative effort.

**Sec. 3. Federalism Policymaking Criteria.** In addition to adhering to the fundamental federalism principles set forth in section 2 of this order, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There should be strict adherence to constitutional principles. Agencies should closely examine the constitutional and statutory authority supporting any Federal action that would limit the policymaking discretion of States and local governments, and should carefully assess the necessity for such action.

(b) Agencies may limit the policymaking discretion of States and local governments only after determining that there is constitutional and legal authority for the action.

(c) With respect to Federal statutes and regulations administered by States and local governments, the Federal Government should grant States and local governments the maximum administrative discretion possible. Any Federal oversight of such State and local administration should not unnecessarily intrude on State and local discretion.

(d) It is important to recognize the distinction between matters of national or multi-state scope (which may justify Federal action) and matters that are merely common to the States (which may not justify Federal action because individual States, acting individually or together, may effectively deal with them). Matters of national or multi-state scope that justify Federal action may arise in a variety of circumstances, including:

(1) When the matter to be addressed by Federal action occurs interstate as opposed to being contained within one State's boundaries.

(2) When the source of the matter to be addressed occurs in a State different from the State (or States) where a significant amount of the harm occurs.

(3) When there is a need for uniform national standards.

(4) When decentralization increases the costs of government thus imposing additional burdens on the taxpayer.

(5) When States have not adequately protected individual rights and liberties.

(6) When States would be reluctant to impose necessary regulations because of fears that regulated business activity will relocate to other States.

(7) When placing regulatory authority at the State or local level would undermine regulatory goals because high costs or demands for specialized expertise will effectively place the regulatory matter beyond the resources of State authorities.

(8) When the matter relates to Federally owned or managed property or natural resources, trust obligations, or international obligations.

(9) When the matter to be regulated significantly or uniquely affects Indian tribal governments.

**Sec. 4. Consultation.** (a) Each agency shall have an effective process to permit elected officials and other representatives of State and local governments to provide meaningful and timely input in the development of regulatory policies that have federalism implications.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that has federalism implications, and that imposes substantial direct compliance costs on States and local governments, unless:

(1) funds necessary to pay the direct costs incurred by the State or local government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation;

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with

representatives of affected States and local governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by States or local governments.

**Sec. 5. Increasing Flexibility for State and Local Waivers.** (a) Agencies shall review the processes under which States and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State or local government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefore.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**Sec. 6. Independent Agencies.** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 7. General Provisions.** (a) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), and OMB Circular A-19.

(c) Executive Order 12612 of October 26, 1987, and Executive Order 12875 of October 26, 1993, are revoked.

(d) The consultation and waiver provisions in sections 4 and 5 of this order shall complement the Executive order entitled, "Consultation and Coordination with Indian Tribal Governments," being issued on this day.

(e) This order shall be effective 90 days after the date of this order.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*May 14, 1998.*

**No. 13084**

May 14, 1998, 63 F.R. 27655

**Consultation and Coordination With Indian Tribal Governments**

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments; it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this order:

(a) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

**Sec. 2. Policymaking Criteria.** In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

**Sec. 3. Consultation.** (a) Each agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that significantly or uniquely affects the communities of the Indian tribal governments, and that imposes substantial direct compliance costs on such communities, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected Indian tribal governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by such Indian tribal governments.

**Sec. 4. Increasing Flexibility for Indian Tribal Waivers.** (a) Agencies shall review the processes under which Indian tribal governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. The agency shall provide the applicant with timely written notice of the decision and, if the application for a waiver is not granted, the reasons for such denial.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**Sec. 5. Cooperation in developing regulations.** On issues relating to tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

**Sec. 6. Independent agencies.** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 7. General provisions.** (a) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(c) This order shall complement the consultation and waiver provisions in sections 4 and 5 of the Executive order, entitled "Federalism," being issued on this day.

(d) This order shall be effective 90 days after the date of this order.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*May 14, 1998.*

**No. 13089**

June 11, 1998, 63 F.R. 32701

**Coral Reef Protection**

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the Clean Water Act of 1977, as amended (33 U.S.C. 1251, et seq.), Coastal Zone Management Act (16 U.S.C. 1451, et seq.), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, et seq.), National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.), National Marine Sanctuaries Act, (16 U.S.C. 1431, et seq.), National Park Service Organic Act (16 U.S.C. 1, et seq.), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment, it is hereby ordered as follows:

**Section 1. Definitions.** (a) “U.S. coral reef ecosystems” means those species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, territorial, or commonwealth waters), including reef systems in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean. (b) “U.S. Coral Reef Initiative” is an existing partnership between Federal agencies and State, territorial, commonwealth, and local governments, nongovernmental organizations, and commercial interests to design and implement additional management, education, monitoring, research, and restoration efforts to conserve coral reef ecosystems for the use and enjoyment of future generations. The existing U.S. Islands Coral Reef Initiative strategy covers approximately 95 percent of U.S. coral reef ecosystems and is a key element of the overall U.S. Coral Reef Initiative. (c) “International Coral Reef Initiative” is an existing partnership, founded by the United States in 1994, of governments, intergovernmental organizations, multilateral development banks, nongovernmental organizations, scientists, and the private sector whose purpose is to mobilize governments and other interested parties whose coordinated, vigorous, and effective actions are required to address the threats to the world’s coral reefs.

**Sec. 2. Policy.** (a) All Federal agencies whose actions may affect U.S. coral reef ecosystems shall: (a) identify their actions that may affect U.S. coral reef ecosystems; (b) utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and (c) to the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems.

(b) Exceptions to this section may be allowed under terms prescribed by the heads of Federal agencies:

- (1) during time of war or national emergency;
- (2) when necessary for reasons of national security, as determined by the President;
- (3) during emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution; or
- (4) in any case that constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, such as cases of force majeure caused by stress of weather or other act of God.

**Sec. 3. Federal Agency Responsibilities.** In furtherance of section 2 of this order, Federal agencies whose actions affect U.S. coral reef ecosystems, shall, subject to the availability of appropriations, provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including, but not limited to,

measures reducing impacts from pollution, sedimentation, and fishing. To the extent not inconsistent with statutory responsibilities and procedures, these measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected States, territorial, commonwealth, tribal, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

**Sec. 4. U.S. Coral Reef Task Force.** The Secretary of the Interior and the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall co-chair a U.S. Coral Reef Task Force (“Task Force”), whose members shall include, but not be limited to, the Administrator of the Environmental Protection Agency, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Secretary of Transportation, the Director of the National Science Foundation, the Administrator of the Agency for International Development, and the Administrator of the National Aeronautics and Space Administration. The Task Force shall oversee implementation of the policy and Federal agency responsibilities set forth in this order, and shall guide and support activities under the U.S. Coral Reef Initiative (“CRI”). All Federal agencies whose actions may affect U.S. coral reef ecosystems shall review their participation in the CRI and the strategies developed under it, including strategies and plans of State, territorial, commonwealth, and local governments, and, to the extent feasible, shall enhance Federal participation and support of such strategies and plans. The Task Force shall work in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

**Sec. 5. Duties of the U.S. Coral Reef Task Force.** (a) Coral Reef Mapping and Monitoring. The Task Force, in cooperation with State, territory, commonwealth, and local government partners, shall coordinate a comprehensive program to map and monitor U.S. coral reefs. Such programs shall include, but not be limited to, territories and commonwealths, special marine protected areas such as National Marine Sanctuaries, National Estuarine Research Reserves, National Parks, National Wildlife Refuges, and other entities having significant coral reef resources. To the extent feasible, remote sensing capabilities shall be developed and applied to this program and local communities should be engaged in the design and conduct of programs.

(b) Research. The Task Force shall develop and implement, with the scientific community, research aimed at identifying the major causes and consequences of degradation of coral reef ecosystems. This research shall include fundamental scientific research to provide a sound framework for the restoration and conservation of coral reef ecosystems worldwide. To the extent feasible, existing and planned environmental monitoring and mapping programs should be linked with scientific research activities. This Executive order shall not interfere with the normal conduct of scientific studies on coral reef ecosystems.

(c) Conservation, Mitigation, and Restoration. The Task Force, in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community and commercial interests, shall develop, recommend, and seek or secure implementation of measures necessary to reduce and mitigate coral reef ecosystem degradation and to restore damaged coral reefs. These measures shall include solutions to problems such as land-based sources of water pollution, sedimentation, detrimental alteration of salinity or temperature, over-fishing, over-use, collection of coral reef species, and direct destruction caused by activities such as recreational and commercial vessel traffic and treasure salvage. In developing these measures, the Task Force shall review existing legislation to determine whether

additional legislation is necessary to complement the policy objectives of this order and shall recommend such legislation if appropriate. The Task Force shall further evaluate existing navigational aids, including charts, maps, day markers, and beacons to determine if the designation of the location of specific coral reefs should be enhanced through the use, revision, or improvement of such aids.

(d) International Cooperation. The Secretary of State and the Administrator of the Agency for International Development, in cooperation with other members of the Coral Reef Task Force and drawing upon their expertise, shall assess the U.S. role in international trade and protection of coral reef species and implement appropriate strategies and actions to promote conservation and sustainable use of coral reef resources worldwide. Such actions shall include expanded collaboration with other International Coral Reef Initiative ("ICRI") partners, especially governments, to implement the ICRI through its Framework for Action and the Global Coral Reef Monitoring Network at regional, national, and local levels.

**Sec. 6.** This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*June 11, 1998.*

**No. 13093**

July 27, 1998, 63 F.R. 40357

**American Heritage Rivers, Amending Executive Order 13061  
and 13080**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the number of rivers that the President may designate as American Heritage Rivers, it is hereby ordered that the second sentence of both section 2(d)(1) of Executive Order 13061<sup>4</sup> and of section 2(a) of Executive Order 13080 are amended by deleting “ten” and inserting “up to 20” in lieu thereof.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*July 27, 1998.*

4. 42 U.S.C.A. § 4321 nt.

**No. 13112**

February 3, 1999, 64 F.R. 6183

**Invasive Species**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 et seq.), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa et seq.), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 et seq.), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

**Section 1. Definitions.**

(a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(b) "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

(c) "Ecosystem" means the complex of a community of organisms and its environment.

(d) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(e) "Introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

(f) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) "Stakeholders" means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam and all possessions, territories, and the territorial sea of the United States.

**Sec. 2. Federal Agency Duties.** (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,

(1) identify such actions;

(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and

habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them, and

(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

**Sec. 3. Invasive Species Council.** (a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

**Sec. 4. Duties of the Invasive Species Council.** The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop recommendations for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;

(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;

(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

**Sec. 5. Invasive Species Management Plan.** (a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying path-ways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

**Sec. 6. Judicial Review and Administration.** (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987<sup>1</sup> of May 24, 1977, is hereby revoked.

(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.

(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*February 3, 1999.*

1. 42 U.S.C.A. § 4321 nt.

**No. 13114**

February 25, 1999, 64 F.R. 10099

**Further Amendment to Executive Order 12852<sup>1</sup>, as Amended,  
Extending the President's Council on Sustainable Development**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further amend Executive Order 12852, as amended, to extend the life of the President's Council on Sustainable Development, it is hereby ordered that Executive Order 12852, as amended, is further amended by deleting from section 4(b) of the order the text "February 28, 1999" and inserting in lieu thereof "June 30, 1999".

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*February 25, 1999.*

1. 42 U.S.C.A. § 4321 nt.

**No. 13123**

June 3, 1999, 64 F.R. 30851

**Greening the Government Through Efficient Energy Management**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95–619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102–486, 106 Stat. 2776), and section 301 of title 3, United States Code, it is hereby ordered as follows:

**PART 1—PREAMBLE**

**Section 101. Federal Leadership.** The Federal Government, as the Nation's largest energy consumer, shall significantly improve its energy management in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change. With more than 500,000 buildings, the Federal Government can lead the Nation in energy efficient building design, construction, and operation. As a major consumer that spends \$200 billion annually on products and services, the Federal Government can promote energy efficiency, water conservation, and the use of renewable energy products, and help foster markets for emerging technologies. In encouraging effective energy management in the Federal Government, this order builds on work begun under EPACT and previous Executive orders.

**PART 2—GOALS**

**Sec. 201. Greenhouse Gases Reduction Goal.** Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by 30 percent by 2010 compared to such emissions levels in 1990. In order to encourage optimal investment in energy improvements, agencies can count greenhouse gas reductions from improvements in nonfacility energy use toward this goal to the extent that these reductions are approved by the Office of Management and Budget (OMB).

**Sec. 202. Energy Efficiency Improvement Goals.** Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding facilities covered in section 203 of this order, by 30 percent by 2005 and 35 percent by 2010 relative to 1985. No facilities will be exempt from these goals unless they meet new criteria for exemptions, to be issued by the Department of Energy (DOE).

**Sec. 203. Industrial and Laboratory Facilities.** Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable by 20 percent by 2005 and 25 percent by 2010 relative to 1990. No facilities will be exempt from these goals unless they meet new criteria for exemptions, as issued by DOE.

**Sec. 204. Renewable Energy.** Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. In support of the Million Solar Roofs initiative, the Federal Government shall strive to install 2,000 solar energy systems at Federal facilities by the end of 2000, and 20,000 solar energy systems at Federal facilities by 2010.

**Sec. 205. Petroleum.** Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum within its facilities. Agencies may accomplish this reduction by switching to a less greenhouse gas-intensive, nonpetroleum energy source, such as natural gas or renewable energy sources; by eliminating unnecessary fuel use; or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

**Sec. 206. Source Energy.** The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

**Sec. 207. Water Conservation.** Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under section 503(f) of this order. Where possible, water cost savings and associated energy cost savings shall be included in Energy-Savings Performance Contracts and other financing mechanisms.

### PART 3—ORGANIZATION AND ACCOUNTABILITY

**Sec. 301. Annual Budget Submission.** Each agency's budget submission to OMB shall specifically request funding necessary to achieve the goals of this order. Budget submissions shall include the costs associated with: encouraging the use of, administering, and fulfilling agency responsibilities under Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and other contractual platforms for achieving conservation goals; implementing life-cycle cost-effective measures; procuring life-cycle cost-effective products; and constructing sustainably designed new buildings, among other energy costs. OMB shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products. OMB shall explore the feasibility of establishing a fund that agencies could draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs. Budget requests to OMB in support of this order must be within each agency's planning guidance level.

**Sec. 302. Annual Implementation Plan.** Each agency shall develop an annual implementation plan for fulfilling the requirements of this order. Such plans shall be included in the annual reports to the President under section 303 of this order.

**Sec. 303. Annual Reports to the President.** (a) Each agency shall measure and report its progress in meeting the goals and requirements of this order on an annual basis. Agencies shall follow reporting guidelines as developed under section 306(b) of this order. In order to minimize additional reporting requirements, the guidelines will clarify how the annual report to the President should build on each agency's annual Federal energy reports submitted to DOE and the Congress. Annual reports to the President are due on January 1 of each year beginning in the year 2000.

(b) Each agency's annual report to the President shall describe how the agency is using each of the strategies described in Part 4 of this order to help meet energy and greenhouse gas reduction goals. The annual report to the President shall explain why certain strategies, if any, have not been used. It shall also include a listing and explanation of exempt facilities.

**Sec. 304. Designation of Senior Agency Official.** Each agency shall designate a senior official, at the Assistant Secretary level or above, to be responsible for meeting the goals and requirements of this order, including preparing the annual report to the President. Such designation shall be reported by each Cabinet Secretary or agency head to the Deputy Director for Management of OMB within 30 days of the date of this order.

Designated officials shall participate in the Interagency Energy Policy Committee, described in section 306(d) of this order. The Committee shall communicate its activities to all designated officials to assure proper coordination and achievement of the goals and requirements of this order.

**Sec. 305. Designation of Agency Energy Teams.** Within 90 days of the date of this order, each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, Energy-Savings Performance Contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this order. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the Interagency Energy Management Task Force, as described in section 306(e) of this order.

**Sec. 306. Interagency Coordination.** (a) *Office of Management and Budget.* The Deputy Director for Management of OMB, in consultation with DOE, shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the President to report progress.

(1) OMB, in consultation with DOE and other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this order. The scoring criteria shall include the extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR and other energy efficient products, renewable energy technologies, electricity from renewable energy sources, and other strategies and requirements listed in Part 4 of this order, as well as overall efficiency and green-house gas metrics and use of other innovative energy efficiency practices. The scorecards shall be based on the annual energy reports submitted to the President under section 303 of this order.

(2) The Deputy Director for Management of OMB shall also select outstanding agency energy management team(s), from among candidates nominated by DOE, for a new annual Presidential award for energy efficiency.

(b) *Federal Energy Management Program.* The DOE's Federal Energy Management Program (FEMP) shall be responsible for working with the agencies to ensure that they meet the goals of this order and report their progress. FEMP, in consultation with OMB, shall develop and issue guidelines for agencies' preparation of their annual reports to the President on energy management, as required in section 303 of this order. FEMP shall also have primary responsibility for collecting and analyzing the data, and shall assist OMB in ensuring that agency reports are received in a timely manner.

(c) *President's Management Council.* The President's Management Council (PMC), chaired by the Deputy Director for Management of OMB and consisting of the Chief Operating Officers (usually the Deputy Secretary) of the largest Federal departments and agencies, will periodically discuss agencies' progress in improving Federal energy management.

(d) *Interagency Energy Policy Committee.* This Committee was established by the Department of Energy Organization Act. It consists of senior agency officials designated in accordance with section 304 of this order. The Committee is responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies designated by DOE are required to participate in the Committee. The Committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this order.

(e) *Interagency Energy Management Task Force.* The Task Force was established by the National Energy Conservation Policy Act. It consists of each agency's chief energy manager. The Committee shall continue to work toward improving agencies' use of energy

management tools and sharing information on Federal energy management across agencies.

**Sec. 307. Public/Private Advisory Committee.** The Secretary of Energy will appoint an advisory committee consisting of representatives from Federal agencies, State governments, energy service companies, utility companies, equipment manufacturers, construction and architectural companies, environmental, energy and consumer groups, and other energy-related organizations. The committee will provide input on Federal energy management, including how to improve use of Energy-Savings Performance Contracts and utility energy-efficiency service contracts, improve procurement of ENERGY STAR and other energy efficient products, improve building design, reduce process energy use, and enhance applications of efficient and renewable energy technologies at Federal facilities.

**Sec. 308. Applicability.** This order applies to all Federal departments and agencies. General Services Administration (GSA) is responsible for working with agencies to meet the requirements of this order for those facilities for which GSA has delegated operations and maintenance authority. The Department of Defense (DOD) is subject to this order to the extent that it does not impair or adversely affect military operations and training (including tactical aircraft, ships, weapons systems, combat training, and border security).

#### **PART 4—PROMOTING FEDERAL LEADERSHIP IN ENERGY MANAGEMENT**

**Sec. 401. Life-Cycle Cost Analysis.** Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the Federal Government's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects. Agencies shall also retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures will be recognized in their scorecard evaluations.

**Sec. 402. Facility Energy Audits.** Agencies shall continue to conduct energy and water audits for approximately 10 percent of their facilities each year, either independently or through Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

**Sec. 403. Energy Management Strategies and Tools.** Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its scorecard.

(a) *Financing Mechanisms.* Agencies shall maximize their use of available alternative financing contracting mechanisms, including Energy-Savings Performance Contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-Savings Performance Contracts, which are authorized under the National Energy Conservation Policy Act, as modified by the Energy Policy Act of 1992, and utility energy-efficiency service contracts provide significant opportunities for making Federal facilities more energy efficient at no net cost to taxpayers.

(b) *ENERGY STAR and Other Energy Efficient Products.*

(1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR labels are not yet available, agencies shall select products that are in the upper 25 percent of energy efficiency as designated by FEMP. The Environmental

Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR and will merge their current efficiency rating procedures.

(2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a "second price tag", which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.

(3) Agencies shall incorporate energy efficient criteria consistent with ENERGY STAR and other FEMP-designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.

(4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months of the date of this order, DOE shall report back to the President's Management Council on the viability of such alternative financing options.

(c) *ENERGY STAR Buildings.* Agencies shall strive to meet the ENERGY STAR Building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by the end of 2002. Agencies may use Energy-Savings Performance Contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to buildings in order to meet the criteria. Buildings that rank in the top 25 percent in energy efficiency relative to comparable commercial and Federal buildings will receive the ENERGY STAR building label. Agencies shall integrate this building rating tool into their general facility audits.

(d) *Sustainable Building Design.* DOD and GSA, in consultation with DOE and EPA, shall develop sustainable design principles. Agencies shall apply such principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using Energy-Savings Performance Contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(e) *Model Lease Provisions.* Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference for buildings having the ENERGY STAR building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors' Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

(f) *Industrial Facility Efficiency Improvements.* Agencies shall explore efficiency opportunities in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching, including cogeneration and other efficiency and renewable energy technologies.

(g) *Highly Efficient Systems.* Agencies shall implement district energy systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power when upgrading and assessing facility power needs and shall use combined cooling, heat, and power systems

when life-cycle cost-effective. Agencies shall survey local natural resources to optimize use of available biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(h) *Off-Grid Generation.* Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

**Sec. 404. Electricity Use.** To advance the greenhouse gas and renewable energy goals of this order, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its score card.

(a) *Competitive Power.* Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

(b) *Reduced Greenhouse Gas Intensity of Electric Power.* When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

(c) *Purchasing Electricity from Renewable Energy Sources.*

(1) Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the President. Based on this review, each agency should adopt policies and pursue projects that increase the use of such electricity. Agencies should include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

(2) In evaluating opportunities to comply with this section, agencies should consider: my Administration's goal of tripling nonhydroelectric renewable energy capacity in the United States by 2010; the renewable portfolio standard specified in the restructuring guidelines for the State in which the facility is located; GSA's efforts to make electricity from renewable energy sources available to Federal electricity purchasers; and EPA's guide-lines on crediting renewable energy power in implementation of Clean Air Act standards.

**Sec. 405. Mobile Equipment.** Each agency shall seek to improve the design, Construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

**Sec. 406. Management and Government Performance.** Agencies shall use the following management strategies in meeting the goals of this order.

(a) *Awards.* Agencies shall use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall include successful implementation of provisions of this order in areas such as Energy-Savings Performance Contracts, sustainable design, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects in the position descriptions and performance evaluations

of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees.

(c) *Retention of Savings and Rebates.* Agencies granted statutory authority to retain a portion of savings generated from efficient energy and water management are encouraged to permit the retention of the savings at the facility or site where the savings occur to provide greater incentive for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources.

(d) *Training and Education.* Agencies shall ensure that all appropriate personnel receive training for implementing this order.

(1) DOE, DOD, and GSA shall provide relevant training or training materials for those programs that they make available to all Federal agencies relating to the energy management strategies contained in this order.

(2) The Federal Acquisition Institute and the Defense Acquisition University shall incorporate into existing procurement courses information on Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR and other energy efficient products, and life-cycle cost analysis.

(3) All agencies are encouraged to develop outreach programs that include education, training, and promotion of ENERGY STAR and other energy-efficient products for Federal purchase card users. These programs may include promotions with billing statements, user training, catalogue awareness, and exploration of vendor data collection of purchases.

(e) *Showcase Facilities.* Agencies shall designate exemplary new and existing facilities with significant public access and exposure as showcase facilities to highlight energy or water efficiency and renewable energy improvements.

#### **PART 5—TECHNICAL ASSISTANCE**

**Sec. 501.** Within 120 days of this order, the Director of OMB shall:

(a) develop and issue guidance to agency budget officers on preparation of annual funding requests associated with the implementation of the order for the FY 2001 budget;

(b) in collaboration with the Secretary of Energy, explain to agencies how to retain savings and reinvest in other energy and water management projects; and

(c) in collaboration with the Secretary of Energy through the Office of Federal Procurement Policy, periodically brief agency procurement executives on the use of Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

**Sec. 502.** Within 180 days of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;

(b) establish criteria for determining which facilities are exempt from the order. In addition, DOE must provide guidance for agencies to report proposed exemptions;

(c) develop guidance to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after 1990 in order to measure progress toward goals;

(d) issue guidance to clarify how agencies determine the life-cycle cost for investments required by the order, including how to compare different energy and fuel options and assess the current tools;

(e) issue guidance for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases; and

(f) provide guidance to assist each agency to determine a baseline of water consumption.

**Sec. 503.** Within 1 year of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;

(b) develop goals for the amount of energy generated at Federal facilities from renewable energy technologies;

(c) support efforts to develop standards for the certification of low environmental impact hydropower facilities in order to facilitate the Federal purchase of such power;

(d) work with GSA and DLA to develop a plan for purchasing advanced energy products in bulk quantities for use in by multiple agencies;

(e) issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use. These guidelines shall include emissions associated with the production, transportation, and use of energy consumed in Federal facilities; and

(f) establish water conservation goals for Federal agencies.

**Sec. 504.** Within 120 days of this order, the Secretary of Defense and the Administrator of GSA, in consultation with other agency heads, shall develop and issue sustainable design and development principles for the siting, design, and construction of new facilities.

**Sec. 505.** Within 180 days of this order, the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, shall:

(a) develop and issue guidance to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs. Incentives for contractors involved in facility design and construction must be structured to encourage the contractors to design and build at the lowest life-cycle cost;

(b) make information available on opportunities to purchase electricity from renewable energy sources as defined by this order. This information should accommodate relevant State regulations and be updated periodically based on technological advances and market changes, at least every 2 years;

(c) develop Internet-based tools for both GSA and DLA customers to assist individual and agency purchasers in identifying and purchasing ENERGY STAR and other energy efficient products for acquisition; and

(d) develop model lease provisions that incorporate energy efficiency and sustainable design.

## **PART 6—GENERAL PROVISIONS**

**Sec. 601. Compliance by Independent Agencies.** Independent agencies are encouraged to comply with the provisions of this order.

**Sec. 602. Waivers.** If an agency determines that a provision in this order is inconsistent with its mission, the agency may ask DOE for a waiver of the provision. DOE will include a list of any waivers it grants in its Federal Energy Management Programs annual report to the Congress.

### **Sec. 603. Scope.**

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive

or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to agency facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Agencies with facilities outside of these areas, however, are encouraged to make best efforts to comply with the goals of this order for those facilities. In addition, agencies can report energy improvements made outside the United States in their annual report to the President; these improvements may be considered in agency scorecard evaluations.

**Sec. 604. Revocations.** Executive Order 12902 of March 9, 1994, Executive Order 12759 of April 17, 1991, and Executive Order 12845 of April 21, 1993, are revoked.

**Sec. 605. Amendments to Federal Regulations.** The Federal Acquisition Regulation and other Federal regulations shall be amended to reflect changes made by this order, including an amendment to facilitate agency purchases of electricity from renewable energy sources.

## PART 7—DEFINITIONS

For the purposes of this order:

**Sec. 701.** “Acquisition” means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**Sec. 702.** “Agency” means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of DOD.

**Sec. 703.** “Energy-Savings Performance Contract” means a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations. Such contracts shall provide that the contractor must incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract. Payment to the contractor is contingent upon realizing a guaranteed stream of future energy and cost savings. All additional savings will accrue to the Federal Government.

**Sec. 704.** “Exempt facility” or “Exempt mobile equipment” means a facility or a piece of mobile equipment for which an agency uses DOE-established criteria to determine that compliance with the Energy Policy Act of 1992 or this order is not practical.

**Sec. 705.** “Facility” means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a purchase option or facilities planned for purchase. In any provision of this order, the term “facility” also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly

for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities.

**Sec. 706.** “Industrial facility” means any fixed equipment, building, or complex for production, manufacturing, or other processes that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the water heating energy load requirements of the facility.

**Sec. 707.** “Life-cycle costs” means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19.

**Sec. 708.** “Life-cycle cost-effective” means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 C.F.R. 436.18 (a), (b), and (c), 436.20, and 436.21.

**Sec. 709.** “Mobile equipment” means all Federally owned ships, aircraft, and nonroad vehicles.

**Sec. 710.** “Renewable energy” means energy produced by solar, wind, geothermal, and biomass power.

**Sec. 711.** “Renewable energy technology” means technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term also means the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

**Sec. 712.** “Source energy” means the energy that is used at a site and consumed in producing and in delivering energy to a site, including, but not limited to, power generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

**Sec. 713.** “Utility” means public agencies and privately owned companies that market, generate, and/or distribute energy or water, including electricity, natural gas, manufactured gas, steam, hot water, and chilled water as commodities for public use and that provide the service under Federal, State, or local regulated authority to all authorized customers. Utilities include: Federally owned nonprofit producers; municipal organizations; and investor or privately owned producers regulated by a State and/or the Federal Government; cooperatives owned by members and providing services mostly to their members; and other nonprofit State and local government agencies serving in this capacity.

**Sec. 714.** “Utility energy-efficiency service” means demand side management services provided by a utility to improve the efficiency of use of the commodity (electricity, gas, etc.) being distributed. Services can include, but are not limited to, energy efficiency and

renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*June 3, 1999.*

**No. 13132**

August 4, 1999, 64 F.R. 43255

**Federalism**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act, it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this order:

(a) “Policies that have federalism implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) “State” or “States” refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) “State and local officials” means elected officials of State and local governments or their representative national organizations.

**Sec. 2. Fundamental Federalism Principles.** In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

(b) The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) The Framers recognized that the States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) The national government should be deferential to the States when taking action that affects the policymaking discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

**Sec. 3. Federalism Policymaking Criteria.** In addition to adhering to the fundamental federalism principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practicable, State and local officials shall be consulted before any such action is implemented. Executive Order 12372 of July 14, 1982 (“Intergovernmental Review of Federal Programs”) remains in effect for the programs and activities to which it is applicable.

(b) National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

(c) With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, agencies shall:

(1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;

(2) where possible, defer to the States to establish standards;

(3) in determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and

(4) where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

**Sec. 4. Special Requirements for Preemption.** Agencies, in taking action that preempts State law, shall act in strict accordance with governing law.

(a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) When an agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.

(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

**Sec. 5. Special Requirements for Legislative Proposals.** Agencies shall not submit to the Congress legislation that would:

(a) directly regulate the States in ways that would either interfere with functions essential to the States' separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;

(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant; or

(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

**Sec. 6. Consultation.**

(a) Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with State and local officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

**Sec. 7. Increasing Flexibility for State and Local Waivers.**

(a) Agencies shall review the processes under which State and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefore.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**Sec. 8. Accountability.**

(a) In transmitting any draft final regulation that has federalism implications to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has federalism implications to the Office of Management and Budget, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order, the Director of the Office of Management and Budget and the Assistant to the President for Intergovernmental Affairs shall confer with State and local officials to ensure that this order is being properly and effectively implemented.

**Sec. 9. Independent Agencies.** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 10. General Provisions.**

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12372 (“Intergovernmental Review of Federal Programs”), Executive Order 12866 (“Regulatory Planning and Review”), Executive Order 12988 (“Civil Justice Reform”), and OMB Circular A–19.

(b) Executive Order 12612 (“Federalism”), Executive Order 12875 (“Enhancing the Intergovernmental Partnership”), Executive Order 13083 (“Federalism”), and Executive Order 13095 (“Suspension of Executive Order 13083”) are revoked.

(c) This order shall be effective 90 days after the date of this order.

**Sec. 11. Judicial Review.** This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*August 4, 1999.*

**No. 13148**

April 21, 2000, 65 F.R. 24595

**Greening the Government Through Leadership in Environmental Management**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (EPCRA), the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (PPA), the Clean Air Act (42 U.S.C. 7401–7671q) (CAA), and section 301 of title 3, United States Code, it is hereby ordered as follows:

**PART 1—PREAMBLE**

**Section 101. Federal Environmental Leadership.** The head of each Federal agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decision-making and long-term planning processes, across all agency missions, activities, and functions. Consequently, environmental management considerations must be a fundamental and integral component of Federal Government policies, operations, planning, and management. The head of each Federal agency is responsible for meeting the goals and requirements of this order.

**PART 2—GOALS**

**Sec. 201. Environmental Management.** Through development and implementation of environmental management systems, each agency shall ensure that strategies are established to support environmental leadership programs, policies, and procedures and that agency senior level managers explicitly and actively endorse these strategies.

**Sec. 202. Environmental Compliance.** Each agency shall comply with environmental regulations by establishing and implementing environmental compliance audit programs and policies that emphasize pollution prevention as a means to both achieve and maintain environmental compliance.

**Sec. 203. Right-to-Know and Pollution Prevention.** Through timely planning and reporting under the EPCRA, Federal facilities shall be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations. Each agency shall strive to reduce or eliminate harm to human health and the environment from releases of pollutants to the environment. Each agency shall advance the national policy that, whenever feasible and cost-effective, pollution should be prevented or reduced at the source. Funding for regulatory compliance programs shall emphasize pollution prevention as a means to address environmental compliance.

**Sec. 204. Release Reduction: Toxic Chemicals.** Through innovative pollution prevention, effective facility management, and sound acquisition and procurement practices, each agency shall reduce its reported Toxic Release Inventory (TRI) releases and off-site transfers of toxic chemicals for treatment and disposal by 10 percent annually, or by 40 percent overall by December 31, 2006.

**Sec. 205. Use Reduction: Toxic Chemicals and Hazardous Substances and Other Pollutants.** Through identification of proven substitutes and established facility management practices, including pollution prevention, each agency shall reduce its use of selected toxic chemicals, hazardous substances, and pollutants, or its generation of

hazardous and radioactive waste types at its facilities by 50 percent by December 31, 2006. If an agency is unable to reduce the use of selected chemicals, that agency will reduce the use of selected hazardous substances or its generation of other pollutants, such as hazardous and radioactive waste types, at its facilities by 50 percent by December 31, 2006.

**Sec. 206. Reductions in Ozone-Depleting Substances.** Through evaluating present and future uses of ozone-depleting substances and maximizing the purchase and the use of safe, cost effective, and environmentally preferable alternatives, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all nonexcepted uses by December 31, 2010.

**Sec. 207. Environmentally and Economically Beneficial Landscaping.** Each agency shall strive to promote the sustainable management of Federal facility lands through the implementation of cost-effective, environmentally sound landscaping practices, and programs to reduce adverse impacts to the natural environment.

### **PART 3—PLANNING AND ACCOUNTABILITY**

**Sec. 301. Annual Budget Submission.** Federal agencies shall place high priority on obtaining funding and resources needed for implementation of the Greening the Government Executive Orders, including funding to address findings and recommendations from environmental management system audits or facility compliance audits conducted under sections 401 and 402 of this order. Federal agencies shall make such requests as required in Office of Management and Budget (OMB) Circular A-11.

**Sec. 302. Application of Life Cycle Assessment Concepts.** Each agency with facilities shall establish a pilot program to apply life cycle assessment and environmental cost accounting principles. To the maximum extent feasible and cost-effective, agencies shall apply those principles elsewhere in the agency to meet the goals and requirements of this order. Such analysis shall be considered in the process established in the OMB Capital Programming Guide and OMB Circular A-11. The Environmental Protection Agency (EPA), in coordination with the Workgroup established in section 306 of this order, shall, to the extent feasible, assist agencies in identifying, applying, and developing tools that reflect life cycle assessment and environmental cost accounting principles and provide technical assistance to agencies in developing life cycle assessments and environmental cost accounting assessments under this Part.

**Sec. 303. Pollution Prevention to Address Compliance.** Each agency shall ensure that its environmental regulatory compliance funding policies promote the use of pollution prevention to achieve and maintain environmental compliance at the agency's facilities. Agencies shall adopt a policy to preferentially use pollution prevention projects and activities to correct and prevent noncompliance with environmental regulatory requirements. Agency funding requests for facility compliance with Federal, State, and local environmental regulatory requirements shall emphasize pollution prevention through source reduction as the means of first choice to ensure compliance, with reuse and recycling alternatives having second priority as a means of compliance.

**Sec. 304. Pollution Prevention Return-on-Investment Programs.** Each agency shall develop and implement a pollution prevention program at its facilities that compares the life cycle costs of treatment and/or disposal of waste and pollutant streams to the life cycle costs of alternatives that eliminate or reduce toxic chemicals or pollutants at the source. Each agency shall implement those projects that are life-cycle cost-effective, or otherwise offer substantial environmental or economic benefits.

### **Sec. 305. Policies, Strategies, and Plans.**

(a) Within 12 months of the date of this order, each agency shall ensure that the goals and requirements of this order are incorporated into existing agency environmental directives, policies, and documents affected by the requirements and goals of this order. Where such directives and policies do not already exist, each agency shall, within 12 months of the date of this order, prepare and endorse a written agency environmental management strategy to achieve the requirements and goals of this order. Agency preparation of directives, policies, and documents shall reflect the nature, scale, and environmental impacts of the agency's activities, products, or services. Agencies are encouraged to include elements of relevant agency policies or strategies developed under this part in agency planning documents prepared under the Government Performance and Results Act of 1993, Public Law 103-62.

(b) By March 31, 2002, each agency shall ensure that its facilities develop a written plan that sets forth the facility's contribution to the goals and requirements established in this order. The plan should reflect the size and complexity of the facility. Where pollution prevention plans or other formal environmental planning instruments have been prepared for agency facilities, an agency may elect to update those plans to meet the requirements and goals of this section.

(c) The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order. Once the appropriate FAR clauses have been published, agencies shall use them in all applicable contracts. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, or concessioners, each agency shall take practical steps to obtain the information needed to comply with this order from such contractors or concessioners.

**Sec. 306. Interagency Environmental Leadership Workgroup.** Within 4 months of the date of this order, EPA shall convene and chair an Interagency Environmental Leadership Workgroup (the Workgroup) with senior-level representatives from all executive agencies and other interested independent Government agencies affected by this order. The Workgroup shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies. Workgroup members shall coordinate with their Agency Environmental Executive (AEE) designated under section 301(d) of Executive Order 13101 and may request the assistance of their AEE in resolving issues that may arise among members in developing policies and guidance related to this order. If the AEEs are unable to resolve the issues, they may request the assistance of the Chair of the Council on Environmental Quality (CEQ).

**Sec. 307. Annual Reports.** Each agency shall submit an annual progress report to the Administrator on implementation of this order. The reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including, but not limited to, progress in achieving the reduction goals in sections 502, 503, and 505 of this order. Each agency may prepare and submit the annual report in electronic format. A copy of the report shall be submitted to the Federal Environmental Executive (FEE) by EPA for use in the biennial Greening the Government Report to the President prepared in accordance with Executive Order 13101. Within 9 months of the date of this order, EPA, in coordination with the Workgroup established under section 306 of this order, shall prepare guidance regarding the information and timing for the annual report. The Workgroup shall coordinate with those agencies responsible for Federal agency reporting guidance under the Greening the Government Executive orders to streamline reporting requirements and reduce agency and facility-level reporting burdens. The first annual report shall cover calendar year 2000 activities.

**PART 4—PROMOTING ENVIRONMENTAL MANAGEMENT AND LEADERSHIP**

**Sec. 401. Agency and Facility Environmental Management Systems.** To attain the goals of section 201 of this order:

(a) Within 18 months of the date of this order, each agency shall conduct an agency-level environmental management system self assessment based on the Code of Environmental Management Principles for Federal Agencies developed by the EPA (61 Fed. Reg. 54062) and/or another appropriate environmental management system framework. Each assessment shall include a review of agency environmental leadership goals, objectives, and targets. Where appropriate, the assessments may be conducted at the service, bureau, or other comparable level.

(b) Within 24 months of the date of this order, each agency shall implement environmental management systems through pilot projects at selected agency facilities based on the Code of Environmental Management Principles for Federal Agencies and/or another appropriate environmental management system framework. By December 31, 2005, each agency shall implement an environmental management system at all appropriate agency facilities based on facility size, complexity, and the environmental aspects of facility operations. The facility environmental management system shall include measurable environmental goals, objectives, and targets that are reviewed and updated annually. Once established, environmental management system performance measures shall be incorporated in agency facility audit protocols.

**Sec. 402. Facility Compliance Audits.** To attain the goals of section 202 of this order:

(a) Within 12 months of the date of this order, each agency that does not have an established regulatory environmental compliance audit program shall develop and implement a program to conduct facility environmental compliance audits and begin auditing at its facilities within 6 months of the development of that program.

(b) An agency with an established regulatory environmental compliance audit program may elect to conduct environmental management system audits in lieu of regulatory environmental compliance audits at selected facilities.

(c) Facility environmental audits shall be conducted periodically. Each agency is encouraged to conduct audits not less than every 3 years from the date of the initial or previous audit. The scope and frequency of audits shall be based on facility size, complexity, and the environmental aspects of facility operations. As appropriate, each agency shall include tenant, contractor, and concessioner activities in facility audits.

(d) Each agency shall conduct internal reviews and audits and shall take such other steps, as may be necessary, to monitor its facilities' compliance with sections 501 and 504 of this order.

(e) Each agency shall consider findings from the assessments or audits conducted under Part 4 in program planning under section 301 of this order and in the preparation and revisions to facility plans prepared under section 305 of this order.

(f) Upon request and to the extent practicable, the EPA shall provide technical assistance in meeting the requirements of Part 4 by conducting environmental management reviews at Federal facilities and developing policies and guidance for conducting environmental compliance audits and implementing environmental management systems at Federal facilities.

**Sec. 403. Environmental Leadership and Agency Awards Programs.**

(a) Within 12 months of the date of this order, the Administrator shall establish a Federal Government environmental leadership program to promote and recognize outstanding environmental management performance in agencies and facilities.

(b) Each agency shall develop an internal agency-wide awards program to reward and highlight innovative programs and individuals showing outstanding environmental leadership in implementing this order. In addition, based upon criteria developed by the EPA in coordination with the Workgroup established in section 306 of this order, Federal employees who demonstrate outstanding leadership in implementation of this order may be considered for recognition under the White House awards program set forth in section 803 of Executive Order 13101 of September 14, 1998.

**Sec. 404. Management Leadership and Performance Evaluations.**

(a) To ensure awareness of and support for the environmental requirements of this order, each agency shall include training on the provisions of the Greening the Government Executive orders in standard senior level management training as well as training for program managers, contracting personnel, procurement and acquisition personnel, facility managers, contractors, concessioners and other personnel as appropriate. In coordination with the Workgroup established under section 306 of this order, the EPA shall prepare guidance on implementation of this section.

(b) To recognize and reinforce the responsibilities of facility and senior headquarters program managers, regional environmental coordinators and officers, their superiors, and, to the extent practicable and appropriate, others vital to the implementation of this order, each agency shall include successful implementation of pollution prevention, community awareness, and environmental management into its position descriptions and performance evaluations for those positions.

**Sec. 405. Compliance Assistance.**

(a) Upon request and to the extent practicable, the EPA shall provide technical advice and assistance to agencies to foster full compliance with environmental regulations and all aspects of this order.

(b) Within 12 months of the date of this order, the EPA shall develop a compliance assistance center to provide technical assistance for Federal facility compliance with environmental regulations and all aspects of this order.

(c) To enhance landscaping options and awareness, the United States Department of Agriculture (USDA) shall provide information on the suitability, propagation, and the use of native plants for landscaping to all agencies and the general public by USDA in conjunction with the center under subsection (b) of this section. In implementing Part 6 of this order, agencies are encouraged to develop model demonstration programs in coordination with the USDA.

**Sec. 406. Compliance Assurance.**

(a) In consultation with other agencies, the EPA may conduct such reviews and inspections as may be necessary to monitor compliance with sections 501 and 504 of this order. Each agency is encouraged to cooperate fully with the efforts of the EPA to ensure compliance with those sections.

(b) Whenever the Administrator notifies an agency that it is not in compliance with section 501 or 504 of this order, the agency shall provide the EPA a detailed plan for achieving compliance as promptly as practicable.

(c) The Administrator shall report annually to the President and the public on agency compliance with the provisions of sections 501 and 504 of this order.

**Sec. 407. Improving Environmental Management.** To ensure that government-wide goals for pollution prevention are advanced, each agency is encouraged to incorporate its environmental leadership goals into its Strategic and Annual Performance

Plans required by the Government Performance and Results Act of 1993, Public Law 103–62, starting with performance plans accompanying the FY 2002 budget.

#### **PART 5—EMERGENCY PLANNING, COMMUNITY RIGHT-TO-KNOW, AND POLLUTION PREVENTION**

**Sec. 501. Toxics Release Inventory/Pollution Prevention Act Reporting.** To attain the goals of section 203 of this order:

(a) Each agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable EPA guidance.

(b) Each agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) delineations. Except as described in subsection (d) of this section, all other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 to specific activities at specific agency facilities apply to the reporting requirements set forth in subsection (a) of this section.

(c) Each agency required to report under subsection (a) of this section shall do so using electronic reporting as provided in EPA’s EPCRA section 313 guidance.

(d) Within 12 months of the date of this order, the Administrator shall review the impact on reporting of existing regulatory exemptions on the application of EPCRA section 313 at Federal facilities. Where feasible, this review shall include pilot studies at Federal facilities. If the review indicates that application of existing exemptions to Federal Government reporting under this section precludes public reporting of substantial amounts of toxic chemicals under subsection 501(a), the EPA shall prepare guidance, in coordination with the Workgroup established under section 306 of this order, clarifying application of the exemptions at Federal facilities. In developing the guidance, the EPA should consider similar application of such regulatory limitations and exemptions by the private sector. To the extent feasible, the guidance developed by the EPA shall be consistent with the reasonable application of such regulatory limitations and exemptions in the private sector. The guidance shall ensure reporting consistent with the goal of public access to information under section 313 of EPCRA and section 6607 of PPA. The guidance shall be submitted to the AEEs established under section 301(d) of Executive Order 13101 for review and endorsement. Each agency shall apply any guidance to reporting at its facilities as soon as practicable but no later than for reporting for the next calendar year following release of the guidance.

(e) The EPA shall coordinate with other interested Federal agencies to carry out pilot projects to collect and disseminate information about the release and other waste management of chemicals associated with the environmental response and restoration at their facilities and sites. The pilot projects will focus on releases and other waste management of chemicals associated with environmental response and restoration at facilities and sites where the activities generating wastes do not otherwise meet EPCRA section 313 thresholds for manufacture, process, or other use. Each agency is encouraged to identify applicable facilities and voluntarily report under subsection (a) of this section the releases and other waste management of toxic chemicals managed during environmental response and restoration, regardless of whether the facility otherwise would report under subsection (a). The releases and other waste management of chemicals associated with environmental response and restoration voluntarily reported under this subsection will not be included in the accounting established under sections 503(a) and (c) of this order.

**Sec. 502. Release Reduction: Toxic Chemicals.** To attain the goals of section 204 of this order:

(a) Beginning with reporting for calendar year 2001 activities, each agency reporting under section 501 of this order shall adopt a goal of reducing, where cost effective, the agency's total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal by at least 10 percent annually, or by 40 percent overall by December 31, 2006. Beginning with activities for calendar year 2001, the baseline for measuring progress in meeting the reduction goal will be the aggregate of all such releases and off-site transfers of such chemicals for treatment and disposal as reported by all of the agency's facilities under section 501 of this order. The list of toxic chemicals applicable to this goal is the EPCRA section 313 list as of December 1, 2000. If an agency achieves the 40 percent reduction goal prior to December 31, 2006, that agency shall establish a new baseline and reduction goal based on agency priorities.

(b) Where an agency is unable to pursue the reduction goal established in subsection (a) for certain chemicals that are mission critical and/or needed to protect human health and the environment or where agency off-site transfer of toxic chemicals for treatment is directly associated with environmental restoration activities, that agency may request a waiver from the EPA for all or part of the requirement in subsection (a) of this section. As appropriate, waiver requests must provide:

- (1) an explanation of the mission critical use of the chemical;
- (2) an explanation of the nature of the need for the chemical to protect human health;
- (3) a description of efforts to identify a less harmful substitute chemical or alternative processes to reduce the release and transfer of the chemical in question; and
- (4) a description of the off-site transfers of toxic chemicals for treatment directly associated with environmental restoration activities. The EPA shall respond to the waiver request within 90 days and may grant such a waiver for no longer than 2 years. An agency may resubmit a request for waiver at the end of that period. The waiver under this section shall not alter requirements to report under section 501 of this order.

(c) Where a specific component (e.g., bureau, service, or command) within an agency achieves a 75 percent reduction in its 1999 reporting year publicly reported total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal, based on the 1994 baseline established in Executive Order 12856, that agency may independently elect to establish a reduction goal for that component lower than the 40 percent target established in subsection (a) of this section. The agency shall formally notify the Workgroup established in section 306 of this order of the elected reduction target.

**Sec. 503. Use Reduction: Toxic Chemicals, Hazardous Substances, and Other Pollutants.** To attain the goals of section 205 of this order:

(a) Within 18 months of the date of this order, each agency with facilities shall develop and support goals to reduce the use at such agencies' facilities of the priority chemicals on the list under subsection (b) of this section for identified applications and purposes, or alternative chemicals and pollutants the agency identifies under subsection (c) of this section, by at least 50 percent by December 31, 2006.

(b) Within 9 months of the date of this order the Administrator, in coordination with the Workgroup established in section 306 of this order, shall develop a list of not less than 15 priority chemicals used by the Federal Government that may result in significant harm to human health or the environment and that have known, readily available, less harmful substitutes for identified applications and purposes. In addition to identifying the applications and purposes to which such reductions apply, the Administrator, in coordination with the Workgroup shall identify a usage threshold below which this section shall not apply. The chemicals will be selected from listed EPCRA section 313 toxic chemicals and, where appropriate, other regulated hazardous substances or

pollutants. In developing the list, the Administrator, in coordination with the Workgroup shall consider:

- (1) environmental factors including toxicity, persistence, and bio accumulation;
- (2) availability of known, less environmentally harmful substitute chemicals that can be used in place of the priority chemical for identified applications and purposes;
- (3) availability of known, less environmentally harmful processes that can be used in place of the priority chemical for identified applications and purposes;
- (4) relative costs of alternative chemicals or processes; and
- (5) potential risk and environmental and human exposure based upon applications and uses of the chemicals by Federal agencies and facilities. In identifying alternatives, the Administrator should take into consideration the guidance issued under section 503 of Executive Order 13101.

(c) If an agency, which has facilities required to report under EPCRA, uses at its facilities less than five of the priority chemicals on the list developed in subsection (b) of this section for the identified applications and purposes, the agency shall develop, within 12 months of the date of this order, a list of not less than five chemicals that may include priority chemicals under subsection (b) of this section or other toxic chemicals, hazardous substances, and/or other pollutants the agency uses or generates, the release, transfer or waste management of which may result in significant harm to human health or the environment.

(d) In lieu of requirements under subsection (a) of this section, an agency may, upon concurrence with the Workgroup established under section 306 of this order, develop within 12 months of the date of this order, a list of not less than five priority hazardous or radioactive waste types generated by its facilities. Within 18 months of the date of this order, the agency shall develop and support goals to reduce the agency's generation of these wastes by at least 50 percent by December 31, 2006. To the maximum extent possible, such reductions shall be achieved by implementing source reduction practices.

(e) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal in subsections (a) and (d) of this section for each agency is the first calendar year following the development of the list of priority chemicals under subsection (b) of this section.

(f) Each agency shall undertake pilot projects at selected facilities to gather and make publicly available materials accounting data related to the toxic chemicals, hazardous substances, and/or other pollutants identified under subsections (b), (c), or (d) of this section.

(g) Within 12 months of the date of this order, the Administrator shall develop guidance on implementing this section in coordination with the Workgroup. The EPA shall develop technical assistance materials to assist agencies in meeting the 50 percent reduction goal of this section.

(h) Where an agency can demonstrate to the Workgroup that it has previously reduced the use of a priority chemical identified in subsection 503(b) by 50 percent, then the agency may elect to waive the 50 percent reduction goal for that chemical.

**Sec. 504. Emergency Planning and Reporting Responsibilities.** Each agency shall comply with the provisions set forth in sections 301 through 312 of the EPCRA, all implementing regulations, and any future amendments to these authorities, in light of any applicable guidance as provided by the EPA.

**Sec. 505. Reductions in Ozone-Depleting Substances.** To attain the goals of section 206 of this order:

- (a) Each agency shall ensure that its facilities: (1) maximize the use of safe alternatives to ozone-depleting substances, as approved by the EPA's Significant New Alternatives Policy (SNAP) program; (2) consistent with subsection (b) of this section,

evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials, and evaluate use of, and plans for recycling, refrigerants, and halons; and (3) exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

(b) Within 12 months of the date of this order, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all nonexcepted uses by December 31, 2010. Plans should target cost effective reduction of environmental risk by phasing out Class I ozone depleting substance applications as the equipment using those substances reaches its expected service life. Exceptions to this requirement include all exceptions found in current or future applicable law, treaty, regulation, or Executive order.

(c) Each agency shall amend its personal property management policies and procedures to preclude disposal of ozone depleting substances removed or reclaimed from its facilities or equipment, including disposal as part of a contract, trade, or donation, without prior coordination with the Department of Defense (DOD). Where the recovered ozone-depleting substance is a critical requirement for DOD missions, the agency shall transfer the materials to the DOD. The DOD will bear the costs of such transfer.

## **PART 6—LANDSCAPING MANAGEMENT PRACTICES**

### **Sec. 601. Implementation.**

(a) Within 12 months from the date of this order, each agency shall incorporate the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 Fed. Reg. 40837) developed by the FEE into landscaping pro-grams, policies, and practices.

(b) Within 12 months of the date of this order, the FEE shall form a workgroup of appropriate Federal agency representatives to review and update the guidance in subsection (a) of this section, as appropriate.

(c) Each agency providing funding for nonfederal projects involving landscaping projects shall furnish funding recipients with information on environmental and economically beneficial landscaping practices and work with the recipients to support and encourage application of such practices on Federally funded projects.

**Sec. 602. Technical Assistance and Outreach.** The EPA, the General Services Administration (GSA), and the USDA shall provide technical assistance in accordance with their respective authorities on environmental and economically beneficial landscaping practices to agencies and their facilities.

## **PART 6—LANDSCAPING MANAGEMENT PRACTICES**

### **Sec. 601. Implementation.**

(a) Within 12 months from the date of this order, each agency shall incorporate the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 Fed. Reg. 40837) developed by the FEE into landscaping pro-grams, policies, and practices.

(b) Within 12 months of the date of this order, the FEE shall form a workgroup of appropriate Federal agency representatives to review and update the guidance in subsection (a) of this section, as appropriate.

(c) Each agency providing funding for nonfederal projects involving landscaping projects shall furnish funding recipients with information on environmental and economically beneficial landscaping practices and work with the recipients to support and encourage application of such practices on Federally funded projects.

**Sec. 602. Technical Assistance and Outreach.** The EPA, the General Services Administration (GSA), and the USDA shall provide technical assistance in accordance with their respective authorities on environmentally and economically beneficial landscaping practices to agencies and their facilities.

## **PART 7—ACQUISITION AND PROCUREMENT**

### **Sec. 701. Limiting Procurement of Toxic Chemicals, Hazardous Substances, and Other Pollutants.**

(a) Within 12 months of the date of this order, each agency shall implement training programs to ensure that agency procurement officials and acquisition program managers are aware of the requirements of this order and its applicability to those individuals.

(b) Within 24 months of the date of this order, each agency shall determine the feasibility of implementing centralized procurement and distribution (e.g., “pharmacy”) programs at its facilities for tracking, distribution, and management of toxic or hazardous materials and, where appropriate, implement such programs.

(c) Under established schedules for review of standardized documents, DOD and GSA, and other agencies, as appropriate, shall review their standardized documents and identify opportunities to eliminate or reduce their use of chemicals included on the list of priority chemicals developed by the EPA under subsection 503(b) of this order, and make revisions as appropriate.

(d) Each agency shall follow the policies and procedures for toxic chemical release reporting in accordance with FAR section 23.9 effective as of the date of this order and policies and procedures on Federal compliance with right-to-know laws and pollution prevention requirements in accordance with FAR section 23.10 effective as of the date of this order.

**Sec. 702. Environmentally Benign Adhesives.** Within 12 months after environmentally benign pressure sensitive adhesives for paper products become commercially available, each agency shall revise its specifications for paper products using adhesives and direct the purchase of paper products using those adhesives, whenever technically practicable and cost effective. Each agency should consider products using the environmentally benign pressure sensitive adhesives approved by the U.S. Postal Service (USPS) and listed on the USPS Qualified Products List for pressure sensitive recyclable adhesives.

**Sec. 703. Ozone-Depleting Substances.** Each agency shall follow the policies and procedures for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances in accordance with FAR section 23.8 and other applicable FAR provisions.

### **Sec. 704. Environmentally and Economically Beneficial Landscaping Practices.**

(a) Within 18 months of the date of this order, each agency shall have in place acquisition and procurement practices, including provision of landscaping services that conform to the guidance referred to in section 601 of this order, for the use of environmentally and economically beneficial landscaping practices. At a minimum, such practices shall be consistent with the policies in the guidance referred to in section 601 of this order.

(b) In implementing landscaping policies, each agency shall purchase environmentally preferable and recycled content products, including EPA-designated items such as compost and mulch, that contribute to environmentally and economically beneficial practices.

## **PART 8—EXEMPTIONS**

**Sec. 801. National Security Exemptions.** Subject to subsection 902(c) of this order and except as otherwise required by applicable law, in the interest of national security, the head of any agency may request from the President an exemption from complying with the provisions of any or all provisions of this order for particular agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed, with the following exceptions:

(a) an exemption issued under this section will be for a specified period of time that may exceed 1 year;

(b) notice of any exemption granted under this section for provisions not otherwise required by law is only required to the Director of OMB, the Chair of the CEQ, and the Director of the National Security Council; and

(c) an exemption under this section may be issued due to lack of appropriations, provided that the head of the agency requesting the exemption shows that necessary funds were requested by the agency in its budget submission and agency plan under Executive Order 12088 of October 13, 1978, and were not contained in the President's budget request or the Congress failed to make available the requested appropriation. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order. Nothing in this order affects limitations on the dissemination of classified information pursuant to law, regulation, or Executive order.

**Sec. 802. Compliance.** After January 1, 2002, OMB, in consultation with the Chair of the Workgroup established by section 306 of this order, may modify the compliance requirements for an agency under this order, if the agency is unable to comply with the requirements of the order. An agency requesting modification must show that it has made substantial good faith efforts to comply with the order. The cost-effectiveness of implementation of the order can be a factor in OMB's decision to modify the requirements for that agency's compliance with the order.

## PART 9—GENERAL PROVISIONS

**Sec. 901. Revocation.** Executive Order 12843 of April 21, 1993, Executive Order 12856 of August 3, 1993, the Executive Memorandum on Environmentally Beneficial Landscaping of April 26, 1994, Executive Order 12969 of August 8, 1995, and section 1-4. "Pollution Control Plan" of Executive Order 12088 of October 13, 1978, are revoked.

### **Sec. 902. Limitations.**

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to Federal facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Each agency with facilities outside of these areas, however, is encouraged to make best efforts to comply with the goals of this order for those facilities.

(c) Nothing in this order alters the obligations under EPCRA, PPA, and CAA independent of this order for Government-owned, contractor-operated facilities and Government corporations owning or operating facilities or subjects such facilities to EPCRA, PPA, or CAA if they are otherwise excluded. However, each agency shall include the releases and other waste management of chemicals for all such facilities to meet the agency's reporting responsibilities under section 501 of this order.

(d) Nothing in this order shall be construed to make the provisions of CAA sections 304 and EPCRA sections 325 and 326 applicable to any agency or facility, except to the extent that an agency or facility would independently be subject to such provisions.

**Sec. 903. Community Outreach.** Each agency is encouraged to establish a process for local community advice and outreach for its facilities relevant to aspects of this and other related Greening the Government Executive orders. All strategies and plans developed under this order shall be made available to the public upon request.

#### PART 10—DEFINITIONS

For purposes of this order:

**Sec. 1001. General.** Terms that are not defined in this part but that are defined in Executive Orders 13101 and 13123 have the meaning given in those Executive orders. For the purposes of Part 5 of this order all definitions in EPCRA and PPA and implementing regulations at 40 CFR Parts 370 and 372 apply.

**Sec. 1002.** “Administrator” means the Administrator of the EPA.

**Sec. 1003.** “Environmental cost accounting” means the modification of cost attribution systems and financial analysis practices specifically to directly track environmental costs that are traditionally hidden in overhead accounts to the responsible products, processes, facilities or activities.

**Sec. 1004.** “Facility” means any building, installation, structure, land, and other property owned or operated by, or constructed or manufactured and leased to, the Federal Government, where the Federal Government is formally accountable for compliance under environmental regulation (e.g., permits, reports/records and/or planning requirements) with requirements pertaining to discharge, emission, release, spill, or management of any waste, contaminant, hazardous chemical, or pollutant. This term includes a group of facilities at a single location managed as an integrated operation, as well as government owned contractor operated facilities.

**Sec. 1005.** “Environmentally benign pressure sensitive adhesives” means adhesives for stamps, labels, and other paper products that can be easily treated and removed during the paper recycling process.

**Sec. 1006.** “Ozone-depleting substance” means any substance designated as a Class I or Class II substance by EPA in 40 CFR Part 82.

**Sec. 1007.** “Pollution prevention” means “source reduction,” as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

**Sec. 1008.** “Greening the Government Executive orders” means this order and the series of orders on greening the government including Executive Order 13101 of September 14, 1998, Executive Order 13123 of June 3, 1999, Executive Order 13134 of August 12, 1999, and other future orders as appropriate.

**Sec. 1009.** “Environmental aspects” means the elements of an organization’s activities, products, or services that can interact with the environment.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*April 21, 2000.*

**No. 13149**

April 21, 2000, 65 F.R. 24607

**Greening the Government Through Federal Fleet and  
Transportation Efficiency**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 *et seq.*), the Energy Policy Act of 1992 (Public Law 102–486), section 301 of title 3, United States Code, and the Energy Conservation Reauthorization Act of 1998 (Public Law 105–388), it is hereby ordered as follows:

**PART 1 PREAMBLE**

**Section 101. Federal Leadership.** The purpose of this order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels. Reduced petroleum use and the displacement of petroleum by alternative fuels will help promote markets for more alternative fuel and fuel efficient vehicles, encourage new technologies, enhance the United States' energy self-sufficiency and security, and ensure a healthier environment through the reduction of greenhouse gases and other pollutants in the atmosphere.

**PART 2 GOALS**

**Sec. 201. Reduced Petroleum Fuel Consumption.** Each agency operating 20 or more motor vehicles within the United States shall reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels.

**Sec. 202. Performance Strategies.** Agencies have numerous options for developing a strategy to meet the petroleum reduction levels established in section 201 of this order. Measures include: the use of alternative fuels in light, medium, and heavy-duty vehicles; the acquisition of vehicles with higher fuel economy, including hybrid vehicles; the substitution of cars for light trucks; an increase in vehicle load factors; a decrease in vehicle miles traveled; and a decrease in fleet size. Each agency will need a strategy that includes most, if not all, of these measures, but can develop a strategy that fits its unique fleet configuration and mission requirements. As part of the strategy, each agency should attempt to accelerate the introduction of vehicles meeting Tier 2 standards. Where feasible, agencies should also consider procurement of innovative vehicles, such as hybrid electric vehicles, capable of large improvements in fuel economy. The strategy should also attempt to minimize costs in achieving the objectives of this order. In developing its strategy, each agency shall include the following:

(a) **AFV Acquisition and Use of Alternative Fuels.** Each agency shall fulfill the acquisition requirements for AFVs established by section 303 of the Energy Policy Act of 1992. Agencies shall use alternative fuels to meet a majority of the fuel requirements of those motor vehicles by the end of FY 2005. Section 402 of this order addresses related issues of alternative fuel infrastructure availability and the ability to track alternative fuel usage data; and

(b) **Acquisition of Higher Fuel Economy Vehicles.** Agencies shall increase the average EPA fuel economy rating of passenger cars and light trucks acquired by at least 1 mile per gallon (mpg) by the end of FY 2002 and at least 3 mpg by the end of FY 2005 compared to FY 1999 acquisitions.

**PART 3 ORGANIZATION AND ACCOUNTABILITY**

**Sec. 301. Leadership Responsibilities.** The Office of Management and Budget (OMB), the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the General Services Administration (GSA) shall be responsible for providing leadership to the other Federal agencies in implementing programs to meet the goals of this order. Therefore, they shall perform the following activities:

(a) OMB shall:

(1) designate a senior official to assume the responsibility for coordinating the Collection of agency budget and data submissions pursuant to this order;

(2) amend and issue budget guidance to the agencies that requires each agency to identify in its annual budget submission the funding necessary to meet the requirements of this order;

(3) review annual agency budget submissions to determine adequacy in meeting the goal of this order and to balance requests for increased funding to support achievement of the goals against other mission priorities for the agency; and

(4) review agency submissions for the annual report to the Congress, after budget decisions are made.

(b) DOE shall:

(1) issue guidance to agencies, within 90 days of the issuance of this order, on preparation and submission of agency strategies for complying with this order and the collection and annual reporting of data to demonstrate compliance with this order;

(2) review and evaluate agency strategies prior to their submission to OMB;

(3) provide OMB with copies of the agency strategy evaluations;

(4) provide whatever other support OMB requires to facilitate performance of OMB's role;

(5) establish the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and other applicable statutes and policies;

(6) educate personnel from other agencies on the requirements of this order, the data collection and reporting system, best practices for improving fleet fuel efficiency, and methods for successfully acquiring and using AFVs;

(7) review agencies' annual data submissions for accuracy and produce a scorecard of agency and overall Federal compliance with this order and other applicable statutes and policies; and

(8) report to the President annually on compliance with the order, including the scorecard and level of performance in meeting the goals of the agencies' strategies.

(c) EPA shall support DOE and GSA in their efforts to assist the agencies in the accelerated purchase of Tier 2 vehicles.

(d) GSA shall develop and implement strategies that will ease agencies' financial and administrative burdens associated with the acquisition of AFVs, including:

(1) Agencies shall be allowed to replace their conventionally-fueled vehicles with AFVs by making an initial lump-sum payment for the additional acquisition cost of the AFV and shall be allowed to contribute to the higher replacement costs of the AFV incrementally over the term of the lease, and have the option of averaging AFV incremental costs across the agency fleet as provided by the Energy Policy Act of 1992.

(2) Within 120 days of this order, the Administrator of GSA, in consultation with other agencies, shall:

(A) provide a summary of agency AFV acquisition plans to potential AFV manufacturers to assist in their production planning. At least 4 months in advance of

agency vehicle ordering cycles, GSA must provide to agencies the best available information on the production plans of AFV manufacturers;

(B) develop, in coordination with DOE and EPA, methods that will help Federal fleet managers to select vehicles to improve fleet fuel efficiency and to meet Tier 2 vehicle standards; and

(C) collaborate with its customer agencies and their procurement staff and officials to discuss and plan efforts to ensure that the GSA-leased fleet is making progress toward the goals of this order.

**Sec. 302. Designation of Senior Agency Official.** Within 90 days of the date of this order, the head of each agency shall designate a senior official to assume responsibility for the agency's AFV and fleet fuel efficiency programs, and for meeting the requirements of this order. Each senior agency official designated by an agency shall be responsible for:

(a) preparing an agency strategy for meeting the goals of this order, in accordance with guidance issued by DOE;

(b) submitting the agency strategy to DOE within 180 days of the issuance of this order for evaluation and submission to OMB;

(c) implementing the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and reporting the data to DOE;

(d) ensuring the agency's strategy for meeting the goals of this order is incorporated in the annual budget submission to OMB; and

(e) assembling the appropriate team and resources in the agency necessary to attain the goals of this order.

**Sec. 303. Management and Government Performance.** Agencies may use the following management strategies to assist them in meeting the goals of this order:

(a) *Awards.* Agencies may use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall, where appropriate, include successful implementation of the provisions of this order in the position descriptions and performance evaluations of agency heads, the senior official, fleet managers, their superiors, and other relevant employees.

**Sec. 304. Applicability.** This order applies to each agency operating 20 or more motor vehicles within the United States. Agency means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

#### PART 4 IMPLEMENTATION

**Sec. 401. Vehicle Reporting Credits.** When preparing the annual report to DOE and OMB, each agency acquisition of an alternative fuel light-duty vehicle, regardless of geographic placement, shall count as one credit towards fulfilling the AFV acquisition requirements of the Energy Policy Act of 1992. Agencies shall receive one additional credit for each light-duty AFV that exclusively uses an alternative fuel and for each Zero Emission Vehicle of any size. Agencies shall receive three credits for dedicated medium-duty AFVs and four credits for dedicated heavy-duty AFVs. Agencies can also receive one credit for every 450 gallons of pure bio-diesel used in diesel vehicles.

**Sec. 402. Infrastructure.** To support the use of alternative fuel in AFVs, agencies should arrange for fueling at commercial facilities that offer alternative fuels for sale to the public.

(a) Agencies should team with State, local, and private entities to support the expansion and use of public access alternative fuel refueling stations;

(b) Agencies should use the authority granted to them in section 304 of the Energy Policy Act of 1992 to establish nonpublic access alternative fuel infrastructure for fueling Federal AFVs where public fueling is unavailable.

(c) Agencies are encouraged to work with DOE and GSA to resolve alternative fuel usage tracking issues with alternative and petroleum fuel providers.

**Sec. 403. Procurement of Environmentally Preferable Motor Vehicle Products.**

(a) Consistent with Executive Order 13101 and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962, effective 6 months after the date of this order, no Federal agency shall purchase, sell, or arrange for the purchase of virgin petroleum motor vehicle lubricating oils when re-refined motor vehicle lubricating oils are reasonably available and meet the vehicle manufacturer's recommended performance standards.

(b) Consistent with Executive Order 13101 and RCRA section 6962, in acquiring and maintaining motor vehicles, agencies shall acquire and use United States EPA-designated Comprehensive Procurement Guideline items, including but not limited to retread tires, when such products are reasonably available and meet applicable performance standards. In addition, Federal agencies should consider acquiring other recycled content products, such as tires containing a minimum of 5–10 percent post-consumer recovered rubber.

(c) Consistent with Executive Order 13101, Federal agencies are encouraged to use biobased motor vehicle products when such products are reasonably available and meet applicable performance standards.

**PART 5 GENERAL PROVISIONS**

**Sec. 501. Revocation.** Executive Order 13031 of December 13, 1996, is revoked.

**Sec. 502. Statutory Authority.** Agencies must carry out the provisions of this order to the extent consistent with their statutory authority.

**Sec. 503. Limitations.** This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

**Sec. 504. Independent Agencies.** Independent agencies and agencies excepted from coverage by section 304 are encouraged to comply with the provisions of this order.

**Sec. 505. Government-Owned Contractor-Operated Vehicles.** Agencies must ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract.

**Sec. 506. Exemptions for Military Tactical, Law Enforcement, and Emergency Vehicles.** Department of Defense military tactical vehicles are exempt from this order. Law enforcement, emergency, and any other vehicle class or type determined by OMB, in consultation with DOE, are exempted from this order's requirements for Federal fleet fuel efficiency and alternative fuel vehicle acquisition. Agencies claiming vehicle exemptions must provide information on the number of each class or type of vehicle claimed as exempt as well as an estimate of total fuel consumption of exempt vehicles on an annual basis. Agencies should examine options for increasing fuel efficiency in these exempt vehicles and should report actions taken to increase fuel efficiency in these vehicles or fleets. All information required by this section must be submitted annually under Part 3 of this order.

**Sec. 507. Compliance.** (a) If an agency fails to meet requirements of the Energy Policy Act of 1992 or this order, its report to the DOE and OMB under section 302(c) must

include an explanation for such failure and an updated strategy for achieving compliance using the agency's current and requested budgets.

(b) OMB, in consultation with DOE, may modify the compliance requirements for an agency under Part 2 of this order, if the agency is unable to comply with the requirements of that part. An agency requesting modification must show that it has made substantial good faith efforts to comply with that part. The availability and costs of alternative fuels and AFVs can be a factor in OMB's decision to modify the agency's compliance with Part 2 of this order.

**Sec. 508. Definitions.** Terms used in this order shall have the same definitions as those in the Energy Policy Act of 1992 and Executive Order 13101, unless specifically changed in guidance to be issued by DOE under section 301(b) of this order.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*April 21, 2000.*

**No. 13158**

May 26, 2000, 65 F.R. 34909

**Marine Protected Areas**

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-ee), National Park Service Organic Act (16 U.S.C. 1 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), Wilderness Act (16 U.S.C. 1131 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*), National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), Outer Continental Shelf Lands Act (42 U.S.C. 1331 *et seq.*), and other pertinent statutes, it is ordered as follows:

**Section 1. Purpose.** This Executive Order will help protect the significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of marine protected areas (MPAs). An expanded and strengthened comprehensive system of marine protected areas throughout the marine environment would enhance the conservation of our Nation's natural and cultural marine heritage and the ecologically and economically sustainable use of the marine environment for future generations. To this end, the purpose of this order is to, consistent with domestic and international law: (a) strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded MPAs; (b) develop a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the Nation's natural and cultural resources; and (c) avoid causing harm to MPAs through federally conducted, approved, or funded activities.

**Sec. 2. Definitions.** For the purposes of this order: (a) "Marine protected area" means any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.

(b) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands there-under, over which the United States exercises jurisdiction, consistent with international law.

(c) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

**Sec. 3. MPA Establishment, Protection, and Management.** Each Federal agency whose authorities provide for the establishment or management of MPAs shall take appropriate actions to enhance or expand protection of existing MPAs and establish or recommend, as appropriate, new MPAs. Agencies implementing this section shall consult with the agencies identified in subsection 4(a) of this order, consistent with existing requirements.

**Sec. 4. National System of MPAs.** (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Commerce and the Department of the Interior, in consultation with the Department of Defense, the Department of State, the United States Agency for International Development, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation,

and other pertinent Federal agencies shall develop a national system of MPAs. They shall coordinate and share information, tools, and strategies, and provide guidance to enable and encourage the use of the following in the exercise of each agency's respective authorities to further enhance and expand protection of existing MPAs and to establish or recommend new MPAs, as appropriate:

(1) science-based identification and prioritization of natural and cultural resources for additional protection;

(2) integrated assessments of ecological linkages among MPAs, including ecological reserves in which consumptive uses of resources are prohibited, to provide synergistic benefits;

(3) a biological assessment of the minimum area where consumptive uses would be prohibited that is necessary to preserve representative habitats in different geographic areas of the marine environment;

(4) an assessment of threats and gaps in levels of protection currently afforded to natural and cultural resources, as appropriate;

(5) practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs;

(6) identification of emerging threats and user conflicts affecting MPAs and appropriate, practical, and equitable management solutions, including effective enforcement strategies, to eliminate or reduce such threats and conflicts;

(7) assessment of the economic effects of the preferred management solutions; and

(8) identification of opportunities to improve linkages with, and technical assistance to, international marine protected area programs.

(b) In carrying out the requirements of section 4 of this order, the Department of Commerce and the Department of the Interior shall consult with those States that contain portions of the marine environment, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, tribes, Regional Fishery Management Councils, and other entities, as appropriate, to promote coordination of Federal, State, territorial, and tribal actions to establish and manage MPAs.

(c) In carrying out the requirements of this section, the Department of Commerce and the Department of the Interior shall seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested persons and organizations through a Marine Protected Area Federal Advisory Committee. The Committee shall be established by the Department of Commerce.

(d) The Secretary of Commerce and the Secretary of the Interior shall establish and jointly manage a website for information on MPAs and Federal agency reports required by this order. They shall also publish and maintain a list of MPAs that meet the definition of MPA for the purposes of this order.

(e) The Department of Commerce's National Oceanic and Atmospheric Administration shall establish a Marine Protected Area Center to carry out, in cooperation with the Department of the Interior, the requirements of subsection 4(a) of this order, coordinate the website established pursuant to subsection 4(d) of this order, and partner with governmental and non-governmental entities to conduct necessary research, analysis, and exploration. The goal of the MPA Center shall be, in cooperation with the Department of the Interior, to develop a framework for a national system of MPAs, and to provide Federal, State, territorial, tribal, and local governments with the information, technologies, and strategies to support the system. This national system framework and the work of the MPA Center is intended to support, not interfere with, agencies' independent exercise of their own existing authorities.

(f) To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

**Sec. 5. Agency Responsibilities.** Each Federal agency whose actions affect the natural or cultural resources that are protected by an MPA shall identify such actions. To the extent permitted by law and to the maximum extent practicable, each Federal agency, in taking such actions, shall avoid harm to the natural and cultural resources that are protected by an MPA. In implementing this section, each Federal agency shall refer to the MPAs identified under subsection 4(d) of this order.

**Sec. 6. Accountability.** Each Federal agency that is required to take actions under this order shall prepare and make public annually a concise description of actions taken by it in the previous year to implement the order, including a description of written comments by any person or organization stating that the agency has not complied with this order and a response to such comments by the agency.

**Sec. 7. International Law.** Federal agencies taking actions pursuant to this Executive Order must act in accordance with international law and with Presidential Proclamation 5928 of December 27, 1988, on the Territorial Sea of the United States of America, Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America, and Presidential Proclamation 7219 of September 2, 1999, on the Contiguous Zone of the United States.

**Sec. 8. General.** (a) Nothing in this order shall be construed as altering existing authorities regarding the establishment of Federal MPAs in areas of the marine environment subject to the jurisdiction and control of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Indian tribes.

(b) This order does not diminish, affect, or abrogate Indian treaty rights or United States trust responsibilities to Indian tribes.

(c) This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*May 26, 2000.*

**No. 13175**

November 6, 2000, 65 F.R. 67249

**Consultation and Coordination With Indian Tribal Governments**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order 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; it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

**Sec. 2. Fundamental Principles.** In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

**Sec. 3. Policymaking Criteria.** In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

**Sec. 4. Special Requirements for Legislative Proposals.** Agencies shall not submit to the Congress legislation that would be inconsistent with the policy-making criteria in Section 3.

**Sec. 5. Consultation.** (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the

agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

**Sec. 6. Increasing Flexibility for Indian Tribal Waivers.**

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**Sec. 7. Accountability.**

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

**Sec. 8. Independent Agencies.** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 9. General Provisions.**

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

**Sec. 10. Judicial Review.** This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*November 6, 2000.*

**No. 13178**

December 4, 2000, 65 F.R. 76903

**Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106-513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, it is ordered as follows:

**Section 1. Preamble.** The world's coral reefs—the rain forests of the sea—are in serious decline. These important and sensitive areas of biodiversity warrant special protection. While United States waters contain approximately 3 percent of the world's coral reefs, approximately 70 percent of U.S. coral reefs are in the Northwestern Hawaiian Islands. The 3.5 million acres of coral reefs around the remote, mostly uninhabited Northwestern Hawaiian Islands are spectacular and almost undisturbed by humans. The approximately 1,200 mile stretch of coral islands, seamounts, banks, and shoals are unquestionably some of the healthiest and most extensive coral reefs in the United States. In their own right, the spectacular coral reefs and lands provide an amazing geological record of volcanic and erosive powers that have shaped this area. This vast area supports a dynamic reef ecosystem that supports more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. This incredibly diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. In addition, this area has great cultural significance to Native Hawaiians as well as linkages to early Polynesian culture—making it additionally worthy of protection and understanding. This is truly a unique and special place, a coral reef ecosystem like no place on earth, and a source of pride, inspiration, and satisfaction for all Americans, especially the people of Hawaii. It is fully worthy of our best efforts to preserve a legacy of America's natural wonders for future generations. Due to the special significance of this area, I have determined that it is in the best interest of our Nation, and of future generations, to provide strong and lasting protection for the coral reef ecosystem of the Northwestern Hawaiian Islands.

On May 26, 2000, I directed the Secretaries of Commerce and the Interior, working cooperatively with the State of Hawaii and consulting with the Western Pacific Fishery Management Council, to develop recommendations for a new, coordinated management regime to increase protection of the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use of the area. Upon consideration of their recommendations and comments received during the public visioning process on this initiative, and based on the statutory authorities set forth above, I am issuing this Executive Order.

**Sec. 2. Purpose.** The purpose of this Executive Order is to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species (resources) of the Northwestern Hawaiian Islands.

**Sec. 3. Establishment of Coral Reef Ecosystem Reserve.** There is hereby established in the Northwestern Hawaiian Islands a coral reef ecosystem reserve to be known as the Northwestern Hawaiian Islands Coral Reef Eco-system Reserve (Reserve). The Reserve shall include submerged lands and waters of the Northwestern Hawaiian Islands, extending approximately 1,200 nautical miles (nm) long and 100nm wide. The Reserve shall be adjacent to and seaward of the seaward boundaries of the State of Hawaii and the Midway Atoll National Wildlife Refuge, and shall overlay the Hawaiian Islands National Wildlife Refuge to the extent that it extends beyond the seaward boundaries of the State of Hawaii. The boundaries of the Reserve are described in section 6 of this order.

**Sec. 4. Management Principles.** The Secretary of Commerce, or his designee, (hereafter “Secretary”) shall, subject to section 10(b) of this order, manage the Reserve in accordance with the following principles:

(a) The principal purpose of the Reserve is the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character;

(b) The Reserve shall be managed using available science and applying a precautionary approach with resource protection favored when there is a lack of information regarding any given activity, to the extent not contrary to law;

(c) Culturally significant, noncommercial subsistence, cultural, and religious uses by Native Hawaiians should be allowed within the Reserve, consistent with applicable law and the long-term conservation and protection of Reserve resources;

(d) The Reserve shall be managed using, when appropriate, geographical zoning and innovative management techniques to ensure that the Reserve resources are protected from degradation or harm;

(e) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to support, promote, and coordinate appropriate scientific research and assessment, and long-term monitoring of Reserve resources, and the impacts or threats thereto from human and other activities, to help better understand, protect, and conserve these resources and species for future generations;

(f) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to enhance public awareness, understanding, and appreciation of Reserve resources, and the impacts or threats thereto from human and other activities;

(g) The Reserve shall be managed to further restoration and remediation of degraded or injured Reserve resources; and

(h) The Reserve shall be managed to facilitate coordinated management among Federal and State agencies and other entities, as appropriate, to provide comprehensive (looking beyond jurisdictional boundaries) conservation of the coral reef ecosystem and related marine resources and species throughout the Northwestern Hawaiian Islands, consistent with applicable authorities and the Management Principles of this section.

**Sec. 5. Implementation.** (a) *Management of the Reserve.* The Secretary shall manage the Reserve under the National Marine Sanctuaries Act and in accordance with this order.

(b) *Reserve Operations Plan.* The Secretary, in consultation with the Secretary of the Interior and the Governor of Hawaii, shall develop an operations plan to govern the management of the Reserve. In developing the Reserve Operations Plan the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (c) of this section.

The Reserve Operations Plan shall be directed at priority issues and actions that, at a minimum, provide for:

(1) Coordinated management among the Reserve, Hawaiian Islands National Wildlife Refuge, Midway Atoll National Wildlife Refuge, and the State of Hawaii, consistent with relevant authorities;

(2) Coordination among Federal agencies and the Director of the National Science Foundation to make vessels and other resources available for conservation and research activities for the Reserve;

(3) The cleanup and prevention of marine debris in the Reserve;

(4) The restoration or remediation of any degraded or injured resources of the Reserve;

(5) Research, monitoring, and assessment of the Reserve;

(6) Education and outreach about the Reserve and its resources and efforts to conserve them;

(7) Enforcement and surveillance for the Reserve, including the use of new technologies and coordination with the United States Coast Guard and other relevant agencies;

(8) Identification and coordination with Native Hawaiian interests, regarding culturally significant, noncommercial subsistence, cultural, and religious uses and locations within the Reserve;

(9) Identification of potential tourism, recreational, and commercial activities within the Reserve and actions necessary to ensure that these activities do not degrade the Reserve's resources or diminish the Reserve's natural character;

(10) Use of vessel monitoring systems for any vessel entering or transiting the Reserve, if warranted. To this end, the Secretary in consultation with the Department of State, United States Coast Guard, and the Department of Defense, shall evaluate the need for the establishment of vessel monitoring systems and, if warranted, shall initiate the steps necessary to have the appropriate domestic agencies, and request that the International Maritime Organization, adopt a vessel monitoring system requirement for the Reserve;

(11) Any regulations, in addition to the conservation measures and Reserve Preservation Areas established under this order, that the Secretary determines are necessary to manage the Reserve in accordance with this order; and

(12) Coordination of all relevant activities with the process to designate the Reserve as a National Marine Sanctuary, as provided under paragraph (f) of this section.

(c) *Conservation Measures.* The Reserve Operations Plan shall also include the conservation measures in section 7 of this order and the Reserve Preservation Areas in section 8 of this order.

(d) *Memorandum of Agreement.* To further paragraph (b)(1) of this section, and subject to section 10(b) of this order, and in particular to promote coordinated management of the entirety of the shallow areas of the coral reef ecosystem throughout the Northwestern Hawaiian Islands, the Secretary shall work with the Secretary of the Interior and Governor of the State of Hawaii to enter into one or more memoranda of agreement for the coordinated conservation and management of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawaii submerged lands and waters within the Northwestern Hawaiian Islands.

(e) *National Marine Sanctuary.* The Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (16 U.S.C. 1433, 1434). In doing so the Secretary shall supplement or complement the existing Reserve. The Secretary shall, in consultation with the Governor of the State of Hawaii, determine whether State submerged lands and waters should be included as part of the sanctuary. In designating and managing the

sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section.

(f) *Council*. After considering input from the Secretary of the Interior and Governor of the State of Hawaii, the Secretary shall establish a Coral Reef Ecosystem Reserve Council pursuant to section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) to provide advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary. The Council shall include:

(1) Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

(2) Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

(A) Marine mammal science.

(B) Coral reef ecology.

(C) Native marine flora and fauna of the Hawaiian Islands.

(D) Oceanography.

(E) Any other scientific discipline the Secretary determines to be appropriate.

(3) Three representatives from nongovernmental wildlife/marine life, environmental, and/or conservation organizations.

(4) One representative from the commercial fishing industry that conduct activities in the Northwestern Hawaiian Islands.

(5) One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(6) One representative from the ocean-related tourism industry.

(7) One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

(8) One citizen-at-large representative.

(9) One representative from the State of Hawaii as appointed by the Governor.

(10) One representative each, as nonvoting, *ex officio* members, from the Department of the Interior, United States Coast Guard, Department of Defense, Department of State, the National Marine Fisheries Service, the Hawaiian Islands Humpback Whale National Marine Sanctuary, National Science Foundation, Marine Mammal Commission, and Western Pacific Regional Fishery Management Council.

(g) *Report*. The Secretary shall provide a progress report on the implementation of this order to the Chair of the Council on Environmental Quality within 1 year from the date of this order.

**Sec. 6. Area of the Reserve.** The Reserve includes the waters and submerged lands of the Northwestern Hawaiian Islands as follows:

(a) The seaward boundary of the Reserve is 50nm from the approximate center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50nm areas that lie around such areas shall delimit the remainder of the Reserve.

(b) The inland boundary of the Reserve around each of the areas named in subparagraph (a) of this section is the seaward boundary of Hawaii State waters and submerged lands, and the seaward boundary of the Midway Atoll National Wildlife Refuge, as appropriate.

(c) The Reserve boundary is generally depicted on the map attached to this order. The Secretary, after consultation with the Governor of the State of Hawaii, may make

technical modifications to the boundary of the Reserve, including providing straight-line boundaries for the Reserve for clarity and ease of identification, as appropriate.

**Sec. 7. Protection and Conservation Measures.** The conservation measures in this section apply throughout the Reserve.

(a) (1) *Commercial Fishing.* All currently existing commercial Federal fishing permits and current levels of fishing effort and take, as determined by the Secretary and pursuant to regulations in effect on the date of this order, shall be capped as follows:

(A) No commercial fishing may occur in Reserve Preservation Areas pursuant to section 8 of this order;

(B) There shall be no increase in the number of permits of any particular type of fishing (such as for bottomfishing) beyond the number of permits of that type in effect the year preceding the date of this order;

(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing in the years preceding the date of this order, as determined by the Secretary, provided that the Secretary shall equitably divide the aggregate level into individual levels per permit, and further provided that the Secretary may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(D) There shall be no permits issued for any particular type of fishing for which there were no permits issued in the year preceding the date of this order; and

(E) The type of fishing gear used by any permit holder may not be changed except with the permission of the Secretary, as provided under paragraph 3 of this section.

(2) *Recreational Fishing.* All currently existing (preceding the date of this order) levels of recreational fishing effort, as determined by the Secretary and pursuant to regulations in effect on the day of this order, shall be capped (i.e., no increase of take levels or levels of fishing effort, species targeted, or change in gear types) throughout the Reserve. However, fishing is further restricted as provided in section 8 of this order.

(3) The Secretary, after consultation with the Secretary of the Interior and Governor of the State of Hawaii, and after public review and comment and consideration of any advice or recommendations of the Reserve Council and Western Pacific Regional Fishery Management Council, may further restrict the fishing activities under subparagraphs (a)(1) and (a)(2) of this section if necessary to protect Reserve resources, or may authorize or require alternate gear types if such gear would offer equal or greater protection for Reserve resources.

(b) In addition to the conservation measures in paragraph (a) of this section, the following activities are prohibited throughout the Reserve:

(1) Exploring for, developing, or producing oil, gas, or minerals;

(2) Having a vessel anchored on any living or dead coral with an anchor, an anchor chain, or an anchor rope when visibility is such that the seabed can be seen;

(3) Drilling into, dredging, or otherwise altering the seabed; or constructing, placing, or abandoning any structure, material, or other matter on the seabed, except as an incidental result of anchoring vessels;

(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust; and

(5) Removal, moving, taking, harvesting, or damaging any living or nonliving Reserve resources, except as provided under paragraph (a) of this section and sections 8(a) and 9 of this order.

(c) The Secretary may conduct, or authorize by permit the activities listed in subparagraphs (b)(3)-(5) of this section to the extent that they are necessary for research, monitoring, education, or management activities that further the Management Principles of section 4 of this order.

**Sec. 8. Reserve Preservation Areas.**

(a) To further protect Reserve resources, the following areas are hereby established as Reserve Preservation Areas until some or all are made permanent after adequate public review and comment, within which all activities referred to in paragraph (b) of this section are prohibited.

(1) From the seaward boundary of Hawaii State waters and submerged lands to a mean depth of 100 fathoms (fm) around:

(A) Nihoa Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(B) Necker Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(C) French Frigate Shoals;

(D) Gardner Pinnacles, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(E) Maro Reef, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 0fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(F) Laysan Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(G) Lisianski Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(H) Pearl and Hermes Atoll; and

(I) Kure Island.

(2) Twelve nautical miles around the approximate geographical centers of:

(A) The first bank immediately east of French Frigate Shoals;

(B) Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately west;

(C) St. Rogatien Bank, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately east, provided further that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment;

(D) The first bank west of St. Rogatien Bank, east of Gardner Pinnacles;

(E) Raita Bank; and

(F) Pioneer Bank, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment.

(b) Activities Prohibited Within Reserve Preservation Areas.

(1) In addition to the conservation measures in section 7 of this order, which are applicable to the entire Reserve, the following activities are prohibited within the Reserve Preservation Areas listed in paragraph (a) of this section, except as expressly otherwise stated in this paragraph and sections (8)(a) and 9 of this order:

(A) Commercial and recreational fishing;

(B) Anchoring in any area that contains available mooring buoys, or anchoring outside an available anchoring area when such area has been designated by the Secretary;

(C) Any type of touching or taking of living or dead coral;

(D) Discharging or depositing any material or other matter except cooling water or engine exhaust; and

(E) Such other activities that the Secretary identifies after adequate public review and comment, and after consideration of any advice and recommendations of the Reserve Council.

(2) Notwithstanding the prohibitions in this paragraph, the Secretary may conduct, or authorize by permit, research, monitoring, education, or management activities within any Reserve Preservation Area that further the Management Principles of section 4 of this order.

(3) The Reserve Preservation Areas in this section are approximated using fathoms. The Secretary will develop straight line boundaries based on longitude and latitude coordinates to encompass each Reserve Preservation Area, to provide for clarity and ease of identification. The Secretary may make technical modifications to any such boundaries.

**Sec. 9. Native Hawaiian Uses.** Native Hawaiian noncommercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas identified under section 8 of this order. The Secretary shall work with Native Hawaiian interests to identify those areas where such Native Hawaiian uses of the Reserve's resources may be conducted without injury to the Reserve's coral reef ecosystem and related marine resources and species, and may revise the areas where such activities may occur after public review and comment, and consideration of any advice and recommendations of the Reserve Council.

**Sec. 10. National Wildlife Refuges.**

(a) The Secretary of the Interior, in managing, through the U.S. Fish and Wildlife Service the Hawaiian Islands and Midway Atoll National Wildlife Refuges pursuant to the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other applicable laws, shall follow the Management Principles of section 4 of this order, to the extent consistent with applicable law.

(b) Wherever the Reserve overlaps the Hawaiian Islands National Wildlife Refuge, the Reserve shall be managed to supplement and complement management of the Refuge to ensure coordinated conservation and management of the Reserve and the Refuge, consistent with the purposes and policies of the National Marine Sanctuaries Act, the National Marine Sanctuaries Amendments Act of 2000, and this order, and the authorities of the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other laws with respect to management of the Refuge. Nothing in this order shall enlarge or diminish the jurisdiction or authority of the Secretary or Secretary of the Interior in managing the Reserve or Refuge, respectively.

(c) The Secretary of the Interior, through the U.S. Fish and Wildlife Service, shall coordinate with the Secretary and the Governor of the State of Hawaii, as provided under section 5(b) of this order, to ensure coordinated protection and management among the Reserve, Refuges, and State, consistent with relevant authorities.

**Sec. 11. Administration and Judicial Review.**

(a) *International Law.* Management of the Reserve and any regulations issued pursuant thereto and all other provisions of this order shall be applied consistently with the 1983 Presidential Proclamation on the Exclusive Economic Zone, the 1988 Presidential Proclamation on the Territorial Sea, and the 1999 Presidential Proclamation on Contiguous Zone and in accordance with generally recognized principles of international law, and with the treaties, conventions, and other agreements to which the United States is a party. The Secretary shall consult with the Department of State in implementing this order.

(b) *Agency Responsibilities.* All Federal agencies whose actions may affect the Reserve and any National Marine Sanctuary established by the Secretary pursuant to this order shall carry out such actions in accordance with applicable laws, regulations and Executive Orders, including Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000.

(c) *National Security and Emergency Actions.* Consistent with applicable law, nothing in this order is intended to apply to military activities (including those carried out by the United States Coast Guard), including military exercises, conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000. Further, nothing in this order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security as determined by the Secretary of Defense, consistent with applicable law. In addition, consistent with applicable law, nothing in this order shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(d) *United States Coast Guard.* Nothing in this order is intended to limit the authority of the United States Coast Guard to enforce any Federal law, or install or maintain aids to navigation.

(e) *Funding.* This order shall be carried out subject to the availability of appropriated funds and to the extent permitted by law.

(f) *Territorial Waters.* Nothing in this order shall enlarge or diminish the jurisdiction or authority of the State of Hawaii or the United States over submerged or other lands within the territorial waters off the coast of Hawaii.

(g) *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,

*December 4, 2000.*

**No. 13185**

December 28, 2000, 66 F.R. 701

**To Strengthen the Federal Government-University Research  
Partnership**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to keep the Federal Government-University research partnership strong, it is hereby ordered as follows:

**Section 1. Principles of the Government-University Partnership.** The partnership in science and technology that has evolved between the Federal Government and American universities has yielded benefits that are vital to each. It continues to prove exceptionally productive, successfully promoting the discovery of knowledge, stimulating technological innovation, improving the quality of life, educating and training the next generation of scientists and engineers, and contributing to America's economic prosperity and national security. In order to reaffirm and strengthen this partnership, this order sets forth the following guiding and operating principles that are fully described in the April 1999 National Science and Technology Council report, "Renewing the Government-University Partnership." These principles shall provide the framework for the development and analysis of all future Federal policies, rules, and regulations for the Federal Government-University research partnership.

(a) The guiding principles that shall govern interactions between the Federal Government and universities that perform research are:

- (1) Research is an investment in the future;
- (2) The integration of research and education is vital;
- (3) Excellence is promoted when investments are guided by merit review; and
- (4) Research must be conducted with integrity.

(b) The operating principles that shall assist agencies, universities, individual researchers, and auditing and regulatory bodies in implementing the guiding principles are:

- (1) Agency cost-sharing policies and practices must be transparent;
- (2) Partners should respect the merit review process;
- (3) Agencies and universities should manage research in a cost-efficient manner;
- (4) Accountability and accounting are not the same;
- (5) The benefits of simplicity in policies and practices should be weighed against the costs;
- (6) Change should be justified by need and the process made transparent.

(c) Each executive branch department or agency that supports research at universities shall regularly review its existing policies and procedures to ensure that they meet the spirit and intent of the guiding and operating principles stated above.

**Sec. 2. Office of Science and Technology (OSTP) Review of the Government-University Research Partnership.** (a) The OSTP, in conjunction with the National Science and Technology Council, shall conduct a regular review of the Government-University research partnership and prepare a report on the status of the partnership. The OSTP should receive input from all departments or agencies that have a major impact on the Government-University partnership through their support of research and education, policy making, regulatory activities, and research administration. In addition, OSTP may seek the input of the National Science Board and the President's Committee of Advisors for Science and Technology, as well as other stakeholders, such as State and

local governments, industry, the National Academy of Sciences, and the Federal Demonstration Partnership.

(b) The purpose of the review and the report is to determine the overall health of the Government-University research partnership, being mindful of the guiding and operating principles stated above. The report should include recommendations on how to improve the Government-University partnership.

(c) The Director of OSTP shall deliver the report to the President.

**Sec. 3. Judicial Review.** This order does not create any enforceable rights against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*December 28, 2000.*

**No. 13186**

January 10, 2001, 66 F.R. 3853

**Responsibilities of Federal Agencies To Protect Migratory  
Birds**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the migratory bird conventions, the Migratory Bird Treaty Act (16 U.S.C. 703–711), the Bald and Golden Eagle Protection Acts (16 U.S.C. 668–668d), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and other pertinent statutes, it is hereby ordered as follows:

**Section 1. Policy.** Migratory birds are of great ecological and economic value to this country and to other countries. They contribute to biological diversity and bring tremendous enjoyment to millions of Americans who study, watch, feed, or hunt these birds throughout the United States and other countries. The United States has recognized the critical importance of this shared resource by ratifying international, bilateral conventions for the conservation of migratory birds. Such conventions include the Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916, the Convention for the Protection of Migratory Birds and Game Mammals-Mexico 1936, the Convention for the Protection of Birds and Their Environment- Japan 1972, and the Convention for the Conservation of Migratory Birds and Their Environment-Union of Soviet Socialist Republics 1978. These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats, and through the Migratory Bird Treaty Act (Act), the United States has implemented these migratory bird conventions with respect to the United States. This Executive Order directs executive departments and agencies to take certain actions to further implement the Act.

**Sec. 2. Definitions.** For purposes of this order:

(a) “Take” means take as defined in 50 C.F.R. 10.12, and includes both “intentional” and “unintentional” take.

(b) “Intentional take” means take that is the purpose of the activity in question.

(c) “Unintentional take” means take that results from, but is not the purpose of, the activity in question.

(d) “Migratory bird” means any bird listed in 50 C.F.R. 10.13.

(e) “Migratory bird resources” means migratory birds and the habitats upon which they depend.

(f) “Migratory bird convention” means, collectively, the bilateral conventions (with Great Britain/Canada, Mexico, Japan, and Russia) for the conservation of migratory bird resources.

(g) “Federal agency” means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(h) “Action” means a program, activity, project, official policy (such as a rule or regulation), or formal plan directly carried out by a Federal agency. Each Federal agency will further define what the term “action” means with respect to its own authorities and what programs should be included in the agency-specific Memoranda of Understanding required by this order. Actions delegated to or assumed by nonfederal entities, or carried out by nonfederal entities with Federal assistance, are not subject to this order. Such actions, however, continue to be subject to the Migratory Bird Treaty Act.

(i) “Species of concern” refers to those species listed in the periodic report “Migratory Nongame Birds of Management Concern in the United States,” priority migratory bird species as documented by established plans (such as Bird Conservation Regions in the North American Bird Conservation Initiative or Partners in Flight physiographic areas), and those species listed in 50 C.F.R. 17.11.

**Sec. 3. Federal Agency Responsibilities.** (a) Each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations.

(b) In coordination with affected Federal agencies, the Service shall develop a schedule for completion of the MOUs within 180 days of the date of this order. The schedule shall give priority to completing the MOUs with agencies having the most substantive impacts on migratory birds.

(c) Each MOU shall establish protocols for implementation of the MOU and for reporting accomplishments. These protocols may be incorporated into existing actions; however, the MOU shall recognize that the agency may not be able to implement some elements of the MOU until such time as the agency has successfully included them in each agency’s formal planning processes (such as revision of agency land management plans, land use compatibility guidelines, integrated resource management plans, and fishery management plans), including public participation and NEPA analysis, as appropriate. This order and the MOUs to be developed by the agencies are intended to be implemented when new actions or renewal of contracts, permits, delegations, or other third party agreements are initiated as well as during the initiation of new, or revisions to, land management plans.

(d) Each MOU shall include an elevation process to resolve any dispute between the signatory agencies regarding a particular practice or activity.

(e) Pursuant to its MOU, each agency shall, to the extent permitted by law and subject to the availability of appropriations and within Administration budgetary limits, and in harmony with agency missions:

(1) support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;

(2) restore and enhance the habitat of migratory birds, as practicable;

(3) prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable;

(4) design migratory bird habitat and population conservation principles, measures, and practices, into agency plans and planning processes (natural resource, land management, and environmental quality planning, including, but not limited to, forest and rangeland planning, coastal management planning, watershed planning, etc.) as practicable, and coordinate with other agencies and nonfederal partners in planning efforts;

(5) within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts such as Partners-in-Flight, U.S. National Shorebird Plan, North American Waterfowl Management Plan, North American Colonial Waterbird Plan, and other planning efforts, as well as guidance from other sources, including the Food and Agricultural Organization’s International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries;

(6) ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern;

(7) provide notice to the Service in advance of conducting an action that is intended to take migratory birds, or annually report to the Service on the number of individuals of each species of migratory birds intentionally taken during the conduct of any agency action, including but not limited to banding or marking, scientific collecting, taxidermy, and depredation control;

(8) minimize the intentional take of species of concern by: (i) delineating standards and procedures for such take; and (ii) developing procedures for the review and evaluation of take actions. With respect to intentional take, the MOU shall be consistent with the appropriate sections of 50 C.F.R. parts 10, 21, and 22;

(9) identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with the Service. These principles, standards, and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the detrimental effect of agency actions on migratory bird populations. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts;

(10) within the scope of its statutorily-designated authorities, control the import, export, and establishment in the wild of live exotic animals and plants that may be harmful to migratory bird resources;

(11) promote research and information exchange related to the conservation of migratory bird resources, including coordinated inventorying and monitoring and the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation. Where such information is collected in the course of agency actions or supported through Federal financial assistance, reasonable efforts shall be made to share such information with the Service, the Biological Resources Division of the U.S. Geological Survey, and other appropriate repositories of such;

(12) provide training and information to appropriate employees on methods and means of avoiding or minimizing the take of migratory birds and conserving and restoring migratory bird habitat;

(13) promote migratory bird conservation in international activities and with other countries and international partners, in consultation with the Department of State, as appropriate or relevant to the agency's authorities;

(14) recognize and promote economic and recreational values of birds, as appropriate; and;

(15) develop partnerships with non-Federal entities to further bird conservation.

(f) Notwithstanding the requirement to finalize an MOU within 2 years, each agency is encouraged to immediately begin implementing the conservation measures set forth above in subparagraphs (1) through (15) of this section, as appropriate and practicable.

(g) Each agency shall advise the public of the availability of its MOU through a notice published in the **Federal Register**.

**Sec. 4. Council for the Conservation of Migratory Birds.** (a) The Secretary of Interior shall establish an interagency Council for the Conservation of Migratory Birds

(Council) to oversee the implementation of this order. The Council's duties shall include the following:

(1) sharing the latest resource information to assist in the conservation and management of migratory birds;

(2) developing an annual report of accomplishments and recommendations related to this order;

(3) fostering partnerships to further the goals of this order; and

(4) selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

(b) The Council shall include representation, at the bureau director/administrator level, from the Departments of the Interior, State, Commerce, Agriculture, Transportation, Energy, Defense, and the Environmental Protection Agency and from such other agencies as appropriate.

**Sec. 5. Application and Judicial Review.** (a) This order and the MOU to be developed by the agencies do not require changes to current contracts, permits, or other third party agreements.

(b) This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*January 10, 2001.*

**No. 13195**

January 18, 2001, 66 F.R. 7391

**Trails for America in the 21st Century**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of purposes of the National Trails System Act of 1968, as amended (16 U.S.C. 1241–1251), the Transportation Equity Act for the 21st Century (Public Law 105–178), and other pertinent statutes, and to achieve the common goal of better establishing and operating America’s national system of trails, it is hereby ordered as follows:

**Section 1. Federal Agency Duties.** Federal agencies will, to the extent permitted by law and where practicable—and in cooperation with Tribes, States, local governments, and interested citizen groups—protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by:

(a) Providing trail opportunities of all types, with minimum adverse impacts and maximum benefits for natural, cultural, and community resources;

(b) Protecting the trail corridors associated with national scenic trails and the high priority potential sites and segments of national historic trails to the degrees necessary to ensure that the values for which each trail was established remain intact;

(c) Coordinating maps and data for the components of the national trails system and Millennium Trails network to ensure that these trails are connected into a national system and that they benefit from appropriate national programs;

(d) Promoting and registering National Recreation Trails, as authorized in the National Trails System Act, by incorporating where possible the commitments and partners active with Millennium Trails;

(e) Participating in a National Trails Day the first Saturday of June each year, coordinating Federal events with the National Trails Day’s sponsoring organization, the American Hiking Society;

(f) Familiarizing Federal agencies that are active in tourism and travel with the components of a national system of trails and the Millennium Trails network and including information about them in Federal promotional and outreach programs;

(g) Fostering volunteer programs and opportunities to engage volunteers in all aspects of trail planning, development, maintenance, management, and education as outlined in 16 U.S.C. 1250;

(h) Encouraging participation of qualified youth conservation or service corps, as outlined in 41 U.S.C. 12572 and 42 U.S.C. 12656, to perform construction and maintenance of trails and trail-related projects, as encouraged in sections 1108(g) and 1112(e) of the Transportation Equity Act for the 21st Century, and also in trail planning protection, operations, and education;

(i) Promoting trails for safe transportation and recreation within communities;

(j) Providing and promoting a wide variety of trail opportunities and experiences for people of all ages and abilities;

(k) Providing historical interpretation of trails and trail sites and enhancing cultural and heritage tourism through special events, artworks, and programs; and

(l) Providing training and information services to provide high-quality information and training opportunities to Federal employees, Tribal, State, and local government agencies, and the other trail partners.

**Sec. 2. The Federal Interagency Council on Trails.** The Federal Interagency Council on Trails (Council), first established by agreement between the Secretaries of Agriculture and the Interior in 1969, is hereby recognized as a long-standing interagency working group. Its core members represent the Department of the Interior's Bureau of Land Management and National Park Service, the Department of Agriculture's Forest Service, and the Department of Transportation's Federal Highway Administration. Other Federal agencies, such as those representing cultural and heritage interests, are welcome to join this council. Leadership of the Council may rotate among its members as decided among themselves at the start of each fiscal year. The Council's mission is to coordinate information and program decisions, as well as policy recommendations, among all appropriate Federal agencies (in consultation with appropriate nonprofit organizations) to foster the development of America's trails through the following means:

(a) Enhancing federally designated trails of all types (e.g., scenic, historic, recreation, and Millennium) and working to integrate these trails into a fully connected national system;

(b) Coordinating mapping, signs and markers, historical and cultural interpretations, public information, training, and developing plans and recommendations for a national trails registry and database;

(c) Ensuring that trail issues are integrated in Federal agency programs and that technology transfer and education programs are coordinated at the national level; and

(d) Developing a memorandum of understanding among the agencies to encourage long-term interagency coordination and cooperation to further the spirit and intent of the National Trails System Act and related programs.

**Sec. 3. Issue Resolution and Handbook for Federal Administrators of the National Trails System.** Federal agencies shall together develop a process for resolving interagency issues concerning trails. In addition, reflecting the authorities of the National Trails System Act, participating agencies shall coordinate preparation of (and updates for) an operating handbook for Federal administrators of the National Trails System and others involved in creating a national system of trails. The handbook shall reflect each agencies' governing policies and provide guidance to each agencies' field staff and partners about the roles and responsibilities needed to make each trail in the national system fully operational.

**Sec. 4. Observance of Existing Laws.** Nothing in this Executive Order shall be construed to override existing laws, including those that protect the lands, waters, wildlife habitats, wilderness areas, and cultural values of this Nation.

**Sec. 5. Judicial Review.** This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity by any party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*January 18, 2001.*

**No. 13196**

January 18, 2001, 66 F.R. 7395

**Final Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106-513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–e.e.), and other pertinent statutes, it is ordered as follows:

**Sec. 1. Preamble.** On December 4, 2000, I issued Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) pursuant to my authority under the National Marine Sanctuaries Act, as amended by the National Marine Sanctuary Amendments Act of 2000 (Act). In establishing the Reserve, I set forth a number of conservation measures and created specific Reserve Preservation Areas to protect the coral reef ecosystem and related marine resources and species (resources) of the Reserve. The Act provides that no closure areas can become permanent without adequate notice and comment. Accordingly, I proposed to make permanent the Reserve Preservation Areas and initiated a 30-day comment period on this proposal. I also sought comment on the conservation measures for the Reserve. On my behalf, the Secretary of Commerce received the public comments and held seven public hearings, including six throughout Hawaii. After considering the comments expressed at the hearings and received in writing, I have determined to make permanent the Reserve Preservation Areas with certain modifications set forth below. Further, I have modified certain conservation measures to address concerns raised, particularly regarding commercial and recreational fishing within the Reserve. With this action, the establishment of the Reserve under the Act, including the conservation measures and permanent Reserve Preservation Areas, is complete. The Secretary of Commerce will manage the Reserve pursuant to Executive Order 13178, as modified by this order, under the Act. The Secretary shall also initiate the process to designate the Reserve as a National Marine Sanctuary, as required by the Act.

**Sec. 2. Purpose.** The purpose of this order is to amend Executive Order 13178, and to make permanent Reserve Preservation Areas, as modified below, to ensure the comprehensive, strong, and lasting protection of the resources of the Northwestern Hawaiian Islands.

**Sec. 3. Amendments to Sections 7 of Executive Order 13178.**

1. Section 7(a)(1) of Executive Order 13178 is hereby amended by revising the first sentence to read as follows: "Commercial Fishing. All currently existing commercial Federal fishing permits and current levels of fishing effort and take, which also includes the non-permitted level of trolling for pelagic species by currently permitted bottom fishers, as determined by the Secretary and pursuant to regulations in effect on December 4, 2000, shall be capped as follows:"

2. Section 7(a)(1)(C) of Executive Order 13178 is hereby revised to read as follows:

“(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing as follows:

(1) Bottomfishing—the annual aggregate level for each permitted bottomfisher shall be that permittee’s individual average taken over the 5 years preceding December 4, 2000, as determined by the Secretary, provided that the Secretary, in furtherance of the principles of the reserve, may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(2) All other commercial fishing—the annual aggregate level shall be the permittee’s individual take in the year preceding December 4, 2000, as determined by the Secretary.”

3. A new section 7(a)(1)(F) is hereby added to Executive Order 13178 and reads as follows:

“(F) Trolling for pelagic species shall be capped based on reported landings for the year preceding December 4, 2000.”

4. Section 7(b)(4) is revised to read as follows:

“(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except:

(A) fish parts (i.e., chumming material or bait) used in and during fishing operations authorized under this order;

(B) biodegradable effluent incident to vessel use and generated by a marine sanitation device in accordance with section 312 of the Federal Water Pollution Control Act, as amended;

(C) water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the Federal Water Pollution Control Act), excluding oily wastes from bilge pumping; or

(D) cooling water from vessels or engine exhaust; and”.

**Sec. 4. Amendments to Sections 8 of Executive Order 13178.**

1. Section 8 of Executive Order 13178 is modified by substituting “provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, respectively,” for “provided that bottomfishing in accordance with the requirements of section 7(a)(1)” every-where the latter phrase appears in section 8.

2. Section 8(a)(1)(A) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 10fm.”

3. Section 8(a)(1)(B) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 20fm.”

4. Section 8(a)(1)(D) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 10fm.”

5. Section 8(a)(1)(E) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 20fm.”

6. Section 8(a)(1)(G) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 50fm.”

7. Section 8(a)(1)(I) is revised to read “Kure Atoll.”

8. Sections 8(a)(2)(D) and (E) are hereby deleted and a new section 8(a)(3) is hereby substituted as follows:

“(3) Twelve nautical miles around the approximate geographical centers of

(A) The first bank west of St. Rogation Bank, east of Gardner Pinnacles, provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, shall be allowed to continue for a period of 5 years from the date of this order; and

(B) Raita Bank, provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, shall be allowed to continue for a period of 5 years from the date of this order; and

(C) Provided that both banks described above in (3)(A) and (3)(B) shall only continue to allow commercial bottomfishing and commercial and recreational trolling for pelagic species after the 5-year time period if it is determined that continuation of such activities will have no adverse impact on the resources of these banks.”

**Sec. 5. Reserve Preservation Areas.** The Reserve Preservation Areas, as modified in sections 3 and 4 of this order, are hereby made permanent in accordance with the Act.

**Sec. 6. Judicial Review.** This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
*January 18, 2001.*

