comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received.

**Regulatory Flexibility Act**

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

**Executive Order 12866**

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866, as amended. Therefore, no regulatory assessment is required.

**Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

**List of Subjects in 27 CFR Part 9**

Wine.

**Proposed Regulatory Amendment**

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### Subpart C—Approved American Viticultural Areas

■ 2. Section 9.158 is amended by revising the section heading, paragraphs (a), (b) introductory text, and (c) introductory text, and by adding paragraph (d) to read as follows:

**§ 9.158 Mendocino Coast Ridge.**

(a) *Name.* The name of the viticultural area described in this section is ''Mendocino Coast Ridge''. For purposes of part 4 of this chapter, ''Mendocino Coast Ridge'' and ''Mendocino Ridge'' are both terms of viticultural significance.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Mendocino Coast Ridge viticultural area are four 1:62,500 scale U.S.G.S. topographical maps. They are titled:

* * * * *

(c) *Boundary.* The Mendocino Coast Ridge viticultural area is located within Mendocino County, California. Within the boundary description that follows, the viticultural area starts at the 1,200-foot elevation contour and encompasses all areas at or above the 1,200-foot elevation contour. The boundary of the Mendocino Coast Ridge viticultural area is as follows:

* * * * *

(d) *Transition period.* A label containing the words ''Mendocino Ridge'' as an appellation of origin approved prior to [the effective date of the final rule] may be used on wine bottled before [two years after the effective date of the final rule], if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to [effective date of the final rule]. Existing certificates of label approval showing ''Mendocino Ridge'' as an appellation of origin are revoked by operation of this regulation on [two years after the effective date of the final rule].

Signed: December 19, 2023.

**Mary G. Ryan,**

*Administrator.*

Approved: December 20, 2023.

**Thomas C. West, Jr.,**

*Deputy Assistant Secretary (Tax Policy).*

[FR Doc. 2024–00057 Filed 1–4–24; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 11

**[Docket No. DOI–2022–0016; 4500176944]**

**RIN 1090–AB26**

## Natural Resource Damages for Hazardous Substances

**AGENCY:** Office of Restoration and Damage Assessment, Interior.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Office of Restoration and Damage Assessment is seeking comments and suggestions from State, Tribal, and Federal natural resource co-trustees, other affected parties, and the interested public on revising the simplified Type A procedures in the regulations for conducting natural resource damage assessment and restoration for hazardous substance releases.

**DATES:** We will accept comments through March 5, 2024.

*Information Collection Requirements:* If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Departmental Information Collection Clearance Officer, U.S. Department of the Interior (see ''Information Collection Requirements'' section below under **ADDRESSES**) by March 5, 2024.

**ADDRESSES:** You may submit comments to Office of Restoration and Damage Assessment (ORDA) on this notice of proposed rulemaking (NPRM); request for public comment by any of the following methods. Please reference the Regulation Identifier Number (RIN) 1090–AB26 in your comments.

- *Electronically:* Go to *http://www.regulations.gov.* In the ''Search'' box enter ''DOI–2022–0016''. Follow the instructions to submit public comments. We will post all comments.
- Hand deliver or mail comments to the Office of Restoration and Damage Assessment, U.S. Department of the Interior, 1849 C Street Northwest, Mail Stop/Room 2627, Washington, DC 20240.

*Information Collection Requirements:* Send your comments on the information collection request to the Departmental Information Collection Clearance Officer, U.S. Department of the Interior, Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1090–AB26 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Emily Joseph, Director, Office of Restoration and Damage Assessment at (202) 208–4438 or email to *emily_joseph@ios.doi.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or

TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on *Regulations.gov* in the docket for this rulemaking.

**SUPPLEMENTARY INFORMATION:** This preamble is organized as follows:



## I. Background

### *What These Natural Resource Damage Type A Regulations Are About*

The regulations describe how to conduct a natural resource damage assessment and restoration (NRDAR) for hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, 9607) (CERCLA) and the Federal Water Pollution Control Act (33 U.S.C. 1251, 1321) (Clean Water Act). CERCLA required the President to promulgate these regulations. 42 U.S.C. 9651(c). The President delegated this rule writing responsibility to the Department of the Interior (DOI). E.O. 12316, as amended by E.O. 12580. The regulations appear at 43 CFR part 11.

A natural resource damage assessment is an evaluation of the need for, and the means of, securing restoration of public natural resources following the release of hazardous substances or oil into the environment. The Department of the Interior has previously developed two types of natural resource damage assessment regulations: Standard procedures for simplified assessments requiring minimal field observations (Type A Rule); and site-specific procedures for detailed assessments in individual cases (Type B Rule). The Type A Rule was last revised in November 1997. It provides two distinct formulas for modeling damages for natural resource injuries caused by hazardous substance releases to coastal and marine environments and Great Lakes environments, respectively. In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) 42 U.S.C. 9601 *et seq.,* damages calculated in accordance with Type A or Type B procedures are entitled to a ''rebuttable presumption'' of correctness in any administrative or judicial proceeding. The rebuttable presumption for the Type A procedure under the current version of the rule is limited to damages of $100,000 or less.

The regulations we are proposing to revise only cover natural resource damage assessments for releases of hazardous substances under CERCLA and the Clean Water Act. There are also natural resource damage assessment regulations at 15 CFR part 990 that cover oil spills under the Oil Pollution Act, 33 U.S.C. 2701, (the OPA regulations). The current hazardous substance natural resource damage assessment and restoration regulations, this preamble, and the proposed revisions to the regulation use ''restoration'' as an umbrella term for all types of actions CERCLA and Clean Water Act authorize to address injured natural resources, including restoration, rehabilitation, replacement, or acquisition of equivalent resources.

Natural resource damage assessments are conducted by government officials designated to act as ''trustees'' to bring claims on behalf of the public for the restoration of injured natural resources. Trustees are designated by the President, State governors, or Tribes. If trustees determine, through an assessment, that hazardous substance releases have injured natural resources, they may pursue claims for damages against potentially responsible parties. ''Damages'' include funds needed to plan and implement restoration, compensation for public losses pending restoration, reasonable assessment costs, and any interest accruing after funds are due.

The regulations establish an administrative process for conducting assessments that include technical criteria for determining whether releases have caused injury, and if so, what funds are needed to implement restoration. The regulations are for the optional use of trustees. Trustees can use the regulations to structure damage assessment work, frame negotiations, and inform restoration planning. If litigation is necessary to resolve the claim, courts will give additional deference—referred to as a ''rebuttable presumption'' in CERCLA—to assessments performed by Federal and State trustees in accord with the regulations.

## II. Description of Changes

### *Why We Are Proposing To Revise the Regulations*

Since its promulgation, the Type A Rule has rarely been utilized to resolve CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) claims. This may be partly due to the Type A Rule's restrictive scope—to two specific aquatic environments when relatively low-impact, single substance spills occur. Additionally, the model equation for each Type A environment is the functional part of the rule itself—with no provisions to reflect evolving toxicology, ecology, technology, or other scientific understanding without a formal amendment to the Type A Rule each time a parameter is modified. The result is an inefficient and inflexible rule that is not currently useful as a means to resolve NRDAR claims and promote natural resource restoration. For these reasons, the Department is now seeking to modernize the Type A process and develop a more flexible and enduring rule than what is provided by the two existing static models.

The Department is proposing to re-formulate the Type A Rule as a procedural structure for negotiated settlements by utilizing tools tailored to incidents of smaller scale and scope. We believe that this aligns better with the original statutory purpose of providing a streamlined and simplified assessment process as a companion to the more complex Type B Rule—to reduce transaction costs and expedite restoration in a broader range of less complex and contentious cases. Our objective is to essentially formalize beneficial practices that have evolved since the 1997 promulgation of the Type A Rule. Specifically, Trustees have utilized well-established methodologies such as habitat equivalency analysis (HEA), resource equivalency analysis (REA), and other relatively simple models to assess natural resource injury in smaller incidents that do not necessarily warrant the more prescriptive Type B procedures.

## III. Major Issues Addressed by the Proposed Revisions

Our proposed revisions would largely leave the framework of the existing rule intact. We are not proposing any substantive changes to legal standards for reliability of assessment data and methodologies. The rest of this section discusses the major issues addressed by the proposed revisions. The following

section references the OPA regulations. These references are solely for the purpose of providing context and background. We are soliciting comments only on the proposed revisions to the CERCLA Type A regulations. For guidance on conducting natural resource damage assessments under OPA, see 15 CFR part 990.

a. Specifying When a Type A Procedure May Be Used

The Trustee has decided that existing models (for replacement of resources or habitats, equivalency analysis, recreational losses, benefits transfer, etc.) are appropriate for determining damages to fund restoration activities at the site.

b. Increasing the Damages Amount for Which Type A Can Be Used

Either (i) the claim that will be resolved using the Type A procedure is expected to be less than $3 million (excluding reasonable assessment costs); or (ii) the claim relates to injury resulting from a hazardous substance release over a relatively short period of time (*e.g.,* a discrete spill) with a small number of potentially responsible parties and is expected to be less than $5 million.

c. Identifying Which Scenarios Allow for the Use of Type A

At least one PRP has voluntarily agreed to utilize the Type A and a tolling agreement for at least one year is in place.

## IV. Required Determinations

*Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094*

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is not significant. Executive Order 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review).

These revisions do not fall under other criteria in E.O. 12866:

a. This rule will not have an annual economic effect of $200 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

The regulations we are revising apply only to natural resource trustees by providing technical and procedural guidance for the assessment of natural resource damages under CERCLA and the Clean Water Act. The revisions are not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. It does not directly impose any additional cost. In fact, we believe the proposed revisions can help reduce natural resource damage assessment transaction costs by allowing trustees to utilize simpler and more transparent methodologies to assess damages when appropriate. The proposed revisions do not sanction or bar the use of any particular methodology, so long as it meets the acceptance criteria for relevance and cost effectiveness that is set out in the rule. Of course, in litigation, any methodology used would be evaluated by courts to further ensure relevance and reliability.

We also believe that in many cases an early focus on feasible restoration and appropriate restoration actions, rather than on the monetary economic value of public losses, can result in less contention and litigation and faster, more cost-effective restoration. Meanwhile, existing criteria in the rule for evaluating restoration alternatives—including cost effectiveness—remain intact (see 43 CFR 11.82(d)). The likely result will be the encouragement of settlements, less costly and more timely restoration, and reduced transaction costs. To the extent any are affected by the proposed revisions, it is anticipated that all parties will benefit by increasing the focus on restoration in lieu of monetary damages.

b. The proposed revisions will not create inconsistencies with other agencies' action. The general approach to losses pending restoration set forth in this rule is consistent with the OPA regulations. Both allow for basing damages on the cost of restoration actions to address public losses associated with natural resource injuries.

Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements. This proposed rule is consistent with E.O. 13563, including with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

*Regulatory Flexibility Act*

We certify that this rule revision will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601) (see Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094 section above for discussion of potential economic effects).

*Congressional Review Act*

This rule revision is not a major rule under the Congressional Review Act (5 U.S.C. 804(2)). This rule revision:

(a) Does not have an annual effect on the economy of $100 million or more (see Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094 section above for discussion of potential economic effects).

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions (see Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094 section above for discussion of potential economic effects).

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (see Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094 section above for discussion of potential economic effects).

*Unfunded Mandates Reform Act*

This rule revision does not mandate any actions. The existing regulations do not require trustees to conduct assessment or pursue damage claims, and trustees who choose to conduct assessments and pursue damage claims are not required to do so in a manner described in the regulations. The proposed revisions do not change the optional nature of the existing regulations. The revisions themselves do not replace existing procedures, they merely give trustees the option of employing other procedures. Therefore, this rule revision will not produce a Federal mandate of $100 million or greater in any year.

*Takings Analysis Under E.O. 12630*

A takings implication assessment is not required by E.O. 12630 because no party can be compelled to pay damages

for injury to natural resources until they have received ''due process'' through a legal action in Federal court. This rule and the proposed revisions merely provide a framework for assessing injury and developing the claim.

*Federalism (E.O. 13132)*

Federal agencies are required to consult with elected State officials before issuing proposed rules that have ''federalism implications'' and either impose unfunded mandates or preempt State law. A rule has federalism implications if it has ''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.'' The NRDAR regulations are already in compliance with E.O. 13132, and this rule does not alter that status. Specifically, this rule does not require State trustees to take any action; therefore, it does not impose any unfunded mandates. The States already have maximum administrative discretion and the ability to develop their own NRDAR policies and programs, which many have implemented (compliance with sections 2 and 3 of E.O. 13132). The rule has no significant effect on intergovernmental relations because it does not alter the rights and responsibilities of government entities (section 3). The rule does not preempt State law (section 4). If trustees elect to use this rule to assess natural resource damages, there is a consultation requirement with other affected trustees, which is not significantly different from the current rule (section 6). Therefore, a federalism summary impact statement is not required under section 6 of the Executive Order. In the spirit of the E.O., though, State trustees, who are representatives of State elected officials, were given the opportunity to respond to the proposed revisions as part of the public comment period. In addition, ORDA discussed the revisions with the NRDAR State Alliance and at our national workshop.

*Civil Justice Reform Under E.O. 12988*

Our Office of the Solicitor has determined that the proposed revisions do not unduly burden the judicial system and meet the requirements of section 3(a) and 3(b)(2) of the E.O. The proposed revisions are intended to provide the option for an early focus on restoration, utilization of simpler and more cost-effective assessment methodologies, and increased opportunities for cooperation among trustees and potentially responsible parties. This should minimize litigation.

*Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)*

Tribes were given the opportunity to respond to the proposed revisions as part of the public comment period. In addition, we discussed the revisions with our NRDAR Tribal Group on our monthly calls and at our national workshop. We also plan to invite all Tribes to participate in one of the monthly calls to discuss the proposed revisions.

*Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

This proposed rule contains existing information collections (ICs) which were in use without approval. All information collections require approval under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We will ask OMB to review and approve the below listed ICs contained in 43 CFR part 11:

(1) *Type A Report (Existing/Modified)*—If a Type A is used, the Report already must include the information specified in subpart D (43 CFR 11.90(b)). This rulemaking seeks to clarify the content of the Type A Report based on the proposed changes in the sections itemized below. The Type A report must be made available to the public and provide for a comment period of at least 30 days.

*Information collected in a Type A Report includes:*

(a) The Type A Report is a document to provide the public with notice of, and an opportunity to comment on, the use of the Type A Procedure.

(b) The Type A Report must:

(1) State that the Trustee is following this rule and provide a citation to the rule;

(2) Explain the basis for concluding that conditions for pursuing an assessment were met;

(3) Describe any agreements among Co-Trustees and potentially responsible parties;

(4) Identify ongoing or planned response activities that could affect the natural resources being assessed;

(5) Explain how conditions for using a Type A Procedure listed in 11.34 of this part are met;

(6) Identify and describe the model(s) selected to determine damages to fund restoration activities, including the following;

(i) Data inputs and the assumptions used for the model(s);

(ii) Possible existing restoration alternatives that make these model assumptions valid for the purpose of restoration;

(iii) Results of the modeling exercise;

(7) Note the establishment of an administrative record for the assessment and explain how to gain access to that record;

(8) Explain how to submit comments and state the deadline for comments; and

(9) Identify a contact person.

*Administrative Record for Type A Report includes:*

(a) Evidence of efforts to coordinate with response agencies (this need not include any evidence of the substance of discussions, nor documentation of every contact);

(b) Evidence of efforts to consult with other Co-trustees (this need not include any evidence of the substance of discussions, nor documentation of every contact) and documentation of any agreements among Co-trustees;

(c) The invitation to potentially responsible parties inviting them to participate in the Type A Procedure and documentation of any agreements reached with potentially responsible parties.

(d) Information considered when developing data inputs and assumptions for modeling, including complete citations to any literature used;

(e) A printout of the model(s) sufficient for reproducibility (or a copy of the file used to generate the model(s));

(f) Documentation of any assessment costs incurred, if Trustees plan to seek reimbursement of such costs.

(g) Copy of the final Type A Report and each published version of the Type A Report.

*Revising Type A Report:*

(d) If the Trustees decide after their review to select different model(s), or substantially change the model data inputs or assumptions to conduct the Type A Procedure, the Trustees must prepare a revised Type A Report that reflects the changes, provides any new information about the modified data inputs and assumptions, and substantively responds to significant comments received during the comment period. Minor changes require a statement of explanation of the changes, explanation of why they are not considered substantial, and discussion of any effects on results to be appended to the original Type A Report.

*Revision to Existing IC in Proposed Rulemaking:* The information to be included in the modified and/or revised

Type A Report will allow for a wider range of models to be used as opposed to the ones currently listed which focus on Coastal and Marine Environments and the Great Lakes Environments exclusively. These changes will allow Trustees to use a variety of models and include their results in the Type A Report.

(2) *Type B Report of Assessment (Existing)*—The completion of an assessment is documented in the Report of Assessment (ROA), which consists of the Preliminary Assessment Screen (PAS), Preliminary Estimate of Damages (PED), Assessment Plan (AP), Restoration and Compensation Determination Plan (RCDP), Restoration Plan (RP; when prepared for settlement), and response to public comments:

- The PAS is a rapid review of readily available information to make a determination as to whether an NRDAR will be carried out (43 CFR 11.23, 11.24 and 11.25).
- The purpose of the PED is to inform the Assessment Plan to ensure that the choice of the scientific, cost estimating, and valuation methodologies expected to be used in the NRDAR are reasonable cost. The PED typically relies on available information (43 CFR 11.38).
- The AP must identify and document the use of all of the Type A and/or Type B procedures that will be performed, including any proposed injury studies, as well as potential studies to identify early restoration opportunities and potential effectiveness. The AP is published for public comment (43 CFR part 11 subpart C).
- The RCDP provides a reasonable number of possible restoration alternatives, identifies the preferred one and the actions required for implementation, and describes the methods and results of the injury determination, injury quantification, and damages determination (monetary or in-kind projects). The RCDP uses literature, site data, and study data, and Trustees' decision making; it is published for public comment (43 CFR 11.81).
- Although the RP is identified as part of a post-assessment activity, ORDA addressed Departmental and Congressional interest in timely restoration through policy by defining a ''restoration-based settlement'' to include a legally binding Consent Decree and concurrent final Restoration Plan. Therefore, the RP may be produced before or after settlement, and is published for public comment. The level of effort on a post-settlement RP is assumed to be the same as for settlement. For purposes of this ICR, the RP is considered to be part of the Type B ROA (43 CFR 11.93; ORDA Restoration Policy).

*Title of Collection:* Natural Resource Damage Assessments (43 CFR part 11).

*OMB Control Number:* 1090–New.

*Form Number:* None.

*Type of Review:* New.

*Respondents/Affected Public:* Private sector (consultants and potentially responsible parties) and State and Tribal governments.

*Total Estimated Number of Annual Respondents:* 10.

*Total Estimated Number of Annual Responses:* 155.

*Estimated Completion Time per Response:* Varies from 40 hours to 18,627.45 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 513,926.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Departmental Information Collection Clearance Officer, U.S. Department of the Interior, Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1090–AB26 in the subject line of your comments.

*National Environmental Policy Act*

We have analyzed the proposed revisions in accordance with the criteria of the National Environmental Policy Act, 43 U.S.C. 433 *et seq.* (NEPA). Restoration actions identified through the proposed revisions may sometimes involve major Federal action significantly affecting the quality of the human environment. In those cases, Federal trustees will need to comply with NEPA. However, the proposed revisions do not require trustees to take restoration action. Further, if the trustees decide to pursue restoration, they are not required to follow the rule when selecting restoration actions. Finally, the rule and the proposed revisions do not determine the specific restoration actions that trustees can seek. Therefore, the rule and the proposed revisions do not significantly affect the quality of the human environment. Even if the rule revisions were considered to significantly affect the quality of the human environment, they would fall under DOI's categorical exclusion for regulations that are of a procedural nature or have environmental effects too broad or speculative for meaningful analysis and will be subject later to the NEPA process.

*Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action because it

(1) is not a significant regulatory action under E.O. 12866; and

(2) is not likely to have a significant adverse effect on the supply, distribution or use of energy or is designated by the Administrator of OMB/OIRA as a significant energy action.

Releases of hazardous substances can adversely affect the supply, distribution, or use of various types of energy. This rulemaking provides simplified procedures to conduct NRDAR activities under CERCLA due to releases of hazardous substances and restore the injured natural resources which may supply energy. A Statement of Energy Effects is not needed.

*Clarity of This Regulation*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized,

(2) Use the active voice to address readers directly.

(3) Use clear language rather than jargon,

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*Public Availability of Comments*

Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review we cannot guarantee that we will do so.

**List of Subjects in 43 CFR Part 11**

Assessment procedures, Natural resource damages, Potentially responsible parties, Trustees.

*Words of Issuance*

For the reasons discussed in the preamble, the Department of the Interior proposes to amend 43 CFR part 11 as follows:

## PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 42 U.S.C. 9651(c), as amended.

■ 2. Revise §§ 11.33 through 11.37 to read as follows:

Sec.

* * * * *



* * * * *

**§ 11.33 What types of assessment procedures are available?**

There are two types of assessment procedures:

(a) Type A procedures are simplified procedures that require minimal field observation. Subpart D of this part describes the Type A procedures.

(b) Type B procedures require more extensive field observation than the Type A procedures. Subpart E of this part describes the Type B procedures.

**§ 11.34 When may a Trustee use a Type A procedure?**

A Trustee may use a Type A procedure if all of the following are satisfied:

(a) The Trustee has decided that existing models (for replacement of resources or habitats, equivalency analysis, recreational losses, benefits transfer, etc.) are appropriate for determining damages to fund restoration activities at the site.

(b) All Federal, State, and Tribal trustees with probable jurisdiction over the injured natural resources who have elected to participate in the claim concur in the use of the Type A procedure in the circumstances presented;

(c) Either the claim that will be resolved using the Type A procedure is expected to be less than $3 million (excluding reasonable assessment costs); or the claim relates to injury resulting from a hazardous substance release over a relatively short period of time (*e.g.,* a discrete spill) with a small number of potentially responsible parties and is expected to be less than $5 million;

(d) At least one potentially responsible party has voluntarily agreed to utilize the Type A procedure. If a claim involves multiple potentially responsible parties (PRPs), the Type A process may not be appropriate unless resolution of the claim involves all significant PRPs, or the resolution of the claim represents a final settlement of the claim for injury to specific natural resources at the site.

(e) The PRP agrees to toll the running of the statutory limitations period for filing the claim for at least one year and to reimburse the trustees for reasonable Type A assessment costs until the claim is resolved or the PRP gives formal notice of withdrawal from voluntary participation in the Type A procedure.

**§ 11.35 How does the Trustee decide whether to use Type A or Type B procedures?**

(a) If the Trustee determines under § 11.34 that a Type A procedure is available, the Trustee must then decide whether to use that procedure or use a Type B procedure. The Trustee must make this decision by weighing the difficulty of collecting site-specific data against the suitability of the averaged data and simplifying assumptions in the Type A procedure for the release being assessed. The Trustee may use a Type B procedure if they can be performed at a reasonable cost and if the increase in accuracy provided by those procedures outweighs the increase in assessment costs.

(b) If there is no appropriate Type A procedure, the Trustee must use a Type B procedure to calculate all damages.

**§ 11.36 May the Trustee use both a Type A and Type B procedure for the same release?**

(a) The Trustee may use both a Type A procedure and Type B procedure for the same release if:

(1) The Type B procedure is cost-effective and can be performed at a reasonable cost;

(2) There is no double recovery; and

(3) The Type B procedure is used only to determine damages for injuries or compensable values that do not fall into the categories addressed by the Type A procedure.

(b) The Type A procedure addresses the following categories of injury and compensable value:

(1) Lethal and sub-lethal injuries to individual organisms within discrete species or guilds;

(2) Injuries to habitat and ecological productivity;

(3) Impairments to human use, cultural use, and enjoyment of natural resources;

(c) If a Trustee elects to use both a Type A procedure and a Type B procedure, the Assessment Plan must explain how the double recovery will be prevented.

(d) When the Trustee uses a Type B procedure for injuries not addressed in a Type A procedure, they must follow all of subpart E of this part (which contains standards for determining and quantifying injury as well as determining damages), § 11.31(c) (which addresses content of the Assessment Plan), and § 11.37 (which addresses confirmation of exposure). When the Trustee uses a Type B procedure for compensable values that are not included in a Type A procedure but that result from injuries that are addressed in the Type A procedure, they need not follow all of subpart E, § 11.31(c), and § 11.37. Instead, the Trustee may rely on the injury predictions of the Type A procedure and simply use the valuation methodologies authorized by § 11.83(c) to calculate compensable value. When using valuation methodologies, the Trustee must comply with § 11.84.

**§ 11.37 Must the Trustee confirm exposure before implementing the Type B Assessment Plan?**

(a) Before including any Type B methodologies in the Assessment Plan, the Trustee must confirm that at least one of the natural resources identified as potentially injured in the preassessment screen has in fact been exposed to the released substance.

(b) Whenever possible, exposure shall be confirmed by using existing data, such as those collected for response actions by the On-Scene Coordinator, or other available studies or surveys of the assessment area.

(c) Where sampling has been done before the completion of the preassessment screen, chemical analyses of such samples may be performed to confirm that exposure has occurred.

(d) Where existing data are unavailable or insufficient to confirm exposure, one or more of the analytical methodologies provided in the Injury Determination phase may be used.

(e) Type B assessment methodologies shall be included in the Assessment Plan only upon meeting the requirements of this section.

■ 3. Revise subpart D to read as follows:

**Subpart D—Using the Type A Procedures**

Sec.



## Subpart D—Using the Type A Procedures

**§ 11.40 How does a Trustee use the Type A Procedure?**

Once a Trustee has decided that the Type A Procedure is appropriate to resolve a claim and the potentially responsible party has agreed to utilize the Type A Procedure, the Trustee should notify and invite other affected Co-trustees to participate in the Type A Procedure. The Type A Procedure must be documented in a Type A Report.

**§ 11.41 What information is included in a Type A Report?**

(a) The Type A Report is a document to provide the public with notice of, and an opportunity to comment on, the use of the Type A Procedure.

(b) The Type A Report must:

(1) State that the Trustee is following this rule and provide a citation to the rule;

(2) Explain the basis for concluding that conditions for pursuing an assessment were met;

(3) Describe any agreements among Co-Trustees and potentially responsible parties;

(4) Identify ongoing or planned response activities that could affect the natural resources being assessed;

(5) Explain how conditions for using a Type A Procedure listed in § 11.34 are met;

(6) Identify and describe the model(s) selected to determine damages to fund restoration activities, including the following;

(i) Data inputs and the assumptions used for the model(s);

(ii) Possible existing restoration alternatives that make these model assumptions valid for the purpose of restoration;

(iii) Results of the modeling exercise;

(7) Note the establishment of an administrative record for the assessment and explain how to gain access to that record;

(8) Explain how to submit comments and state the deadline for comments; and

(9) Identify a contact person.

(c) The Type A report must be made available to the public and provide for a comment period of at least 30 days.

**§ 11.42 What documents must be in the Administrative Record when the Type A Report is published?**

(a) Evidence of efforts to coordinate with response agencies (this need not include any evidence of the substance of discussions, nor documentation of every contact);

(b) Evidence of efforts to consult with other Co-trustees (this need not include any evidence of the substance of discussions, nor documentation of every contact) and documentation of any agreements among Co-trustees;

(c) The invitation to potentially responsible parties inviting them to participate in the Type A Procedure and documentation of any agreements reached with potentially responsible parties.

(d) Information considered when developing data inputs and assumptions for modeling, including complete citations to any literature used;

(e) A printout of the model(s) sufficient for reproducibility (or a copy of the file used to generate the model(s));

(f) Documentation of any assessment costs incurred, if Trustees plan to seek reimbursement of such costs.

(g) Copy of the final Type A Report and each published version of the Type A Report.

**§ 11.43 What is the process for Type A Report comments?**

(a) Comments received during the comment period must be placed in the Administrative Record and reviewed by the Trustees.

(b) If the Trustees decide after their review that no changes to the Type A Report are needed, the Trustees must publish a notice that:

(1) States that the Type A Report has been finalized; and

(2) Provides substantive responses to significant comments received during the comment period.

(c) If the Trustees decide after their review that it is inappropriate to use the Type A Procedure, the Trustees may decide to use a Type B Procedure for the assessment or stop the assessment.

(d) If the Trustees decide after their review to select different model(s), or substantially change the model data inputs or assumptions to conduct the Type A Procedure, the Trustees must prepare a revised Type A Report that reflects the changes, provides any new information about the modified data inputs and assumptions, and substantively responds to significant comments received during the comment period. Minor changes require a statement of explanation of the changes, explanation of why they are not considered substantial, and discussion of any effects on results to be appended to the original Type A Report.

(e) The Trustees must provide an additional comment period of at least 30 days for a revised Type A Report.

**§ 11.44 How do the Trustees conclude the Type A Procedure?**

(a) After the Type A Report is finalized, Trustees may enter into a settlement agreement with potentially responsible parties.

(b) Damages to fund or undertake restoration activities must be utilized pursuant to a publicly reviewed Restoration Plan consistent with subpart F of this part.

(c) The comment period for Administrative Settlement Agreements, Consent Decrees, and Restoration Plans may run concurrently with the comment period for the Type A Report, if appropriate.

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