

APPENDIX W

GUIDANCE FOR STATE-LEAD REMOVAL ACTIONS

OSWER DIRECTIVE
9375.1-4-W

PREFACE

This guidance sets forth the policy and procedures for awarding to States the authority and funds necessary to lead a CERCLA-funded removal action. It is intended to provide Regions with a new management tool for handling their workload and as a mechanism for further delegating program responsibilities to States. Under this program, States may lead non-time-critical removal actions at NPL and non-NPL sites. Authority to enter into a Cooperative Agreement with interested States rests with the Regional Administrator as set forth in Delegation 14-1-B (Superfund State Contracts and Cooperative Agreements for Removal Actions).

Provisions of this guidance may be subject to revision given CERCLA Reauthorization, proposed revisions to the National Contingency Plan and removal program policy/guidance development activities. In addition, it is anticipated that revisions to the operating procedures set forth in the guidance may be necessary once Regions have obtained experience in implementing Cooperative Agreements with States.

This guidance has been developed by OSWER's Emergency Response Division (ERD) in cooperation with the Hazardous Site Control Division. Regional staff participating in the implementation of State-lead removal actions should contact their appropriate Regional grant personnel or HQ ERD Regional Coordinator if questions or problems arise when executing a Cooperative Agreement.

APPENDIX WGUIDANCE FOR STATE-LEAD REMOVAL ACTIONS

I. SCOPE OF STATE-LEAD REMOVAL ACTIONS

A. Types of Cooperative Agreements

A State must enter into a Cooperative Agreement with EPA before beginning a response action using CERCLA funds. A Cooperative Agreement is the mechanism established by the Federal Grant and Cooperative Agreement Act that a Federal agency uses to provide States or political subdivisions with funding assistance while retaining significant involvement in the project. The Cooperative Agreement documents the respective responsibilities of the recipient of Federal funds and the agency providing the assistance. Cooperative Agreements are used to:

- . Transfer funds for specific project(s)
- . Document the State's statutory and regulatory responsibilities and assurances
- . Approve project-specific budgets and scopes of work
- . Identify any special program requirements related to the project
- . Document the Federal agency's role and responsibilities during the project.

There are two types of Cooperative Agreements: 1) a site-specific Cooperative Agreement; and 2) a multi-site Cooperative Agreement (MSCA). State-lead removal actions may be executed via a site-specific or multi-site Cooperative Agreement.

1. Site-specific Cooperative Agreements are appropriate mechanisms to fund response activities required at a single site. These agreements cover one removal action at one site and can be amended to include subsequent removal activities and to provide funds necessary to complete the action at that site.

2. A multi-site Cooperative Agreement is an "umbrella" Cooperative Agreement that, under one funding document, may include several response activities at more than one site within a State. MSCAs should be used in situations where sites are within close proximity. States requesting to lead removal actions at more than

one site may choose to develop a MSCA or an existing MSCA may be amended to include a State-lead removal. If the State agency identified to lead Superfund response actions is different from the agency certified under an existing agreement with EPA, the State must submit to EPA a letter (signed by the Governor or Attorney General) indicating it has the authority to accept Federal funds and make the required assurances.

B. Types of Actions

1. State-lead removal actions initially will be limited to non-time-critical removals at NPL and non-NPL sites. All time-critical removal actions will be Federal-lead, including actions that are initially categorized as non-time-critical, but due to extenuating circumstances, the Regional Administrator (RA) has determined to be more appropriate for a Federal-lead response (e.g., a time-critical response becomes necessary, required response is more extensive than anticipated and exceeds State capabilities). Cooperative Agreements must contain a special condition to this effect.

(a) Non-time-critical removals appropriate for State-lead are actions where initiation of cleanup or stabilization efforts may be delayed for approximately six months or more from the time the threat is discovered.

(b) Non-time-critical removals include all activities formerly categorized as initial remedial measures (IRMs) under the remedial program and longer term removals that can be planned in advance.

(c) To date, State experience in leading non-time-critical actions has been limited to IRM-type activities previously conducted under the remedial program. Examples of State-lead IRM-type responses include fence construction, erosion control and off-site disposal of hazardous waste. Additional examples are provided in Exhibit 1.

2. The Superfund Comprehensive Accomplishments Plan (SCAP) process will be used as a planning/management tool for identifying removal actions appropriate for State-lead. Only removals that are listed on the approved or revised SCAP can be State-lead.

(a) Funds may not be obligated for State-lead removal actions that do not appear on the approved SCAP. Removal actions under consideration for State-lead must be listed on the SCAP at least one quarter in advance. However, these actions may

EXHIBIT 1

EXAMPLES OF STATE-LEAD IRM PROJECTS CONDUCTED UNDER THE REMEDIAL PROGRAM

- Excavation and off-site disposal of surface and buried waste materials and contaminated soil
- Fence construction
- Bank stabilization
- Water supply treatment of municipal well
- Installation of carbon filters on private wells
- Construction of lagoon perimeter dike
- Temporary cap for lagoons
- Posting of cautionary signs along creek
- Storm water control

be projected on the SCAP for more than one quarter in advance since, by definition, non-time-critical removals are actions where initiation of cleanup or stabilization efforts may be delayed for approximately six months or more from the time the threat is discovered.

(b) Removal actions identified for State-lead must be on the SCAP before the Action Memorandum and Cooperative Agreement can be approved. Preparation of the Action Memorandum and Cooperative Agreement application can begin, however, before the removal action is placed on the SCAP.

(c) Revisions to the approved SCAP require coordination with EPA Headquarters. Regional Oil and Hazardous Materials (OHM) Coordinators are responsible for initiating any necessary SCAP updates/revisions to ensure that sites identified for State-lead are placed on the SCAP, as required. OHM Coordinators should contact their designated Emergency Response Division (ERD) Regional Coordinator in EPA Headquarters when updates/revisions to the SCAP are required.

C. Scope of Activities

1. All CERCLA-funded preliminary assessment and section 104(b) activities undertaken to assess the extent of contamination and to determine whether the incident meets the NCP and CERCLA criteria for removal action will be Federal-lead. This does not preclude States from leading pre-remedial activities under a remedial Cooperative Agreement.

2. All Engineering Evaluations/Cost Analyses (EE/CAs) necessary to meet the requirements of the National Environmental Policy Act (NEPA) will be Federal-lead.

3. All enforcement activities, including Potentially Responsible Party (PRP) search, and notification and negotiation with PRPs will be Federal-lead. State-lead enforcement activities for removal actions may be considered once the program has been implemented.

4. Only those activities authorized in the initial or amended Action Memorandum will be State-lead, including any post removal site control (formerly operation and maintenance or O&M) that is CERCLA-funded.

(a) States will procure and lead all contractor cleanup and stabilization activities, including operation and maintenance activities authorized in the Action Memorandum.

(b) Once response begins, no party other than the State may direct the response activities being performed either by the State or its contractor(s). However, at the discretion of the RA, a response may be determined to be more appropriate for Federal-lead (see section I.B.1 of this guidance).

D. Approval of State-Lead Removals

1. The RA will determine, on a case-by-case basis, removal actions appropriate for State-lead. Factors the RA should consider when evaluating a State's request to lead a CERCLA-funded removal include, but are not limited to:

- . State experience in leading activities conducted under the remedial program (e.g., IRM-type actions) that are similar to the response actions required to clean up or to stabilize the release at the site under evaluation for State-lead.
- . State experience in responding to hazardous substance spills/incidents independent of Federal involvement/funds.
- . Existence of a State Contingency Plan for hazardous substance release response.

2. A Removal Action Memorandum and Cooperative Agreement are required for all State-lead removal actions. The Action Memorandum will be an integral part of the Cooperative Agreement and must be approved before an Agreement can be awarded to the State. A copy of the approved Action Memorandum will be made available to the State and will be provided when the Agreement is awarded, if not before. All Cooperative Agreements, and amendments to the Agreement, will be negotiated at the Regional level and approved by the Regional Administrator. OSCs or RPMs, as appropriate, will be the State's primary EPA contact for developing and negotiating Cooperative Agreements.

(a) EPA will prepare the Action Memoranda in accordance with current program procedures, and in close cooperation/consultation with the State. EPA will always select the response/activities to be taken at the site in consultation with the State. The Action Memorandum must document that the removal will be State-lead and identify what cleanup or stabilization actions must be taken within a specified cost and duration. The Action Memorandum must also identify activities that will be Federal-lead (e.g., enforcement activities).

- In accordance with program policy and procedures, the AA, OSWER must approve all Action Memoranda for removal actions initially or ultimately expected to exceed the statutory limitation on cost; otherwise, the RA will approve the Action Memoranda, including exemptions to the limitation on time, with OSWER concurrence required on proposed precedent-setting non-NPL removals.
- Changes in project scope and exemptions to the statutory limitations on cost and duration must be documented and approved in accordance with current removal program procedures before the Cooperative Agreement is amended. In order to expedite the approval process, State Project Officers (SPOs) should contact the assigned OSC/RPM as soon as it is known that an amendment to the Action Memorandum is necessary.

These procedures are discussed briefly in Section III of this guidance and in more detail in the Superfund Removal Procedures manual.

(b) States are responsible for preparing the Cooperative Agreement package, which must include a Cooperative Agreement Application, EPA Form 5700-33, and the attachments discussed in section II (Development of Cooperative Agreement Application Packages) of this guidance.

E. Funding Mechanism

1. State-lead removal actions will be funded via a Letter of Credit.

(a) Under this method, CERCLA funds are provided to a State through an existing Letter of Credit established at a Federal Reserve Bank chosen by the State. The State uses — or "draws down" — funds from the credit account to cover its immediate cash needs.

(b) Under a Letter of Credit, funds are obligated when the RA signs the Cooperative Agreement and sends it as an offer of award to the State; funds become accessible to the State on an as-needed basis upon execution of the Cooperative Agreement.

The State Participation Manual provides additional information on the Letter of Credit funding method.

F. Procurement Methods/Conditions

Under a removal Cooperative Agreement, States must award a fixed price subagreement (lump sum, unit price or a combination of the two) when procuring contractor support, regardless of the procurement method selected, unless it receives the Award Official's prior written approval.

1. Methods of procurement that States may use include small purchase, formal advertisement, competitive negotiation, or non-competitive negotiation, as appropriate.
2. All procurement subagreements must adhere to any Engineering Evaluations/Cost Analyses that may have been conducted by EPA for the project covered in the Cooperative Agreement. A special condition to this effect should be included in the Cooperative Agreement.
3. To conduct procurement activities under the Superfund program, a State must either have an internal procurement system that complies with the requirements of 40 CFR Part 33 (Procurement under Assistance Agreements) or must use Part 33 as its procurement regulation and allow EPA preaward review of proposed procurement actions. Additional information on this requirement is provided in section II.2(a) of this guidance and Volume II of the State Participation Manual.

G. State Assurances

In order to enter into a Cooperative Agreement for a removal action, EPA policy requires States to provide assurances for (1) sharing in the cost of cleanup at publicly operated sites, (2) providing a facility in compliance with the Resource Conservation and Recovery Act for off-site treatment, storage, or disposal of substances taken from a site, and (3) assuming responsibility for post removal site control (formerly termed operation and maintenance or O&M). OSCs/RPMs are responsible for monitoring State compliance with these requirements.

1. States are not required to share in the cost of a removal action, unless that removal is conducted at an NPL site that was publicly operated (either by a State or a political subdivision thereof) at the time of a release and a remedial action is ultimately undertaken at the site. In these situations, States are required to pay 50 percent of all removal costs. A State is not required to pay its cost share for the removal until the remedial action is funded by EPA.

2. States are statutorily required to ensure the availability of a hazardous waste treatment, storage or disposal facility, if a remedial action requires off-site treatment, storage, or disposal of hazardous substances. Such facilities must be in compliance with Subtitle C of RCRA and a RCRA compliance inspection must have been completed at the facility within the six-month period prior to the receipt of wastes. According to current EPA policy on off-site disposal (OSWER Directive #9330.2-3), non-time-critical removal actions are subject to these requirements. SPOs should contact their EPA-designated OSC/RPM or Regional RCRA Off-site Contact (RROC) for assistance in identifying disposal facilities and resolving issues pertaining to off-site disposal.

3. Removal program policy allows for payment of post removal site control within the twelve months time limit for the entire removal. The State must assume responsibility for post removal site control at the conclusion of the removal action. EPA may include funds for post removal site control for the project period covered in the Action Memorandum. However, a State must assume responsibility for post removal site control after the completion of the CERCLA-financed action. The Cooperative Agreement Application or a special condition must provide an assurance that the State will assume responsibility for all post removal site control as long as necessary once the action is complete.

II. DEVELOPMENT OF COOPERATIVE AGREEMENT APPLICATION PACKAGES

The State is responsible for developing the Cooperative Agreement Application package. While the OSC/RPM will be the State's primary EPA contact for developing and negotiating Cooperative Agreements for removals, Regions may elect to assign administrative responsibilities to Regional staff other than the OSC/RPM. State officials responsible for response agreements, usually State Project Officers (SPOs)*, should work closely with an EPA-designated OSC/RPM when developing the Cooperative Agreement. Additional support to the OSC/RPM will be available through the ERD Regional Coordinators in EPA Headquarters. OSCs/RPMs and OHM Coordinators are responsible for reviewing the Cooperative Agreement Application for accuracy and completeness.

A. The Cooperative Agreement Application

The Cooperative Agreement Application package must include EPA Form 5700-33 and several attachments. The application form and the required attachments are briefly discussed below. Additional information is provided in EPA's manual entitled State Participation in the Superfund Program.

1. When applying for CERCLA funds, a State must complete EPA Form 5700-33, Application for Federal Assistance -- State and Local Nonconstruction Programs. This form consists of five parts:

- . Part I - General Summary Information
- . Part II - Project Approval Information
- . Part III - Budget Information
- . Part IV - Project Narrative Statement
- . Part V - Assurances.

General instructions for completing each part are included in the application form. The State should ensure that costs included in the application are allowable for payment under CERCLA. To be allowable, proposed costs must be consistent with section 111 of CERCLA and with Federal cost principles outlined in the OMB Circular A-87, "Cost Principles for State and Local Governments." The State may seek assistance from the OSC/RPM in determining which costs may be allowable. Final determination of the reasonableness of the cost estimates in the application will be made by the EPA Award Official. Exhibit 2 presents the content and Exhibit 3 the appropriate level of detail required for completing Cooperative Agreement budget information.

2. Attachments to the Cooperative Agreement Application

A Cooperative Agreement Application for removal actions must include the following attachments:

- . State certification letter
- . Procurement System Certification, EPA Form 5700-49
- . Intergovernmental review comments
- . Community relations plan, if applicable
- . Quality assurance/quality control (QA/QC) plan
- . Site safety plan

These attachments are briefly discussed below. More detailed information is provided in the State Participation Manual.

* While the term State Project Officer is used throughout the guidance to denote a State's counterpart to an EPA OSC/RPM, it is recognized that different terminology may be used among the States.

EXHIBIT 2
OBJECT CLASS CATEGORIES CONTENT REQUIRED FOR COMPLETING
COOPERATIVE AGREEMENT BUDGET SHEETS

CATEGORY	CONTENT - THE STATE MAY INCLUDE:
Personnel	<ul style="list-style-type: none"> Costs of wages paid to State employees who are engaged in response activities. (Calculated either as a percentage of time or level of effort (LOE) basis.)
Fringe Benefits	<ul style="list-style-type: none"> Fringe benefits for State employees, calculated as a fixed percentage of salary or by some other agreed-upon method.
Travel	<ul style="list-style-type: none"> Costs incurred by State employees for travel necessary for response activities.
Equipment	<ul style="list-style-type: none"> Purchase price of necessary equipment that the State furnishes, less its residual value after project completion. If equipment costs are based on usage rates, the costs are calculated by a standard depreciation usage method or in accordance with OMB Circular A-102, Attach. N.
Materials and Supplies	<ul style="list-style-type: none"> Purchase price of any necessary materials and supplies the State furnishes.
Contractual Services	<ul style="list-style-type: none"> Costs associated with reimbursing contractor services, including direct and indirect contractor costs and a reasonable profit for personal services and nonconstruction contracts. (See 40 CFR Part 33 and OMB Circular A-87.)*
Other Direct Costs	<ul style="list-style-type: none"> Costs such as equipment rental, real property purchase (see 40 CFR Part 30), and miscellaneous costs.
Indirect Costs	<ul style="list-style-type: none"> The State may include indirect costs.

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- * In accordance with the Prompt Payment Act (PL 97-177), Federal funds may not be used for payment of interest penalties to contractors when bills are paid late.

EXHIBIT 3
OBJECT CLASS CATEGORIES
APPROPRIATE LEVEL OF DETAIL FOR ITEMIZED
COOPERATIVE AGREEMENT APPLICATION BUDGET

CATEGORY	INFORMATION
Personnel	<ul style="list-style-type: none"> • Positions of staff • Number of hours • Salary of staff (annual or hourly rate) • Estimates of personnel costs, by position
Fringe Benefits	<ul style="list-style-type: none"> • Basis (percentage or other) upon which fringe benefits are calculated • Estimates of fringe benefit costs, by position
Travel	<ul style="list-style-type: none"> • Purpose and estimated number of trips • Starting point and destination • Transportation method • Per Diem while on travel • Number of persons traveling • Estimated cost of trips
Equipment	<ul style="list-style-type: none"> • Number and type(s) of equipment to be purchased • Price of each piece
Materials and Supplies	<ul style="list-style-type: none"> • Type(s) of materials and supplies to be furnished • Total prices
Contractual Services	<ul style="list-style-type: none"> • Estimated number of personal services or nonconstruction contracts • Nature of contract services • Estimated total cost for each contract*

* Estimates should allow for bid and activity contingencies.

(a) A certification letter must be included in the Cooperative Agreement Application package. This letter must be signed by the Governor or Attorney General and must indicate that the agency entering into the agreement has both the authority to do so and to make the assurances required by EPA as discussed in section I.G of this guidance. This letter may be a generic, one-time statement that covers all sites within the State, or it may be site-specific. If a State chooses to submit certification letters on a site-specific basis, a certification letter must be provided for each site covered under a multi-site Cooperative Agreement.

(b) In order to conduct procurement activities under the Superfund program, a State either must have an internal procurement system that meets the intent of EPA's regulations, Procurement Under Assistance Agreements (40 CFR Part 33), or it must follow Part 33 when it conducts procurement and allow EPA pre-award review. The procurement certification form, EPA Form 5700-48 (Procurement System Certification), demonstrates whether or not the State's procurement system is equivalent to EPA requirements. The certification is valid for two years or for the length of the project period established in the assistance agreement, whichever ever is greater. If the State has previously provided this certification to EPA, the State needs only to indicate in Part A of the form the date the certification was originally submitted.

(c) In accordance with Executive Order 12372, State removal proposals are subject to intergovernmental review before EPA will obligate funds. Intergovernmental review is implemented under 40 CFR Part 29, Intergovernmental Review of EPA Programs and Activities. Under this regulation, if the State has an established review process that includes the project in question, an applicant must formally notify its designated single point of contact, as well as any directly affected governmental entities and areawide or regional planning agencies that it is seeking Federal assistance and comply with the State's review process. A copy of the notification should be sent to the appropriate EPA Regional office. Any comments received in response to this notification must be attached to the Cooperative Agreement Application. Funds will not be obligated to the State until representatives of the State have had an opportunity to comment on the proposed project(s). The intergovernmental review process should be initiated at least one quarter prior to obligation of funds for response at a site. This lead time is necessary to meet the required 60-day State review period

and to allow time for EPA to respond to State and local comments. EPA must accommodate, or explain why it cannot accommodate, any comment received during the formal process before it can award funds to the State.

(d) Section 300.67(b) of the National Contingency Plan (NCP) requires a formal community relations plan (CRP) for all removal actions that last longer than 45 days (Note: proposed revisions to the NCP change this requirement to 120 days). States are therefore required to develop and implement a CRP for all removal actions that are expected to extend beyond this designated time frame. Additional information on CRPs and guidance for developing these plans is provided in the Superfund Removal Procedures manual and in EPA's manual entitled Community Relations in Superfund: A Handbook. States may submit the CRP separately from the Cooperative Agreement Application package. In that event, either the Cooperative Agreement Application or a special condition must provide that the State will submit the CRP prior to beginning on-site activities. The CRP is subject to EPA review and approval.

(e) As required by 40 CFR Part 30.302(d)(2), a State must submit within 30 days of receiving its Cooperative Agreement the QA/QC procedures it intends to use in environmental monitoring. These include any sample collection and analysis activities that may be necessary during the response. One generic QA/QC plan is sufficient for an MSCA. In addition, however, States are required to develop a site-specific Quality Assurance Project Plan (QAPP) to describe the measurement systems it intends to use on a site. When preparing the QA/QC plan and QAPP, States must meet Superfund program data requirements, including the following:

- . Data produced must be able to withstand the scrutiny of litigative proceedings, thus requiring appropriate chain-of-custody, document control and QA/QC documentation.
- . Data collection must be cost-effective. Costs of generating the data cannot significantly exceed costs associated with similar analyses provided by the EPA Contract Laboratory Program (CLP).
- . Data turnaround times must meet project needs.

The QA/QC plan must be reviewed by the EPA Regional QA Officer and the RPM/OSC and must be approved by the Award Official before any sampling can begin for a project.

(f) States are required to have a site safety plan in place before field activities can commence. A site-specific plan must be developed for each removal action. Each safety plan must provide for the protection of on-site personnel and area residents. Plans must be consistent with site conditions and must cover all phases of incident operations. Site safety plans must also comply with all applicable Federal, State and local Occupational Safety and Health (OSH) laws and Occupational Safety and Health Administration (OSHA) standards. Each site-specific safety plan must be submitted to the OSC/RPM for review to ensure removal program requirements are met. Additional information on site safety plans is provided in the Superfund Removal Procedures manual. Site safety plans may be submitted to EPA after the Cooperative Agreement has been signed providing that the application or a special condition provides that the plan will be submitted for EPA review before on-site activities begin.

III. ADMINISTERING COOPERATIVE AGREEMENTS

OSCs/RPMs and SPOs are responsible for ensuring that response activities are conducted according to the agreed-upon scope of work, budget, and schedule included in the Cooperative Agreement and Action Memorandum. The State official responsible for directing response activities, usually the SPO, must ensure that all on-site activities are consistent with CERCLA, the NCP and removal program policies and procedures. Daily on-site presence by SPOs is therefore required when response activities are underway. The OSC/RPM and SPO should maintain close communication at all times to monitor progress effectively. This can include meetings, phone calls, written correspondence, and review of contractor monthly progress reports. In addition, the OSC/RPM and SPO must notify each other immediately of any unscheduled or unanticipated events (e.g., a fire or explosion on site that may require an emergency response by EPA) that may have a direct impact on the project and/or on the terms of the response agreement.

This section briefly discusses State reporting and cost documentation requirements, monitoring State financial commitments and procedures for agreement adjustments. Additional information on response agreement administration and reporting and cost documentation requirements is provided in the State Participation Manual.

A. Reporting Requirements

When entering into a Cooperative Agreement, States are subject to a number of reporting requirements, including submittal of technical progress reports, financial status reports and other reports as required in the Cooperative Agreement. These reporting requirements are discussed briefly below.

1. For removal actions, States must submit quarterly technical progress reports within 30 days of the end of each Federal fiscal quarter and at the end of each response. These reports are submitted to the Region and present information on activities performed during the quarter and on total work to date. Exhibit 4 lists the minimum elements that State technical progress reports should contain for removal actions.

(a) The OSC/RPM is responsible for reviewing technical progress reports and providing any necessary direction or assistance to the State, as required. The content of State reports should be tailored to specific requirements of the response activities as covered in the Action Memorandum and the provisions of the Cooperative Agreement. All information should be site-specific and the OSC/RPM and SPO should reach an initial agreement on the content and format of these reports during negotiation of the Cooperative Agreement. For certain removal actions, EPA may require daily communication from the State, including submission of contractor progress reports. A special condition to this effect should be included in the Cooperative Agreement at the time the agreement is negotiated and may include a provision that the State require from its contractor submission of daily and/or weekly progress reports.

(b) In addition, the State must prepare and submit a final technical progress report to the OSC/RPM within 90 days after the completion of the removal action. Removal actions are complete when the scope of work in the Action Memorandum has been completed and the State has demobilized. The Cooperative Agreement is closed out when all administrative/financial reporting requirements are completed. See section IV of this guidance.

2. Once a removal action has been completed, States must submit a final Financial Status Report (FSR), Standard Form 269, and any ancillary reports. Ancillary reports include statistical or monitoring data, operation and maintenance manuals and other reports as required in the Cooperative Agreement. The State should

EXHIBIT 4
CONTENT OF STATE TECHNICAL PROGRESS REPORTS

- Description of activities and tasks completed to date, by site
- Estimates (percentages) of work completed for each activity, by site, including a basis for the estimates
- Itemization of expenditures by object class for each response included in the Cooperative Agreement, including both expenditures for the quarter and the cumulative expenditures to date
- Estimated variances in cost and time to complete the project
- Narrative explanation of any trends observed
- Description of any actions taken or planned to resolve problems or delays encountered

submit a final FSR and all ancillary reports to the OSC/RPM within 90 calendar days after completion of the removal action.

(a) The State must provide EPA with the opportunity to verify that the removal has been successfully completed. At the conclusion of the removal, joint EPA/State final inspection may be required to confirm that the removal action has been implemented properly and that all outstanding action items are resolved. The State and EPA will jointly inspect the project to confirm that all outstanding action items are resolved. The State shall prepare a final inspection report describing any outstanding items and their resolutions. A copy of this report shall be submitted to the EPA OSC/RPM.

(b) In addition, a Final OSC Report must be prepared by the State at the conclusion of each removal action in accordance with the NCP and removal program policy and procedures. This report will be prepared by the SPO, in consultation with the OSC/RPM, and must be signed by the SPO. The Final OSC Report is subject to the approval of the OSC/RPM and therefore must be signed by the OSC/RPM.

B. Cost Documentation Requirements

When entering into a Cooperative Agreement, States must also adhere to certain cost documentation requirements as set forth in 40 CFR Parts 30 and 33 and all additional Superfund-specific requirements or procedures for documenting State expenditure of CERCLA funds.

1. For removal actions, State accounting and recordkeeping activities must be detailed on a site-specific basis to ensure effective cost recovery. States must also track and report expenditures by object class category. Superfund procedures include documentation and recordkeeping measures intended to protect the integrity of site data, such as:
 - (a) Notifying EPA of archive research by third parties unless authorized in writing by EPA
 - (b) Requiring all microform copying of original documentation to be done in accordance with, or in a manner equivalent to, the technical requirements for copying Federal government records (36 CFR section 1230 et seq.).
2. In addition, the Superfund program adheres to the general Agency-wide policy that, when requested by EPA, States must provide documentation to support cost recovery litigation and

related efforts. Documentation must be available for use as evidence to answer questions such as what work was authorized, what work was completed, what charges were incurred for the work, and what payments were made for the work.

C. Monitoring Financial Commitments

OSCs/RPMs are responsible for ensuring that State expenditure of CERCLA funds corresponds to technical progress at the site and is within the cost ceiling in the Action Memorandum and Cooperative Agreement. Costs incurred by the State may not exceed the amount obligated for the response in the Cooperative Agreement.

1. The OSC/RPM should review State drawdowns on a monthly basis, using drawdown information available from the Regional financial management office. Key documents for this review include the Financial Management System (FMS) Outlay Report and the State's quarterly reports.

2. Funds awarded under a Cooperative Agreement are assigned an activity (e.g., removal action) and site code. The OSC/RPM should ensure that the State is drawing funds from the proper account for the site and for the action funded. The account from which drawdowns are made, identified in the FMS Outlay Report and the State quarterly reports, must match the action being conducted.

3. Under a multi-site Cooperative Agreement, when a removal at a particular site has been completed, remaining funds may be used to fund removal activities at another site covered by the same Agreement. Such funds, however, must be officially transferred to the appropriate account. A transfer of funds between sites under a MSCA requires a formal amendment to the Cooperative Agreement to move the funds from one account to another. Funds remaining in a site account at the completion of a removal should be deobligated and returned to EPA unless the State requires additional funds to support other removal actions covered in the same Cooperative Agreement. All amendments to Cooperative Agreements will be negotiated at the Regional level. This requirement will ensure that the statutory limitation on cost is adhered to when there is a need to transfer funds.

D. Agreement Adjustments

Agreement adjustments consist of alterations in the amount, terms, conditions, project period, project scope or some other administrative, technical, or financial aspect of the Action Memorandum or Cooperative Agreement. Depending upon the significance of the change, adjustments

to the Agreement can be made, either through formal amendments or in writing, between the OSC/RPM and the SPO. Modifications to Action Memoranda are subject to current removal procedures and policy. All modifications to the initial Action Memorandum (e.g., ceiling increases, exemptions to the statutory limits on cost and duration) must be documented in an amended Cooperative Agreement, but only after the Action Memorandum requesting the modification has been approved. Circumstances where a Cooperative Agreement and Action Memorandum must be formally amended are presented below.

1. A Cooperative Agreement must be amended when it requires a significant change. These occur when:

- . Objectives and/or scope of the project, as funded, are altered
- . Funds obligated under one accounting code will be used for a different activity or a different site
- . There is any increase or substantial decrease in the project period or budget
- . A rebudgeting of funds occurs, such as a transfer between contractual services and another object class category or a change in the amount of indirect costs
- . Changes to special conditions to the Cooperative Agreement award document.

(a) Formal amendments are not required for minor project changes that are consistent with the project's objectives. Minor changes include shifts between object class categories (except as indicated above) and adjustments to the work plan within the scope and objectives of the funded project. Minor project changes should be approved in writing by the OSC/RPM or the Regional Administrator, as appropriate.

(b) Responsibility for requesting and obtaining approval of modifications to the Cooperative Agreement rests with the SPO and OSC/RPM. The SPO or the OSC/RPM identifies the need for an adjustment and the SPO initiates the approval process by submitting a request to the Region. The OSC/RPM then determines whether a formal amendment is needed, and if so, transmits the request to the Regional Administrator. If the RA signs the amendment, it is sent to the State for acceptance and is executed upon signature by an authorized State official.

2. According to standard removal program policy and procedures, special requests, in the form of Action Memoranda, must be prepared when the following are required after approval of the initial Action Memorandum:

- . An increase in the project's established cost ceiling
- . Exemptions to the statutory limitations on cost and duration
- . Changes in scope of work
- . Changes among cost categories where no change in total project ceiling is required.

Guidance on the procedures for requesting and obtaining approval for these changes is set forth in the Superfund Removal Procedures manual. OSCs/RPMs are responsible for preparing these requests and obtaining the necessary concurrence, as well as ensuring that the Cooperative Agreement is amended accordingly.

IV. CLOSEOUT OF RESPONSE AGREEMENTS

In order to close out a Cooperative Agreement, EPA must determine that the State has completed the removal action and complied with all applicable administrative requirements under the agreement. The general closeout responsibilities of the State and the OSC/RPM are briefly discussed below.

A. State Responsibilities

1. A State must complete the work specified in the Cooperative Agreement and the Action Memorandum and produce the required reports (e.g., final FSR and technical progress report), manuals, plans and other information. The State is responsible for ensuring that all products and reports necessary for closeout are submitted to EPA, as required.

2. The SPO is responsible for the completion of the final report as described in the Cooperative Agreement including the reports and activities as follows:

- . Draft and final technical report
- . Final FSR
- . Ancillary products such as O&M manuals
- . Property/equipment report
- . Other required reports.

B. EPA OSC Responsibilities

1. OSCs/RPMs are responsible for ensuring that the State has provided all required reports and is in compliance with the provisions of the Cooperative Agreement and Action Memorandum.
2. Specific OSC/RPM responsibilities are as follows:
 - . Reviews/inspects work in the project and arranges for acceptance or correction
 - . Reviews and approves required reports
 - . Follows through on delinquencies or deficiencies
 - . Ensures that all disputes and audit exceptions are resolved
 - . Transmits final determinations on any outstanding issues
 - . Documents the closure in the official file
 - . Maintains the official records.

The State Participation Manual provides detailed guidance on closing out response agreements. OSCs/RPMs should refer to the State Participation Manual for additional information on the requirements/procedures for closing out Cooperative Agreements.