§ 11.10 Scope and applicability.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9601 et seq., and the Clean Water Act (CWA), 33 U.S.C. 1251–1257, provide that natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance covered under CERCLA or the CWA and may seek to recover those damages. This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, for the identification, investigation, study, and response to a discharge of oil or release of a hazardous substance, and it provides a procedure by which a natural resource trustee can determine compensation for injuries to natural resources that have not been nor are expected to be addressed by response actions conducted pursuant to the NCP. The assessment procedures set forth in this part are not mandatory. However, they must be used by Federal or State natural resource trustees in order to obtain the rebuttable presumption contained in section 107(f)(2)(C) of CERCLA. This part applies to assessments initiated after the effective date of this final rule.

[53 FR 5171, Feb. 22, 1988]

§ 11.11 Purpose.

The purpose of this part is to provide standardized and cost-effective procedures for assessing natural resource damages. The results of an assessment performed by a Federal or State natural resource trustee according to these procedures shall be accorded the evidentiary status of a rebuttable presumption as provided in section 107(f)(2)(C) of CERCLA.

[53 FR 5171, Feb. 22, 1988]

§ 11.12 Biennial review of regulations.

The regulations and procedures included within this part shall be reviewed and revised as appropriate 2 years from the effective date of these rules and every second anniversary thereafter.

§ 11.13 Overview.

(a) Purpose. The process established by this part uses a planned and phased approach to the assessment of natural resource damages. This approach is designed to ensure that all procedures used in an assessment, performed pursuant to this part, are appropriate, necessary, and sufficient to assess damages for injuries to natural resources.

(b) Preassessment phase. Subpart B of this part, the preassessment phase, provides for notification, coordination, and emergency activities, if necessary, and includes the preassessment screen. The preassessment screen is meant to be a rapid review of readily available information that allows the authorized