

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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1991 JUN 14 AM 9:44
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: State Emergency Response Commission TITLE NUMBER: 55
RULE TYPE: Legislative; CITE AUTHORITY Chapter 15, Article 5A, Section 5(g)to(1)
AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series I

TITLE OF RULE BEING PROPOSED: SERC Legislative Rules

DATE OF PUBLIC HEARING: July 19, 1991 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Emergency Services

Main Capitol Building, Room EB-80

Bid Room

Charleston, WV 25305

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Emergency Services

Main Capitol Building

EB-80

Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Barbara K. Gault
Secretary, SERC

4.00



Joseph J. Skaff
 SECRETARY
 (304) 348-2930

State of West Virginia
 OFFICE OF THE SECRETARY
 Department of Public Safety
 State Capitol Building
 Box 2930
 1900 Kanawha Boulevard
 Charleston, West Virginia 25305-0001

Secretary of:
 Department of Public Safety and
 Comm. on Drunk Driving Prevention
 Department of Corrections
 Adjutant General's Department
 Office of Emergency Services and
 Emergency Services Advisory Council
 Armory Board
 Military Awards Board
 Sheriffs' Bureau
 Fire Commission & State Fire Admin.
 Regional Jail and Prison Authority
 Board of Probation and Parole

June 14, 1991

TO: Ken Heckler
 Secretary of State

FROM: Joseph J. Skaff, Secretary
 Department of Public Safety

I hereby concur with the Rules and Regulations being proposed by the State Emergency Response Commission on this date.

JJS/CLB:bk

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 55 - SERC Legislative Rules

Type of Rule: XX Legislative Interpretive Procedural

Agency State Emergency Response Comm: Address c/o Office Emergency Services
State Capitol, Charleston, WV 25305

| 1. Effect of Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----------------------------|----------|----------|-------------|-------|------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Estimated Total Cost | \$ N/A | \$ N/A | \$ N/A | \$N/A | \$ N/A |
| Personal Services | | | | | |
| Current Expense | | | | | |
| Repairs and Alterations | | | | | |
| Equipment | | | | | |
| Other | | | | | |

2. Explanation of above estimates:
 The expenditure of funds for implementation of these rules is considered overhead costs and therefore, absorbed within the current budget.

3. Objectives of these rules:
 The objective of these rules is to require the development of comprehensive emergency response plans, and establish a program for the collection and dissemination to the public of information on certain hazardous or toxic chemicals in their communities.

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SERC LEGISLATIVE RULES 1991 JUN 14 AM 9:44

SUMMARY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

The State Emergency Response Commission is proposing to promulgate rules for the purpose of achieving the mandates of Title III of the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, enacted by the United States Congress. The rules will enable the State Emergency Response Commission to establish a program for the collection and dissemination of information on certain hazardous and toxic chemicals to the public, and approve Local Emergency Planning Committee emergency response plans. The rules also provide a reasonable method of implementing the provisions of Chapter 15, Article 5A of the West Virginia Code.

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA
STATE EMERGENCY RESPONSE COMMISSION
Title 55

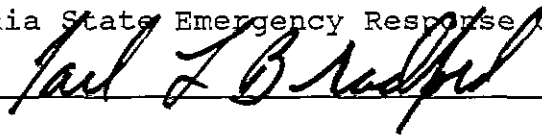
SERC Legislative Rules

State Capitol
Charleston, West Virginia

Approved by:

The West Virginia State Emergency Response Commission:

June 7, 1991



Secretary, Department of Public Safety:



General Joseph J. Skaff

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| | | |
|----------|-----------------------------------------------------------------------------------|----|
| 55-1-4. | Rules of Practice before the Commission | 5 |
| | 4.1 Open Meeting Law | 5 |
| | 4.2 Business before the Commission | 5 |
| | 4.3 Agenda | 5 |
| 55-1-5. | Procedures for receiving and processing requests in accordance with USC 42 11001. | |
| | 5.1 Public Records | 6 |
| | 5.2 Qualifications on Availability of Information | 6 |
| | 5.3 How to Request Information | 7 |
| | 5.4 Processing Requests | 7 |
| 55-1-6. | Forms and instructions for requesting information. | 8 |
| 55-1-7. | Rules Regarding Confidential Information. | 8 |
| 55-1-8. | Fees | |
| | 8.1 Emergency Planning Notification Fee | 9 |
| | 8.2 Annual Inventory Fee | 9 |
| | 8.3 Surcharge Fee | 9 |
| | 8.4 Date Required to be paid | 9 |
| 55-1-9. | Grants | |
| | 9.1 Purpose | 9 |
| | 9.2 Grant Application Deadline Date | 9 |
| | 9.3 Eligibility to Apply | 11 |
| | 9.4 Grant Period | 11 |
| | 9.5 Grant Application Information | 11 |
| | 9.6 Final Grant & Reductions in Grant Awards | 11 |
| | 9.7 Eligible Costs | 12 |
| 55-1-10. | Office of Emergency Services | |
| | 10.1 Office of Emergency Services | 12 |
| | 10.2 Duties of the Office of Emergency Services | 12 |
| 55-1-11. | Enforcement | |
| | 11.1 Order | 13 |
| | 11.2 Failure to Comply | 13 |
| | 11.3 Legal Action | 13 |
| 55-1-12. | State Emergency Response | 13 |

WEST VIRGINIA STATE EMERGENCY RESPONSE COMMISSION

LEGISLATIVE RULES

Title 55

Index

| | | |
|---------|------------------------------------------------------|---|
| 55-1-1. | General | |
| 1.1 | Scope | 1 |
| 1.2 | Authority | 1 |
| 1.3 | Effective Date | 1 |
| 1.4 | Filing Date | 1 |
| 1.5 | Exemptions | 1 |
| 55-1-2. | Definitions | |
| 2.1 | Best management practices | 1 |
| 2.2 | Clean Water Act | 1 |
| 2.3 | Code | 1 |
| 2.4 | Commission | 1 |
| 2.5 | Committee | 1 |
| 2.6 | Emergency planning district | 2 |
| 2.7 | Facility | 2 |
| 2.8 | Local emergency planning committee | 2 |
| 2.9 | Resource Conservation and Recovery Act | 2 |
| 2.10 | Spill prevention control and counter measure plan | 2 |
| 2.11 | Title III | 2 |
| 2.12 | Emergency Notification | 2 |
| 2.13 | Emergency Response Plan | 2 |
| 2.14 | Inventory Form | 2 |
| 2.15 | List of MSDS Chemicals | 2 |
| 2.16 | MSDS or Material Safety Data Sheet | 3 |
| 2.17 | Tier II Information | 3 |
| 2.18 | Toxic Chemical Releases | 3 |
| 55-1-3. | State Emergency Response Commission | |
| 3.1 | Composition | 3 |
| 3.2 | Chairman | 4 |
| 3.3 | Vice Chairman | 4 |
| 3.4 | Secretary | 4 |
| 3.5 | Meetings | 4 |
| 3.6 | Quorum | 4 |
| 3.7 | Authority of State Emergency Response Commission | 4 |
| 3.8 | Reimbursement | 5 |
| 3.9 | Employment of Personnel | 5 |

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State Emergency Response Commission
Legislative Rules

1991 JUN 14 AM 9:44 Sec. 1.1

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

55-1-1. GENERAL

1.1 Scope: These rules establish the procedures necessary by the West Virginia State Emergency Response Commission for the implementation of Title III of the Superfund Amendments and Reauthorization Act of 1986 and Chapter 15, Article 5A et. seq. for the purpose of developing comprehensive emergency response plans and to establish a program for the collection and dissemination to the public of information on certain hazardous and toxic chemicals in communities throughout West Virginia.

1.2 Authority: These rules are issued under authority of West Virginia Code, Chapter 15, Article 5A, Section 5.

1.3 Effective Date:

1.4 Filing Date:

1.5 Exemptions: These rules have no application to (1) substances regulated by the Federal Drug Administration (FDA); (2) any hazardous chemical that is a solid in a manufactured item as long as exposure to that chemical does not occur under normal use; (3) products packaged for use by the general public; (4) substances used in research labs while under the direct supervision of technically qualified persons; (5) substances used in routine agricultural operations or a fertilizer held for sale to a customer; and (6) No exemptions apply to the requirements of Section 302 of SARA Title III.

55-1-2. DEFINITIONS.

2.1. "Best management practices" means any practices made applicable to a facility pursuant to section 304(e) of the Clean Water Act and the federal regulations promulgated thereunder.

2.2. "Clean Water Act" means the Federal Water Pollution Control Act, P.L. 92-500, enacted on the eighteenth day of October, one thousand nine hundred seventy-two, and all subsequent amendments to that act.

2.3. "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

2.4. "Commission" means the state emergency response commission.

2.5. "Committee" means a local emergency planning committee.

2.6. "Emergency planning district" means a geographic area designated by the Commission as requiring its own comprehensive emergency response plan. The Commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts.

2.7. "Facility" means a facility subject to the provisions of 42 U.S.C. 11001, et seq., and this article, pursuant to the provisions of 42 U.S.C. 11002.

2.8. "Local emergency planning committee" means that group of persons, for each emergency planning district, who are appointed by the State Emergency Response Commission in accordance with the provisions of section seven of this article.

2.9. "Resource Conservation and Recovery Act" means P.L. 94-580, enacted on the twenty-first day of October, one thousand nine hundred seventy-six, and all subsequent amendments to that act.

2.10. "Spill prevention control and countermeasure plan" means any plan developed pursuant to Section 112.3 of Title 40 of the Code of Federal Regulations.

2.11. "Title III" means the Emergency Planning and Community Right-to-Know Act of 1986, P.L. 99-499.

2.12. "Emergency Notification" or "Emergency Release Notification" means the notification required by Section 304 of Title III which must be given immediately in the event of a release of a listed hazardous substance that exceeds the reportable quantity for that substance. This notification must be given to the State Emergency Response Commission and the Local Emergency Planning Committee.

2.13. "Emergency Response Plan" means the plan to be developed by each Local Emergency Response Committee.

2.14. "Inventory Form" means the Emergency and Hazardous Chemical Inventory form that must be submitted by covered facilities to the Local Emergency Planning Committee, the State Emergency Response Commission, and the local fire department.

2.15. "List of MSDS Chemicals" means a list of chemicals submitted to the Local Emergency Planning Committee, the State Emergency Response Commission, and the local fire department in lieu of the requirement to submit copies of Material Safety Data Sheets (MSDS).

2.16. "MSDS" or "Material Safety Data Sheet" means a form used by chemical companies and required by the Federal Occupational Safety and Health Administration's Hazard Communication Standard (40 C.F.R. 1910.1200) for reporting health and safety information on hazardous substances.

2.17. "Tier II Information" means information which must be provided on the inventory form only upon request of the State Emergency Response Commission or Local Emergency Planning Committee and includes:

(a) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(b) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(c) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(d) A brief description of the manner of storage of the hazardous chemical.

(e) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324.

2.18. "Toxic Chemical Releases" means releases of toxic chemicals that must be reported annually in a "Toxic Chemical Release Reporting Form" to the U. S. Environmental Protection Agency and a State Official to be designated by the Governor pursuant to Section 313 of Title III.

55-1-3. STATE EMERGENCY RESPONSE COMMISSION

3.1. Composition. The State Emergency Response Commission shall consist of eleven members including (1) the director of the department of natural resources, (2) the director of the Department of health, (3) the director of the air pollution control commission, (4) the director of the office of emergency services, (5) the superintendent of the department of public safety, (6) the commission of the department of highways; one designee of the (7) public service commission and (8) state fire marshal, all of whom shall be ex officio members. A representative from (9) the chemical industry, (10) a representative of a municipal or volunteer fire department and (11) a representative of the public.

3.2. Chairman: The director of the office of emergency services shall serve as the Chairman of the Commission.

3.3. Vice Chairman: The State Commission shall elect from its membership a Vice Chairman who shall preside over the meetings and hearings of the Commission in the absence of the Chairman.

3.4. Secretary: The State Commission shall appoint a secretary. The secretary need not be a member of the Commission. The secretary shall keep all proceedings of the Commission entered in a permanently bound record book properly indexed. The secretary shall preserve and attest to all proceedings of the Commission.

3.5. Meetings: The State Commission shall meet at such times and places as may be agreed upon by the commissioners or upon call of the Chairman or any two members of the Commission.

3.6. Quorum: Six commissioners shall constitute a quorum for the transaction of business.

3.7. Authority of the State Emergency Response Commission: The State Commission shall have and exercise the authority to perform the following duties:

- (a) Designate emergency planning districts,
- (b) Appoint local emergency planning committee for each emergency planning district and supervise and coordinate the activities of such committees,
- (c) Revise any designations and appointments of planning districts and committees as appropriate,
- (d) Designate additional facilities subject to the requirements of these rules, SARA Title III and Chapter 15 Article 5A of the West Virginia Code after public notice and comments,
- (e) Review emergency response plans submitted by the local emergency planning committees, make recommendations to ensure coordination of plans with other planning districts and existing state and local emergency response plans.
- (f) Enter into cooperative agreements with state agencies designating specific responsibilities to implement these rules and Article 15, Section 5A of the West Virginia Code.

- (g) Promulgate procedural rules of practice before the Commission, receiving and processing requests from the public for information in accordance with 42 USC 11001, et.seq., prescribing forms and instructions for requesting information, prescribing forms and instructions for the submission and receipt of confidential information, awarding grants, establishing fees and implementing the provisions of Chapter 15, Article 5A of the West Virginia Code.
- (h) Establish an emergency planning grant program.

3.8. Reimbursement of Expenses. Members of the State Commission shall be reimbursed for all reasonable and necessary expenses actually involved in the performance of their duties in accordance with the State Travel Management Regulations.

3.9. Employment of Personnel.

(a) The State Commission may appoint and employ such personnel as may be required, whose duties shall be defined by the State Commission and whose compensation to be fixed by the state commission.

(b) Payment of compensation shall be from the state treasury, upon requisition of the State Commission from monies appropriated for such purposes.

55-1-4. RULES OF PRACTICE BEFORE THE STATE COMMISSION

4.1. All meetings shall be in accordance with Chapter 6, Article 9A et.seq. of the West Virginia Code.

4.2. Any interested person desiring to appear before the State Commission shall notify the Secretary of the State Commission at least two weeks prior to the next scheduled meeting.

4.3. The chairman shall establish the agenda, provide for public notice and make necessary arrangements for the meeting.

55-1-5. PROCEDURES FOR RECEIVING AND PROCESSING REQUESTS
IN ACCORDANCE WITH 42 USC 11001.

5.1. Public records of the West Virginia Emergency Response Commission or the Local Emergency Planning Committee consistent with the provisions of SARA Title III will be made available to the general public during normal work hours at the office of Emergency Services.

(a) Public records include the following documents which will be made available:

- (1) Material Safety Data Sheets submitted under Section 311 of Title III.
- (2) List described in Section 311(a)(2) of SARA, Title III.
- (3) Emergency Response Plan prepared under Section 303 of Title III.
- (4) Hazardous Chemical Inventory Forms (Tier II) prepared under Section 312 of Title III.
- (5) Follow up Emergency Notice, submitted under Section 304 of Title III.
- (6) Chemical Release Form submitted under Section 313 of Title III.
- (7) Minutes of the West Virginia Emergency Response Commission.
- (8) Correspondence between the West Virginia Emergency Response Commission and the Local Emergency Response Commission regarding plans developed by the Local Emergency Response Commission.
- (9) List of facilities reporting under Sara Title III Sections 302 and 313.

5.2. Qualifications on Availability of Information Contained in Public Records.

(a) If the West Virginia Emergency Response Commission or the Local Emergency Planning Committee does not have the Tier II information, upon written request the West Virginia Emergency Response Commission or the Local Emergency Planning Committee will request the facility owner or operator for the Tier II information. Tier II information must be in excess of 10,000 pounds at any time during the previous year. Your receipt of the information the West Virginia Emergency Response Commission or the Local Emergency Planning Committee will then make the information available in accordance with the open meeting law.

(b) Trade Secret information will be withheld in accordance with SARA Title III.

(c) Upon the request of an owner or operator of a facility subject to the requirements of SARA Title III Section 312, the West Virginia Emergency Response Commission or the Local Emergency Planning Committee will withhold from disclosure the location of any specific chemical required by SARA Title III Section 312 (d)(2) to be contained in an inventory form as Tier II information.

5.3. How To Request Information.

(a) Individuals seeking information must file a written request with the West Virginia Emergency Response Commission or the Local Emergency Planning Committee identifying the specific public record requested.

(b) Records which may be requested from the West Virginia State Emergency Response Commission or the Local Emergency Planning Committee includes those items in Section 5.01(a).

(c) If the written request does not adequately identify the specific public record requested, the State Emergency Response Commission or the Local Emergency Planning Committee will notify the person making the request that additional information is needed before the request can be processed.

(d) Toxic Chemical Release Form Tier II information will be requested from the appropriate agency in accordance with SARA Title III, Section 313(a).

5.4. Processing of Requests.

(a) Upon receipt of a written request for information, the State Emergency Response Commission or the Local Emergency Planning Committee will note the date and process the request, which includes one of the following actions:

- (1) Furnish the requested information along with an invoice for the cost of reproducing the information.
- (2) Advise the requestor of the time and place where the records may be inspected.
- (3) Request more specific information in order to process the request.

- (4) If the record is not available but was required to have been filed with SERC and can be obtained by the State Emergency Response Commission, advise the requestor that the record will be obtained.
- (5) Deny the request stating the reason for denial, i.e. (a) record not known to exist; (b) record is not required under SARA Title III; or (c) the record is exempt from disclosure under SARA Title III or any provision of Chapter 15, Article 5A of the West Virginia Code.

55-1-6. FORMS AND INSTRUCTIONS FOR REQUESTING INFORMATION

If the State Emergency Response Commission or a Local Emergency Planning Committee requests, in writing, information relating to the federal act or state law, a facility shall furnish the information requested.

55-1-7. CONFIDENTIAL INFORMATION

Information received by the State Emergency Response Commission from facilities required to report under USC 42 11000 et. seq. for confidentiality must:

1. Be able to prove among other things that the information has not been reported under any other environmental regulation; and
2. The chemical's identity be included in the company's reports to EPA. EPA will keep the original reports in a confidential file, and "sanitized" versions will be available to the public, and
3. Substantiate any trade secret claims when reported.

All reports received meeting the criteria of Section 7 shall not be available for public information.

55-1-8. FEES.

All facilities required to submit the emergency and hazardous chemical inventory forms or material safety data sheet required under SARA, Title III, Sections 311 and 312 shall pay the following fee for the administration of Chapter 15, Article 5A et. seq. All fees collected shall be deposited into a special account.

- 8.1. An emergency planning notification fee of \$100 shall be paid by a facility when it makes the emergency planning notification required under SARA Title III, Sections 301-303.
- 8.2. An annual inventory fee of \$100 shall be paid by a facility when it submits the emergency and hazardous chemical inventory forms or material safety data sheet required under SARA, Title III, Sections 311 and 312.
- 8.3. A surcharge fee of 20% shall be paid by a facility which fails to pay the required fees of this section.
- 8.4. Fees required in Section 8.02 shall be paid by March 1st of each year. -

55-1-9. GRANTS.

9.1. Purpose: The purpose of this procedure is to implement the emergency planning program grants as authorized by Chapter 15, Article 5A, Section 5(k) of the West Virginia Code.

9.2. Grant Application Deadline Dates.

- (a) Emergency planning grant application shall be received by the state emergency response commission no later than June 30th of the grant year. Applications received after the established date shall not be considered for funding.
- (b) A mid-year report shall be submitted to the state emergency response commission by July 1 of each grant year and shall include a report of the actual eligible expenditures incurred and a report of the activities accomplished under the grant through May 31 of the grant year.

- (c) Amended application to change grant request shall be received by the State Emergency Response Commission not later than July 1 of the grant year and shall indicate actual expenditures incurred by the Committee and include a revised Local Emergency Planning Committee emergency response plan as part of the justification for the requested change in the grant request. Requests for increased grant awards may only be approved by the State Emergency Response Commission if sufficient revenue is available.
- (d) Request for the first payment (up to 25% of the grant award) shall be made if the grant application is approved.

Second payment request (up to 25% of the grant application) shall be received by the State Emergency Response Commission no later than July 1 of each grant year and shall include actual expenditures incurred by the Committee through May 31 of the grant year. No second payments will be made for requests received after July 1; those requests will be considered as part of the final close-out of the grant.

Grant close-out including reimbursement request and certification of expenses shall be received by the State Emergency Response Commission not later than March 1 of the next grant year. Payment will be made based on actual eligible documented expenditures and completed Local Emergency Planning Commission emergency response plan submission. If the required close-out information is not received by the State Emergency Response Commission by March 1 and:

- (1) If no request for a second payment has been received, the State Emergency Response Commission shall assume that the Local Emergency Planning Commission has had no eligible expenditures during the grant period and any payment shall be considered to be an overpayment, or

- (2) If a request for a second payment has been received, the State Emergency Response Commission shall assume that the eligible expenditures reported on the request for second payment are the Committee's total final eligible expenditures.

9.3. Eligibility to apply: Any Local Emergency Planning Commission approved by the State Emergency Response Commission may apply for an annual emergency planning grant.

The Local Emergency Planning Committee beginning in 1993 shall have:

- (a) An approved Local Emergency Planning Commission Hazardous Materials plan and updated, if required.
- (b) Met at least quarterly in the preceding year.
- (c) Conducted at least one hazardous materials emergency response exercise during the preceding grant period and at least one hazardous material emergency response exercise (tabletop) each grant period.

9.4. Grant Period: All grant periods shall be on a calendar year, January 1 through December 31.

9.5. Grant application Information: Any Local Emergency Planning Committee making application shall complete the required information on the forms provided by the State Emergency Response Commission.

9.6. Final Grant and Reductions in Grant Awards. In order to be eligible for the full grant award, the Local Emergency Planning Committee must have incurred eligible expenses of at least the grant amounts and must have completed the required work activities as outlined in the grant proposal. If the Local Emergency Planning Commission fails to complete the required work activities, the final grant award and final payment of the grant shall be reduced.

The value of the grant is calculated as: (1) Work activities associated with planning shall be worth up to 70% of the grant; (2) work activities associated with Local Emergency Planning Committee administration shall be worth up to 30% of the grant; (3) Exercises shall be worth up to the maximum allowable amount for the type of exercise conducted.

9.7. Eligible Costs.

(a) Personnel costs, including salary and fringe benefits, travel reimbursement for developing, reviewing and updating emergency response plans and for administration of the Committee are eligible.

(b) Copying, printing, postage costs associated with developing, reviewing, updating and publishing of emergency response plans and associated Committee operations are eligible.

(c) Each Local Emergency Planning Committee is eligible for funding during the grant year for certain costs of conducting hazardous materials emergency response exercises as determined by the State Emergency Response Commission.

55-1-10. OFFICE OF EMERGENCY SERVICES

10.1. The office of emergency services shall perform the administrative duties of the State Emergency Response Commission.

10.2. The administrative duties shall include, but not limited to, the following:

- (a) Receive, catalogue and organize information required to be submitted to the commission;
- (b) Utilize existing state response organizations, plans and facilities to the extent possible;
- (c) Upon concurrence of the Commission, enter into training exercise agreements with federal response agencies;
- (d) Coordinate with other state agencies on training for first responders and emergency service personnel;
- (e) Respond to requests to the Commission from the public for information pursuant to this act;
- (f) Perform such preliminary analysis and collect such information as may be required to enable the Commission to fully review local emergency response plans; and

- (g) The director may employ such clerical and technical personnel and acquire data management and other equipment and office space as may be necessary to carry out the provisions of this act.

55-1-11. ENFORCEMENT.

11.1. The Chairman of the State Emergency Response Commission may order a facility owner or operator to comply with the requirements of applicable federal law, Chapter 15, Article 5A of the West Virginia Code and any rules promulgated by the State Emergency Response Commission.

11.2. Failure to comply with the provisions of applicable federal law, Chapter 15, Article 5A et. seq. or any rule promulgated, the Chairman may request the attorney general to commence an action for civil penalties, injunctive relieve or other appropriate relief to enforce such provisions, rules or order.

11.3. Action may be brought in any federal district court having jurisdiction or in the circuit court of Kanawha County or the county where the facility or a major portion thereof is located.

55-1-12. STATE EMERGENCY RESPONSE.

Agencies of state government shall respond within the confines of the West Virginia Hazardous Materials Emergency Response Plan.