

entities to demonstrate and validate innovative environmental technologies, and to provide funds to the partner or partners from appropriations available to the Department of Defense for environmental activities for a period of up to five years.

AGREEMENTS FOR SERVICES OF OTHER AGENCIES IN SUPPORT OF ENVIRONMENTAL TECHNOLOGY CERTIFICATION

Pub. L. 105-85, div. A, title III, §342(d), Nov. 18, 1997, 111 Stat. 1686, provided that not later than 90 days after Nov. 18, 1997, the Secretary of Defense was to submit to Congress a report setting forth the guidelines established by the Secretary for reimbursement of State and local governments, and for cost-sharing between the Department of Defense, such governments, and vendors, under cooperative agreements entered into under section 327 of Pub. L. 104-201, formerly set out below.

Pub. L. 104-201, div. A, title III, §327, Sept. 23, 1996, 110 Stat. 2483, as amended by Pub. L. 105-85, div. A, title III, §342(a)-(c), Nov. 18, 1997, 111 Stat. 1686, authorized the Secretary of Defense, until five years after Sept. 23, 1996, to enter into a cooperative agreement with an agency of a State or local government, or with an Indian tribe, to obtain assistance in certifying environmental technologies.

§ 2703. Environmental restoration accounts

(a) ESTABLISHMENT OF ACCOUNTS.—There are hereby established in the Department of Defense the following accounts:

(1) An account to be known as the “Environmental Restoration Account, Defense”.

(2) An account to be known as the “Environmental Restoration Account, Army”.

(3) An account to be known as the “Environmental Restoration Account, Navy”.

(4) An account to be known as the “Environmental Restoration Account, Air Force”.

(5) An account to be known as the “Environmental Restoration Account, Formerly Used Defense Sites”.

(b) PROGRAM ELEMENTS FOR ORDNANCE REMEDIATION.—The Secretary of Defense shall establish a program element for remediation of unexploded ordnance, discarded military munitions, and munitions constituents within each environmental restoration account established under subsection (a). In this subsection, the terms “discarded military munitions” and “munitions constituents” have the meanings given such terms in section 2710 of this title.

(c) OBLIGATION OF AUTHORIZED AMOUNTS.—(1) Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account only to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law.

(2) Funds authorized for deposit in an account under subsection (a) shall remain available until expended.

(d) BUDGET REPORTS.—In proposing the budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amounts requested for environmental restoration programs of the Department of Defense and of each of the military departments under this chapter and under any other Act.

(e) CREDIT OF AMOUNTS RECOVERED.—The following amounts shall be credited to the appropriate environmental restoration account:

(1) Amounts recovered under CERCLA for response actions.

(2) Any other amounts recovered from a contractor, insurer, surety, or other person to reimburse the Department of Defense or a military department for any expenditure for environmental response activities.

(f) PAYMENTS OF FINES AND PENALTIES.—None of the funds appropriated to the Environmental Restoration Account, Defense, for fiscal years 1995 through 2010, or to any environmental restoration account of a military department for fiscal years 1997 through 2010, may be used for the payment of a fine or penalty (including any supplemental environmental project carried out as part of such penalty) imposed against the Department of Defense or a military department unless the act or omission for which the fine or penalty is imposed arises out of an activity funded by the environmental restoration account concerned and the payment of the fine or penalty has been specifically authorized by law.

(g) SOLE SOURCE OF FUNDS FOR OPERATION AND MONITORING OF ENVIRONMENTAL REMEDIES.—(1) Except as provided in subsection (h), the sole source of funds for all phases of an environmental remedy at a site under the jurisdiction of the Department of Defense or a formerly used defense site shall be the applicable environmental restoration account established under subsection (a).

(2) In this subsection, the term “environmental remedy” has the meaning given the term “remedy” in section 101 of CERCLA (42 U.S.C. 9601).

(h) SOLE SOURCE OF FUNDS FOR ENVIRONMENTAL REMEDIATION AT CERTAIN BASE REALIGNMENT AND CLOSURE SITES.—In the case of property disposed of pursuant to a base closure law and subject to a covenant that was required to be provided by paragraphs (3) and (4) of section 120(h) of CERCLA (42 U.S.C. 9620(h)), the sole source of funds for services procured under section 2701(d)(1) of this title shall be the applicable Department of Defense base closure account. The limitation in this subsection shall expire upon the closure of the applicable base closure account.

(Added Pub. L. 99-499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 103-337, div. A, title III, §321, Oct. 5, 1994, 108 Stat. 2710; Pub. L. 104-106, div. A, title III, §322, Feb. 10, 1996, 110 Stat. 252; Pub. L. 104-201, div. A, title III, §322(a)(1), Sept. 23, 1996, 110 Stat. 2477; Pub. L. 106-65, div. A, title III, §321, title X, §1066(a)(27), Oct. 5, 1999, 113 Stat. 560, 772; Pub. L. 106-398, §1 [[div. A], title III, §§311, 312], Oct. 30, 2000, 114 Stat. 1654, 1654A-53, 1654A-54; Pub. L. 107-107, div. A, title III, §312, Dec. 28, 2001, 115 Stat. 1051; Pub. L. 108-136, div. A, title III, §313(a), Nov. 24, 2003, 117 Stat. 1430; Pub. L. 108-375, div. A, title X, §1084(d)(26), Oct. 28, 2004, 118 Stat. 2063; Pub. L. 109-163, div. A, title III, §312(b), title X, §1056(c)(7), Jan. 6, 2006, 119 Stat. 3191, 3439; Pub. L. 109-364, div. A, title X, §1071(a)(23), Oct. 17, 2006, 120 Stat. 2399.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-163, §1056(c)(7), substituted “In this subsection, the terms ‘discarded mili-

tary munitions' and" for "For purposes of the preceding sentence, the terms 'unexploded ordnance', 'discharged military munitions', and".

Subsec. (g)(1). Pub. L. 109-163, §312(b)(1), substituted "Except as provided in subsection (h), the sole source" for "The sole source".

Subsec. (h). Pub. L. 109-364 substituted "section 2701(d)(1)" for "subsection 2701(d)(1)".

Pub. L. 109-163, §312(b)(2), added subsec. (h).

2004—Subsec. (b). Pub. L. 108-375 substituted "For purposes of the preceding sentence, the terms" for "The terms".

2003—Subsec. (c)(1). Pub. L. 108-136, §313(a)(1), substituted "only to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law." for "only—

"(A) to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law; and

"(B) to pay for the costs of permanently relocating a facility because of a release or threatened release of hazardous substances, pollutants, or contaminants from—

"(i) real property on which the facility is located and that is currently under the jurisdiction of the Secretary of Defense or the Secretary of a military department; or

"(ii) real property on which the facility is located and that was under the jurisdiction of the Secretary of Defense or the Secretary of a military department at the time of the actions leading to the release or threatened release."

Subsec. (c)(2). Pub. L. 108-136, §313(a)(3), redesignated par. (4) as (2) and struck out second sentence which read as follows: "Not more than 5 percent of the funds deposited in an account under subsection (a) for a fiscal year may be used to pay relocation costs under paragraph (1)(B)."

Pub. L. 108-136, §313(a)(2), struck out par. (2) which read as follows: "The authority provided by paragraph (1)(B) expires September 30, 2003. The Secretary of Defense or the Secretary of a military department may not pay the costs of permanently relocating a facility under such paragraph unless the Secretary—

"(A) determines that permanent relocation—

"(i) is the most cost effective method of responding to the release or threatened release of hazardous substances, pollutants, or contaminants from the real property on which the facility is located;

"(ii) has the approval of relevant regulatory agencies; and

"(iii) is supported by the affected community; and

"(B) submits to Congress written notice of the determination before undertaking the permanent relocation of the facility, including a description of the response action taken or to be taken in connection with the permanent relocation and a statement of the costs incurred or to be incurred in connection with the permanent relocation."

Subsec. (c)(3). Pub. L. 108-136, §313(a)(2), struck out par. (3) which read as follows: "If relocation costs are to be paid under paragraph (1)(B) with respect to a facility located on real property described in clause (ii) of such paragraph, the Secretary of Defense or the Secretary of the military department concerned may use only fund transfer mechanisms otherwise available to the Secretary."

Subsec. (c)(4). Pub. L. 108-136, §313(a)(3), redesignated par. (4) as (2).

2001—Subsecs. (b) to (g). Pub. L. 107-107 added subsec. (b) and redesignated former subsecs. (b) to (f) as (c) to (g), respectively.

2000—Subsec. (a)(5). Pub. L. 106-398, §1 [[div. A], title III, §311(a)], added par. (5).

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title III, §312], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "Funds authorized for deposit in an account under subsection

(a) may be obligated or expended from the account only in order to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law. Funds so authorized shall remain available until expended."

Subsec. (f). Pub. L. 106-398, §1 [[div. A], title III, §311(b)], added subsec. (f).

1999—Subsec. (c). Pub. L. 106-65, §1066(a)(27), struck out "United States Code," after "title 31,".

Subsec. (e). Pub. L. 106-65, §321, substituted "through 2010," for "through 1999," in two places.

1996—Pub. L. 104-201 substituted "accounts" for "transfer account" in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (f) establishing the Defense Environmental Restoration Account and providing for deposits into and withdrawals from the Account.

Subsec. (e). Pub. L. 104-106 amended subsec. (e) generally, substituting

"(e) AMOUNTS RECOVERED.—The following amounts shall be credited to the transfer account:

"(1) Amounts recovered under CERCLA for response actions of the Secretary.

"(2) Any other amounts recovered by the Secretary or the Secretary of the military department concerned from a contractor, insurer, surety, or other person to reimburse the Department of Defense for any expenditure for environmental response activities." for

"(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account."

1994—Subsec. (f). Pub. L. 103-337 added subsec. (f).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title III, §313(a), Nov. 24, 2003, 117 Stat. 1430, provided that the amendment made by that section is effective Oct. 1, 2003.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 322(e) of Pub. L. 104-201 provided that: "The amendments made by this section [amending this section and section 2705 of this title] shall take effect on the later of—

"(1) October 1, 1996; or

"(2) the date of the enactment of this Act [Sept. 23, 1996]."

EFFECTIVE DATE

Section 211(c) of Pub. L. 99-499 provided that: "Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986."

EFFECT OF AMENDMENT BY PUB. L. 108-136 ON EXISTING AGREEMENTS

Pub. L. 108-136, div. A, title III, §313(b), Nov. 24, 2003, 117 Stat. 1430, provided that: "An agreement in effect on September 30, 2003, under section 2703(c)(1)(B) of title 10, United States Code, as in effect on that date, to pay for the costs of permanently relocating a facility because of a release or threatened release of hazardous substances, pollutants, or contaminants shall remain in effect after that date, subject to the terms of the agreement, and costs may be paid in accordance with the terms of the agreement, notwithstanding the amendments made by subsection (a) [amending this section]."

REFERENCES TO DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT

Section 322(b) of Pub. L. 104-201 provided that: "Any reference to the Defense Environmental Restoration Account in any Federal law, Executive Order, regulation, delegation of authority, or document shall be deemed to refer to the appropriate environmental res-

toration account established under section 2703(a)(1) of title 10, United States Code (as amended by subsection (a)(1)).”

UNOBLIGATED BALANCES IN DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT

Section 322(d) of Pub. L. 104-201 provided that: “Any unobligated balances that remain in the Defense Environmental Restoration Account under section 2703(a) of title 10, United States Code, as of the effective date specified in subsection (e) [Oct. 1, 1996] shall be transferred on such date to the Environmental Restoration Account, Defense, established under section 2703(a)(1) of title 10, United States Code (as amended by subsection (a)(1)).”

§ 2704. Commonly found unregulated hazardous substances

(a) NOTICE TO HHS.—

(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary’s jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

(2) DEFINITION.—In this subsection, the term “unregulated hazardous substance” means a hazardous substance—

(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related ac-

tivities under section 104(i) of CERCLA (42 U.S.C. 9604(i)). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

(d) EPA HEALTH ADVISORIES.—

(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

(A) for which no advisory exists;

(B) which is found to threaten drinking water; and

(C) which is emanating from a facility under the jurisdiction of the Secretary.

(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

(e) CROSS REFERENCE.—Section 104(i) of CERCLA (42 U.S.C. 9604(i)) applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA (42 U.S.C. 9604(i)).

(Added Pub. L. 99-499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 102-25, title VII, §701(j)(10), Apr. 6, 1991, 105 Stat. 116; Pub. L. 108-375, div. A, title X, §1084(d)(27), Oct. 28, 2004, 118 Stat. 2063.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in subsec. (a)(2)(A), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (a)(2)(A), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended,