

of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the owner or operator of the permitted facility;

(ii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will ship the mercury to the designated facility when the Secretary is able to accept the mercury; and

(iii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will not sell, or otherwise place into commerce, the mercury.

This subparagraph shall not apply to mercury with respect to which the owner or operator of the permitted facility fails to comply with a certification provided under clause (ii) or (iii).

**(h) Study**

Not later than July 1, 2014, the Secretary shall transmit to the Congress the results of a study, conducted in consultation with the Administrator of the Environmental Protection Agency, that—

(1) determines the impact of the long-term storage program under this section on mercury recycling; and

(2) includes proposals, if necessary, to mitigate any negative impact identified under paragraph (1).

(Pub. L. 110-414, § 5, Oct. 14, 2008, 122 Stat. 4344.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (b)(2) and (d)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to this chapter. Subtitle C of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mercury Export Ban Act of 2008, and not as part of the Solid Waste Disposal Act which comprises this chapter.

**§ 6939g. Hazardous waste electronic manifest system**

**(a) Definitions**

In this section:

**(1) Board**

The term “Board” means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).

**(2) Fund**

The term “Fund” means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).

**(3) Person**

The term “person” includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a State, or interstate body.

**(4) System**

The term “system” means the hazardous waste electronic manifest system established under subsection (b).

**(5) User**

The term “user” means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that—

(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and

(B)(i) elects to use the system to complete and transmit an electronic manifest format; or

(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

**(b) Establishment**

Not later than 3 years after October 5, 2012, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

**(c) User fees**

**(1) In general**

In accordance with paragraph (4), the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

**(2) Collection of fees**

The Administrator shall—

(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and

(B) deposit the fees in the Fund.

**(3) Fee structure**

**(A) In general**

The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including—

(i) contractor costs relating to—

(I) materials and supplies;

(II) contracting and consulting;

(III) overhead;

(IV) information technology (including costs of hardware, software, and related services);

(V) information management;

- (VI) collection of service fees;
- (VII) reporting and accounting; and
- (VIII) project management; and

(ii) costs of employment of direct and indirect Government personnel dedicated to establishing, managing, and maintaining the system.

**(B) Adjustments in fee amount**

**(i) In general**

The Administrator, in consultation with the Board, shall increase or decrease the amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—

- (I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient and not more than reasonably necessary to cover current and projected system-related costs (including any necessary system upgrades); and
- (II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

**(ii) Exception for initial period of operation**

The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed \$2,000,000, during the 3-year period beginning on the date on which the system enters operation.

**(iii) Timing of adjustments**

Adjustments to service fees described in clause (i) shall be made—

- (I) initially, at the time at which initial development costs of the system have been recovered by the Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and
- (II) periodically thereafter, upon receipt and acceptance of the findings of any annual accounting or auditing report under subsection (d)(3), if the report discloses a significant disparity for a fiscal year between the funds collected from service fees under this subsection for the fiscal year and expenditures made for the fiscal year to provide system-related services.

**(4) Crediting and availability of fees**

Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

**(d) Hazardous Waste Electronic Manifest System Fund**

**(1) Establishment**

There is established in the Treasury of the United States a revolving fund, to be known as the “Hazardous Waste Electronic Manifest System Fund”, consisting of such amounts as are deposited in the Fund under subsection (c)(2)(B).

**(2) Expenditures from Fund**

**(A) In general**

Only to the extent provided in advance in appropriations Acts, on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator amounts appropriated to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

**(B) Use of funds by Administrator**

Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator subject to appropriations Acts for use in accordance with this section without fiscal year limitation.

**(C) Oversight of funds**

The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

**(3) Accounting and auditing**

**(A) Accounting**

For each 2-fiscal-year period, the Administrator shall prepare and submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives a report that includes—

- (i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—
  - (I) the Chief Financial Officers Act of 1990 (Public Law 101-576; 104 Stat. 2838) and amendments made by that Act; and
  - (II) the Government Management Reform Act of 1994 (Public Law 103-356; 108 Stat. 3410) and amendments made by that Act; and
- (ii) an accounting describing actual expenditures from the Fund for the period covered by the report for costs described in subsection (c)(1).

**(B) Auditing**

**(i) In general**

For the purpose of section 3515(c) of title 31, the Fund shall be considered a component of an Executive agency.

**(ii) Components of audit**

The annual audit required in accordance with sections 3515(b) and 3521 of title 31 of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

- (I) the fees collected and disbursed under this section;
- (II) the reasonableness of the fee structure in place as of the date of the audit

to meet current and projected costs of the system;

(III) the level of use of the system by users; and

(IV) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data.

**(iii) Federal responsibility**

The Inspector General of the Environmental Protection Agency shall—

(I) conduct the annual audit described in clause (ii); and

(II) submit to the Administrator a report that describes the findings and recommendations of the Inspector General resulting from the audit.

**(e) Contracts**

**(1) Authority to enter into contracts funded by service fees**

After consultation with the Secretary of Transportation, the Administrator may enter into 1 or more information technology contracts with entities determined to be appropriate by the Administrator (referred to in this subsection as “contractors”) for the provision of system-related services.

**(2) Term of contract**

A contract awarded under this subsection shall have a term of not more than 10 years.

**(3) Achievement of goals**

The Administrator shall ensure, to the maximum extent practicable, that a contract awarded under this subsection—

(A) is performance-based;

(B) identifies objective outcomes; and

(C) contains performance standards that may be used to measure achievement and goals to evaluate the success of a contractor in performing under the contract and the right of the contractor to payment for services under the contract, taking into consideration that a primary measure of successful performance shall be the development of a hazardous waste electronic manifest system that—

(i) meets the needs of the user community (including States that rely on data contained in manifests);

(ii) attracts sufficient user participation and service fee revenues to ensure the viability of the system;

(iii) decreases the administrative burden on the user community; and

(iv) provides the waste receipt data applicable to the biennial reports required by section 6922(a)(6) of this title.

**(4) Payment structure**

Each contract awarded under this subsection shall include a provision that specifies—

(A) the service fee structure of the contractor that will form the basis for payments to the contractor; and

(B) the fixed-share ratio of monthly service fee revenues from which the Administrator shall reimburse the contractor for

system-related development, operation, and maintenance costs.

**(5) Cancellation and termination**

**(A) In general**

If the Administrator determines that sufficient funds are not made available for the continuation in a subsequent fiscal year of a contract entered into under this subsection, the Administrator may cancel or terminate the contract.

**(B) Negotiation of amounts**

The amount payable in the event of cancellation or termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

**(6) No effect on ownership**

Regardless of whether the Administrator enters into a contract under this subsection, the system shall be owned by the Federal Government.

**(f) Hazardous Waste Electronic Manifest System Advisory Board**

**(1) Establishment**

Not later than 3 years after October 5, 2012, the Administrator shall establish a board to be known as the “Hazardous Waste Electronic Manifest System Advisory Board”.

**(2) Composition**

The Board shall be composed of 9 members, of which—

(A) 1 member shall be the Administrator (or a designee), who shall serve as Chairperson of the Board; and

(B) 8 members shall be individuals appointed by the Administrator—

(i) at least 2 of whom shall have expertise in information technology;

(ii) at least 3 of whom shall have experience in using or represent users of the manifest system to track the transportation of hazardous waste under this subchapter (or an equivalent State program); and

(iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

**(3) Duties**

The Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.

**(g) Regulations**

**(1) Promulgation**

**(A) In general**

Not later than 1 year after October 5, 2012, after consultation with the Secretary of Transportation, the Administrator shall promulgate regulations to carry out this section.

**(B) Inclusions**

The regulations promulgated pursuant to subparagraph (A) may include such requirements as the Administrator determines to

be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests submit to the system copies of the paper manifests for data processing purposes.

**(C) Requirements**

The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, to the same extent as paper manifests under applicable Federal and State law, for—

(i) the ability to track and maintain legal accountability of—

(I) the person that certifies that the information provided in the manifest is accurately described; and

(II) the person that acknowledges receipt of the manifest;

(ii) if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from the system; and

(iii) access to all publicly available information contained in the manifest.

**(2) Effective date of regulations**

Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 6923 of this title relating to electronic manifesting of hazardous waste shall take effect in each State as of the effective date specified in the regulation.

**(3) Administration**

The Administrator shall carry out regulations promulgated under this subsection in each State unless the State program is fully authorized to carry out such regulations in lieu of the Administrator.

**(h) Requirement of compliance with respect to certain States**

In any case in which the State in which waste is generated, or the State in which waste will be transported to a designated facility, requires that the waste be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the State in which the facility is located—

(1) complete the facility portion of the applicable manifest;

(2) sign and date the facility certification; and

(3) submit to the system a final copy of the manifest for data processing purposes.

**(i) Authorization for start-up activities**

There are authorized to be appropriated \$2,000,000 for each of fiscal years 2013 through 2015 for start-up activities to carry out this section, to be offset by collection of user fees under subsection (c) such that all such appropriated funds are offset by fees as provided in subsection (c).

(Pub. L. 89-272, title II, §3024, as added Pub. L. 112-195, §2(a), Oct. 5, 2012, 126 Stat. 1452.)

REFERENCES IN TEXT

The Chief Financial Officers Act of 1990, referred to in subsec. (d)(3)(A)(i)(I), is Pub. L. 101-576, Nov. 15, 1990, 104

Stat. 2838. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 501 of Title 31, Money and Finance, and Tables.

The Government Management Reform Act of 1994, referred to in (d)(3)(A)(i)(II), is Pub. L. 103-356, Oct. 13, 1994, 108 Stat. 3410. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 3301 of Title 31, Money and Finance, and Tables.

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

**§ 6941. Objectives of subchapter**

The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89-272, title II, §4001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2813; amended Pub. L. 96-482, §32(b), Oct. 21, 1980, 94 Stat. 2353; Pub. L. 98-616, title III, §301(a), title V, §501(f)(1), Nov. 8, 1984, 98 Stat. 3267, 3276.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1984—Pub. L. 98-616, §501(f)(1), inserted “, including those needs created by thorough implementation of section 6962(h) of this title,”.

Pub. L. 98-616, §301(a), inserted at end “In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.”

1980—Pub. L. 96-482 included as an objective in the disposal of solid waste the utilization of energy and materials recoverable from solid waste.

**§ 6941a. Energy and materials conservation and recovery; Congressional findings**

The Congress finds that—

(1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

(2) solid waste contains valuable energy and material resources which can be recovered and