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HAZARDOUS WASTE ELECTRONIC MANIFEST ESTABLISHMENT ACT

JUNE 7, 2011.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public
Works, submitted the following

R E P O R T

[To accompany S. 710]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 710) to amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system, having considered the same, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE AND SUMMARY OF THE LEGISLATION

The purpose of the bill is to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system to track the cradle-to-grave management of hazardous waste under the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

BACKGROUND AND NEED FOR THE LEGISLATION

In 1976 Congress passed the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) (RCRA) that, among other things, established a federal program to regulate solid and hazardous waste management. In addition to defining solid and hazardous waste, Congress required the Administrator of the Environmental Protection Agency (EPA) to establish “such standards, applicable to generators of hazardous waste identified of listed under [RCRA], as may be necessary to protect human health and the environment.” One such requirement that Congress mandated was the “use of a

manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage or disposal in, and arrives at, treatment, storage, or disposal facilities . . . for which a permit has been issued. . .” This law ensures that hazardous wastes are safely managed from “cradle to grave.”

Beginning in 1980, EPA required the use of a paper manifest system to track federally-regulated hazardous wastes from their point of generation, along their transportation routes, to the place of final treatment, storage, or disposal. The paper manifest is a tool that requires each entity that handles the waste to sign and retain a copy of the manifest as the waste is transported. The paper manifest is currently comprised of six carbon-copies that must be filled out and signed by each person that handles the waste. Copies of the manifest must not only accompany the waste as it is transported but must be mailed to generators and state agencies and kept on-file by each regulated entity.

The manifest system also provides information that the Department of Transportation (DOT) requires whenever a person offers, transports, transfers, or delivers hazardous waste. As a form of DOT required “shipping paper”, the manifest conveys essential information needed if an emergency occurs during the transportation of hazardous waste, specifically the proper shipping name, hazard class, and phone numbers that enable responders to obtain additional information, when necessary. These information requirements negated the need of having another set of separate papers, namely a DOT shipping paper.

The essential aspect of the manifest system is to ensure there is a traceable record showing who is in the control of the hazardous waste at any given time and where the hazardous waste is destined for its ultimate disposition. In general, the manifest also identifies the waste’s toxicity and quantity. This information is indispensable in the case of an emergency or release of hazardous waste. It also provides emergency response personnel with information on the hazardous waste’s potential to threaten human health and the environment.

The EPA estimates the paperwork burden on states and private entities from manifests at between \$193 million to over \$400 million annually. However, EPA has not estimated the quantifiable and unquantifiable benefits that flow from having a reliable tracking system for hazardous waste that maintains accountability, provides information for the recovery of cleanup costs, and helps inform first responders about the threats and best steps to take to address dangerous chemical spills.

In September 2006, EPA required all states to use one Uniform Hazardous Waste Manifest. The Uniform Hazardous Waste Manifest was designed to reduce the reporting burden for generators, transporters, and other waste handlers who may have been subject to several versions of waste tracking systems with duplicate information. It also was designed to enable generators and transporters to meet both Department of Transportation and EPA regulatory requirements. Additionally, the Uniform Hazardous Waste Manifest has state information blocks, which allow states to require the entry of additional specific information to serve their state’s regulatory needs.

In 2001, EPA proposed certain revisions to the manifest system, including the creation of a nearly paperless manifest program. While EPA reports that some commenters disagreed with the proposal, many stakeholders agreed that there was a need for a centralized, consistent, secure, cost-effective, and web-based service for manifests. Some of the potential benefits that would come from such a national system would include greater benefits to users and regulators, such as one-stop reporting; more effective oversight and enforcement; nearly real-time tracking of waste shipments; and potentially increased efficiency of collecting and managing manifest data and similar waste data collected for reporting purposes.

The EPA refined their draft approach in subsequent stakeholder meetings, and later as part of regulatory proposals in 2006 and 2008—which past legislative measures were based upon to create such a system. In 2008, EPA stated that its proposed rule for an electronic manifest system could affect up to 223,000 entities in almost 600 industries involved in shipping approximately 12 million tons of RCRA hazardous wastes annually, using 5 million EPA Uniform Hazardous Waste Manifests.

SUMMARY OF MAJOR PROVISIONS OF THE BILL

As a result of input from stakeholders and EPA, the bill (S. 710) requires the Administrator to create a hazardous waste electronic manifest system that may be used by any user of manifests, and that meets certain goals.

The bill authorizes the Administrator to impose a fee on the users of this hazardous waste electronic manifest system.

The bill authorizes the creation of a revolving fund, paid for by the regulated community, to allow the Administrator to pay for costs incurred in developing, operating, maintaining, and upgrading the hazardous waste electronic manifest system.

The bill requires the Administrator to periodically report on the financial status of the revolving fund to Congress and the Inspector General of the EPA to provide an accounting of the actual expenditures from the revolving fund.

The bill allows the Administrator to enter into one or more contracts for the creation of a hazardous waste electronic manifest system, so long as any such contract achieves certain goals, including meeting the needs of the user community which includes states that rely on data from manifests.

The bill requires the Administrator to create a Hazardous Waste Electronic Manifest System Governing Board to evaluate the effectiveness and make recommendations for improving the manifest system.

The bill requires that facilities receiving hazardous waste also report so that a state can track waste that was generated in or shipped through the state.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Hazardous Waste Electronic Manifest Establishment Act

Section 2. Hazardous Waste Electronic Manifest System

Contains definitions, directs the Administrator to establish an electronic manifest system not later than three years after the date of enactment of the Act, and allows the Administrator to create user fees to pay for the costs of developing, operating, maintaining, and upgrading the electronic manifest system. The fees collected by the Administrator can only be used to pay the necessary costs incurred in developing, operating, maintaining, and upgrading the system. The Administrator is authorized to adjust the fees to cover current and projected system-related costs and to minimize the accumulation of unused amounts of money in the fund.

The section establishes a Hazardous Waste Electronic Manifest System revolving fund to pay costs incurred in developing, operating, maintaining, and upgrading the electronic manifest system. It also sets out certain requirements for investing and transferring fund resources, and auditing and reporting requirements to ensure accountability.

Authorizes the Administrator to enter into contracts with one or more information technology contracts with entities that the Administrator deems appropriate and where the contractor agrees to assume the initial risk of the information technology investment and to obtain reimbursement for investment and operating costs by receiving as payment an agreed-upon share of amounts collected as fees by the Administrator.

Such contracts shall have a term of not more than ten years and shall ensure, to the maximum extent practicable, that a contract meets certain requirements, including the needs of the user community, which includes states that rely on data contained in manifests.

Not later than three years after the date of enactment of the act, the Administrator must establish a Hazardous Waste Electronic Manifest System Governing Board, which will assess the effectiveness of the electronic manifest system and make recommendations for improving the system. The Board must be comprised of nine representatives, including individuals with experience in information technology, users of the manifest system in transporting hazardous waste, and state officials with experience in processing manifests.

Not later than one year after enactment of this act, the Administrator must promulgate regulations to implant the act. The regulations must ensure that, to at least the same extent as paper manifests under federal and state law, the electronic manifests provide for the ability to track and maintain accountability of the person who certified that the information in the manifest is accurate and the person who acknowledges receipt of the manifest. Similarly, the electronic manifest must provide for state authority to access paper copies of manifests and provide for the public's access to the information contained in the manifest.

To ensure that states that track hazardous waste generated or shipped through their borders can continue to do so under an electronic manifest system, the facility that receives hazardous waste shall complete a facility portion of a manifest, sign and date a facility certification, and submit to the electronic manifest system a final copy of the manifest for inclusion in the system.

LEGISLATIVE HISTORY, COMMITTEE VIEWS AND VOTES

COMMITTEE VIEWS

The Committee believes that the manifest system, which has been in place for more than 20 years, provides one of the essential foundations for protecting human health and the environment from releases of hazardous waste. Manifests also play a pivotal role in federal and state enforcement of such safeguards. The Committee believes that the time has come to ensure that EPA has the authority to implement a safe, secure, and comprehensive electronic manifest system.

The Committee expects that the electronic manifest system will significantly improve the management and enforcement of hazardous waste programs by providing an integrated tracking process that creates clear lines of accountability among the participants in the hazardous waste system. It will serve, together with the other requirements, to increase protections for human health and the environment during the transportation of hazardous waste by providing real-time information on the waste to persons handling the waste and to emergency response personnel.

The Committee also anticipates that electronic manifests will expedite the processing and distribution of information that is the foundation for EPA's recordkeeping, reporting, and management requirements and the public's right to know about the generation, transportation, and disposal of hazardous waste. This system will conserve agency resources and help to improve agencies' efficiency. The Committee also expects that the electronic manifest will facilitate the enforcement of protections for human health and the environment by increasing the accuracy and accessibility of information on hazardous waste. An electronic manifest system as envisioned by S. 710 could also produce homeland security benefits, with agencies having faster access to reliable data.

The Committee expects that similar benefits will occur for state safeguards. Twenty-three states regularly accept and use manifests to protect public health and environmental quality, reduce and prevent pollution and target inspections and enforcement activities. The electronic manifest system will help to ensure that these states are working with a modern manifest system that enables them to better protect public health and the environment. An electronic manifest system also provides states that do not currently accept manifests with an easy-to-use system of tracking hazardous waste within their borders.

An electronic manifest system will further reduce reporting burdens on entities that use the hazardous waste manifest system. This modernized system should also reduce business' costs associated with using manifests.

S. 710 establishes the outline for a centralized, consistent, secure, cost-effective, and web-based service for manifests that protects human health and the environment. The on-going negotiations between EPA and state officials will necessarily fill in many of the details needed to implement this system. The Committee expects EPA to work closely with the states and to address potential problems that could arise that may impact protecting for human health and the environment, enforcement of such protections, and the public availability of information.

LEGISLATIVE HISTORY

On September 7, 2006, Senator Thune introduced S. 3871, the Hazardous Waste Electronic Manifest Establishment Act, which was referred to the Senate Environment and Public Works Committee. On September 28, 2006, the Committee on Environment and Public Works' Subcommittee on Superfund Management held a legislative hearing to consider S. 3871.

On June 10, 2008, Senator Thune introduced S. 3109, the Hazardous Waste Electronic Manifest Establishment Act, which was referred to the Senate Environment and Public Works Committee. On July 31, 2008, the full Committee on Environment and Public Works favorably reported S. 3109 by voice vote, demonstrating the broad bipartisan support for this measure. The Senate passed S. 3109 by unanimous consent on September 26, 2008 and referred the bill to the House on September 27, 2008.

On March 31, 2011, Senator Thune introduced S. 710, the Hazardous Waste Electronic Manifest Establishment Act. On April 14, 2011, the Committee on Environment and Public Works favorably reported the bipartisan bill to the Senate by voice vote, again demonstrating the broad bipartisan support for this measure.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee notes that the Congressional Budget Office has found that "CBO expects that participants in the electronic manifest system created by the bill could save money in comparison to the paper manifest system. Participants include generators, transporters, and recipients of hazardous waste, as well as state agencies that collect copies of manifests."

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the Committee notes that the Congressional Budget Office has said that the bill's electronic manifest system would save money in comparison to the current paper system. Further, as more fully discussed below, CBO found that the cost of any mandates in the bill "would fall below the annual thresholds established in UMRA (\$71 million for intergovernmental mandates and \$142 million for private-sector mandates in 2011, adjusted annually for inflation)."

CONGRESSIONAL BUDGET OFFICE ESTIMATE

MAY 6, 2011.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 710, the Hazardous Waste Electronic Manifest Establishment Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 710—Hazardous Waste Electronic Manifest Establishment Act

Summary: S. 710 would require the Environmental Protection Agency (EPA) to establish an electronic manifest system to track the handling of hazardous waste. This legislation would allow EPA to collect user fees to offset the cost of developing, operating, and maintaining the system. Under current law, individuals who handle hazardous waste must prepare a paper manifest, which is a form that provides a complete paper trail of a waste's progress from a generator through its treatment, storage, and disposal. Under S. 710, generators or transporters of hazardous waste and the owners or operators of hazardous waste treatment, storage, or disposal facilities could elect to use the electronic manifest system or the existing paper system.

Pay-as-you-go procedures apply to S. 710 because enacting this legislation would affect direct spending and revenues. CBO estimates that enacting S. 710 would increase both revenues and direct spending by \$28 million over the 2011–2021 period. In addition, CBO estimates that implementing S. 710 would cost less than \$500,000 annually in 2012 and 2013, subject to the availability of appropriated funds.

S. 710 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on facilities that handle hazardous waste. CBO estimates that the cost of the mandates would fall below the annual thresholds established in UMRA (\$71 million for intergovernmental mandates and \$142 million for private-sector mandates in 2011, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 710 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	35	0	0	0	0	0	0	0	0	0	35	35
Estimated Outlays	2	2	3	3	3	3	3	3	3	3	13	28
CHANGES IN REVENUES												
Estimated Revenues	0	0	0	6	5	5	3	3	3	3	11	28
NET CHANGE IN THE BUDGET DEFICIT FROM CHANGES IN REVENUES AND DIRECT SPENDING												
Impact on Deficit ^a	2	2	3	–3	–2	–2	0	0	0	0	2	0
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization												
Level	0	*	*	0	0	0	0	0	0	0	1	1
Estimated Outlays	0	*	*	0	0	0	0	0	0	0	1	1

Notes: * = less than \$500,000.

^a Positive numbers indicate an increase in the deficit; negative numbers indicate a decrease in the deficit.

Basis of estimate: For this estimate, CBO assumes that S. 710 will be enacted by the end of fiscal year 2011.

Revenues and Direct Spending

S. 710 would authorize EPA to enter into a contract to develop and maintain the electronic manifest system in advance of, or in excess of, available appropriations. Based on information from EPA, CBO estimates that the contract would cost about \$35 million. Because entering into the type of contract authorized by the legislation is an obligation of the federal government, its total cost—\$35 million—would be recorded as new budget authority in 2012. Though this legislation would also authorize EPA to collect user fees to offset the cost of establishing and maintaining this system, such fees could not be collected before the new system is in operation beginning in 2015. CBO expects that EPA would recover the costs of developing the system (about \$22 million) within five years of its launch and that the agency would reduce user fees to a level that would cover maintenance costs once development costs were recouped.

Based on information from EPA, CBO estimates that about 114,000 users would obtain electronic manifests in 2015, with participation reaching 227,000 users in subsequent years. We estimate that, under this legislation, EPA would collect annual user fees totaling \$28 million over the 2012–2021 period.

Spending of the fees collected by EPA would increase direct spending and would likely begin in 2015. However, spending on developing the system would likely begin in 2012 because the legislation would give EPA the authority to spend fees in advance of their collection. CBO estimates that enacting this legislation would increase federal outlays by \$28 million over the 2012–2021 period.

Spending Subject to Appropriation

Enacting legislation also would require EPA to develop regulations related to the implementation of the electronic manifest system not later than one year after enactment. CBO estimates that funding of less than \$500,000 annually in 2012 and 2013 would be necessary to meet this requirement.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 710, THE HAZARDOUS WASTE ELECTRONICS MANIFEST ESTABLISHMENT ACT, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS ON APRIL 15, 2011

	By fiscal year, in millions of dollars—												
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2011– 2016	2011– 2021
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact ...	0	2	2	3	–3	–2	–2	0	0	0	0	2	0

Intergovernmental and private-sector impact: S. 710 would impose intergovernmental and private-sector mandates, as defined in UMRA, on facilities that handle hazardous waste. CBO estimates that the cost of the mandates would fall below the annual thresh-

olds established in UMRA (\$71 million for intergovernmental mandates and \$142 million for private-sector mandates in 2011, adjusted annually for inflation).

The bill would require waste management facilities that receive hazardous waste generated in or shipped through other states to submit copies of shipment manifests to EPA. The bill also would authorize EPA to require those facilities and any hazardous waste management facility that uses a paper system to submit a copy of the manifest to the electronic system established under the bill. The mandated facilities would primarily be private entities but could include municipal and county landfills. Because the cost to complete a manifest and to submit a paper copy to the electronic system would be minimal, CBO estimates that the cost to comply with the mandates would be small.

The bill also would authorize EPA to establish fees for users of the electronic manifest system. CBO estimates that such fees would total \$6 million or less annually beginning in fiscal year 2015.

Other Impacts

CBO expects that participants in the electronic manifest system created by the bill could save money in comparison to the paper manifest system. Participants include generators, transporters, and recipients of hazardous waste, as well as state agencies that collect copies of manifests.

Estimate prepared by: Federal Revenues: Mark Booth; Federal Spending: Susanne Mehlman; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

* * * * *

SOLID WASTE DISPOSAL ACT

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this title referred to as “this Act”), together with the following table of contents, may be cited as the “Solid Waste Disposal Act”:

[42 U.S.C. 6901]

Subtitle A—General Provisions

- Sec. 1001. Short title and table of contents.
- Sec. 1002. Congressional findings.
- Sec. 1003. Objectives.
- Sec. 1004. Definitions.

- Sec. 1005. Governmental cooperation.
- Sec. 1006. Application of Act and integration with other Acts.
- Sec. 1007. Financial disclosure.
- Sec. 1008. Solid waste management information and guidelines.

Subtitle B—Office of Solid Waste; Authorities of the Administrator

- Sec. 2001. Office of Solid Waste and Interagency Coordinating Committee.
- Sec. 2002. Authorities of Administrator.
- Sec. 2003. Resource recovery and conservation panels.
- Sec. 2004. Grants for discarded tire disposal.
- Sec. 2005. Labeling of certain oil.
- Sec. 2006. Annual report.
- Sec. 2007. General authorization.
- Sec. 2008. Office of Ombudsman.

Subtitle C—Hazardous Waste Management

- Sec. 3001. Identification and listing of hazardous waste.
- Sec. 3002. Standards applicable to generators of hazardous waste.
- Sec. 3003. Standards applicable to transporters of hazardous waste.
- Sec. 3004. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
- Sec. 3005. Permits for treatment, storage, or disposal of hazardous waste.
- Sec. 3006. Authorized State hazardous waste programs.
- Sec. 3007. Inspections.
- Sec. 3008. Federal enforcement.
- Sec. 3009. Retention of State authority.
- Sec. 3010. Effective date.
- Sec. 3011. Authorization of assistance to States.
- Sec. 3012. Hazardous waste site inventory.
- Sec. 3013. Monitoring, analysis, and testing.
- Sec. 3014. Restrictions on recycled oil.
- Sec. 3015. Expansion during interim status.
- Sec. 3016. Inventory of Federal Agency hazardous waste facilities.
- Sec. 3017. Export of hazardous waste.
- Sec. 3018. Domestic sewage.
- Sec. 3019. Exposure information and health assessments.
- Sec. 3020. Interim control of hazardous waste injection.
- Sec. 3021. Mixed waste inventory reports and plan.
- Sec. 3022. Public vessels.
- Sec. 3023. Federally owned treatment works.
- Sec. 3024. *Hazardous waste electronic manifest system.*

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Subtitle C—Hazardous Waste Management

IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SEC. 3001. (a) CRITERIA FOR IDENTIFICATION OR LISTING.—* * *

* * * * *

SEC. 3024. 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 the date of enactment of this section, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

(c) *USER FEES.*—

(1) *IN GENERAL.*—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 for use in accordance with this subsection.

(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 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) investment of any unused service fees;

(viii) reporting and accounting;

(ix) employment of direct and indirect Government personnel dedicated to establishing and maintaining the system; and

(x) project management.

(B) *ADJUSTMENTS IN FEE AMOUNT.*—

(i) *IN GENERAL.*—The Administrator, in consultation with the Board, shall increase or decrease 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 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)(6), 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.

(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—

(A) such amounts as are appropriated to the Fund under paragraph (2); and

(B) any interest earned on investment of amounts in the Fund under paragraph (4).

(2) *TRANSFERS TO FUND.*—There are appropriated to the Fund amounts equivalent to amounts collected as fees and received by the Administrator under subsection (c).

(3) *EXPENDITURES FROM FUND.*—

(A) *IN GENERAL.*—Subject to paragraph (2), on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator such amounts as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

(B) *USE OF FUNDS.*—

(i) *IN GENERAL.*—Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator for use in accordance

with this section without fiscal year limitation and without further appropriation.

(ii) *OVERSIGHT.—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.*

(4) *INVESTMENT OF AMOUNTS.—*

(A) *IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury and the Administrator, required to meet current withdrawals.*

(B) *INTEREST-BEARING OBLIGATIONS.—Investments may be made only in—*

(i) *interest-bearing obligations of the United States; or*

(ii) *obligations, participations, or other instruments that are lawful investments for fiduciaries, trusts, or public funds, as determined by the Secretary of the Treasury.*

(C) *ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—*

(i) *on original issue at the issue price; or*

(ii) *by purchase of outstanding obligations at the market price.*

(D) *SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.*

(E) *CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of the Fund.*

(5) *TRANSFERS OF AMOUNTS.—*

(A) *IN GENERAL.—The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.*

(B) *ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.*

(6) *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 of the Senate and the Committee on Energy and Commerce 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, United States Code, 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, United States Code, 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.—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’) under which—

(A) the Administrator agrees to award a contract for the provision of system-related services; and

(B) the contractor agrees to assume the initial risk of the information technology investment, and to obtain reimbursement for investment costs, operating costs, and other fees, by receiving as payment an agreed-upon share of the amounts collected as fees by the Administrator under subsection (c).

(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 3002(a)(6).*

(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;

(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 and provide an additional profit or fee commensurate with the risk undertaken by the contractor in performing in accordance with the contract;

(C) the amount of additional transactional costs attributed to—

(i) the ancillary costs of the Administrator in implementing and managing the system, including the costs of integrating the applications of the contractor with the central data exchange architecture of the Environmental Protection Agency;

(ii) the direct and indirect personnel costs incurred by the Administrator to employ personnel dedicated to the implementation and management of the system; and

(iii) expenses incurred in procuring any independent contractor services to assist staff of the Administrator in the preparation of financial statements and reports and the conduct of regular user group and governance meetings necessary for the oversight of the system.

(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 shall cancel or terminate the contract.

(B) COSTS.—The costs of cancellation or termination under subparagraph (A) may be paid using—

(i) appropriations available for performance of the contract;

(ii) unobligated appropriations available for acquisition of the information technology procured under the contract; or

(iii) funds subsequently appropriated for payment of costs of the cancellation or termination.

(C) *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.

(D) *AUTHORITY TO ENTER INTO CONTRACTS.*—The Administrator may enter into a contract under this subsection for any fiscal year, regardless of whether funds are made specifically available for the full costs of cancellation or termination of the contract, if—

(i) funds are available at the time at which the contract is awarded to make payments with respect to a contingent liability in an amount equal to at least 100 percent of the estimated costs of a cancellation or termination during the first fiscal year of the contract, as determined by the Administrator; or

(ii) funds described in clause (i) are not available as described in that clause, but the contractor—

(I) is informed of the amount of any unfunded contingent liability; and

(II) agrees to perform the contract despite the unfunded contingent liability.

(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 the date of enactment of this section, 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 subtitle (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 the date of enactment of this section, 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 3003 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 those 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.

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