

PART B—POST-CLOSURE LIABILITY TRUST FUND

§ 9641. Repealed. Pub. L. 99-499, title V, § 514(b), Oct. 17, 1986, 100 Stat. 1767

Section, Pub. L. 96-510, title II, § 232, Dec. 11, 1980, 94 Stat. 2804, provided for establishment of the Post-closure Liability Trust Fund in the Treasury of the United States.

EFFECTIVE DATE OF REPEAL

Pub. L. 99-499, title V, § 514(c), Oct. 17, 1986, 100 Stat. 1767, provided that:

“(1) IN GENERAL.—The amendments made by this section [repealing this section and sections 4681 and 4682 of Title 26, Internal Revenue Code] shall take effect on October 1, 1983.

“(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.”

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 9651. Reports and studies**(a) Implementation experiences; identification and disposal of waste**

(1) The President shall submit to the Congress, within four years after December 11, 1980, a comprehensive report on experience with the implementation of this chapter including, but not limited to—

(A) the extent to which the chapter and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this chapter;

(F) the impact of the taxes imposed by subchapter II¹ of this chapter on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on

Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this chapter. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this chapter, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of title 26 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after December 11, 1980, a report identifying additional wastes designated by rule as hazardous after the effective date of this chapter and pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980 [42 U.S.C. 6921(b)(2)(B) and 6921(b)(3)(A)], has determined should be subject to regulation under subtitle C of such Act [42 U.S.C. 6921 et seq.], (ii) within three years after December 11, 1980, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) Private insurance protection

The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 9607 of this title, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of December 11, 1980, and shall submit an interim report on his study within one year of December 11, 1980.

¹ See References in Text note below.

(c) Regulations respecting assessment of damages to natural resources

(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 9605 of this title, shall study and, not later than two years after December 11, 1980, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this chapter and section 1321(f)(4) and (5) of title 33. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) Issues, alternatives, and policy considerations involving selection of locations for waste treatment, storage, and disposal facilities

The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of December 11, 1980, on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e) Adequacy of existing common law and statutory remedies

(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of December 11, 1980.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of

a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed \$300,000.

(f) Modification of national contingency plan

The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after December 11, 1980, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) Insurability study

(1) Study by Comptroller General

The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

(A) Persons who generate hazardous substances: liability for costs and damages under this chapter.

(B) Persons who own or operate facilities: liability for costs and damages under this chapter.

(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

(2) Consultation

In conducting the study under this subsection, the Comptroller General shall consult with the following:

(A) Representatives of the Administrator.

(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

(D) Representatives of property and casualty insurers.

(E) Representatives of reinsurers.

(F) Persons responsible for the regulation of insurance at the State level.

(3) Items evaluated

The study under this section shall include, among other matters, an evaluation of the following:

(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this chapter on the protection of human health and the environment and on the availability, underwriting, and pricing of insurance coverage.

(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding October 17, 1986.

(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this chapter on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

(4) Submission

The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after October 17, 1986.

(Pub. L. 96-510, title III, §301, Dec. 11, 1980, 94 Stat. 2805; Pub. L. 99-499, title I, §107(d)(3), title II, §§208, 212, Oct. 17, 1986, 100 Stat. 1630, 1707, 1726; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (E), (G), (c)(1), and (g), was in the original "this Act", meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Subchapter II of this chapter, referred to in subsec. (a)(1)(F), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

For effective date of this chapter, referred to in subsec. (a)(2), see section 9652 of this title.

Subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, referred to in subsec. (a)(2), probably mean section 3001(b)(2)(B) and

(3)(A) of the Solid Waste Disposal Act, as amended by the Solid Waste Disposal Act Amendments of 1980, which enacted section 6921(b)(2)(B) and (3)(A) of this title.

The Solid Waste Disposal Act, referred to in subsecs. (a)(2) and (d)(C), 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. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Subsec. (h) of this section, which required the Administrator of the Environmental Protection Agency to submit an annual report to Congress of such Agency on the progress achieved in implementing this chapter during the preceding fiscal year, required the Inspector General of the Agency to review the report for reasonableness and accuracy and submit to Congress, as a part of that report, a report on the results of the review, and required the appropriate authorizing committees of Congress, after receiving those reports, to conduct oversight hearings to ensure that this chapter is being implemented according to the purposes of this chapter and congressional intent in enacting this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 164 of House Document No. 103-7.

AMENDMENTS

1986—Subsec. (a)(1)(H). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (c)(1). Pub. L. 99-499, § 107(d)(3), inserted at end “Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986.”

Subsec. (g). Pub. L. 99-499, § 208, added subsec. (g).

Subsec. (h). Pub. L. 99-499, § 212, added subsec. (h).

§ 9652. Effective dates; savings provisions

(a) Unless otherwise provided, all provisions of this chapter shall be effective on December 11, 1980.

(b) Any regulation issued pursuant to any provisions of section 1321 of title 33 which is repealed or superseded by this chapter and which is in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

- (1) respecting financial responsibility,
- (2) issued pursuant to any provision of law repealed or superseded by this chapter, and
- (3) in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, in-

cluding common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this chapter shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

(Pub. L. 96-510, title III, § 302, Dec. 11, 1980, 94 Stat. 2808.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c)(2), (3), and (d), was in the original “this Act”, meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

§ 9653. Repealed. Pub. L. 99-499, title V, § 511(b), Oct. 17, 1986, 100 Stat. 1761

Section, Pub. L. 96-510, title III, § 303, Dec. 11, 1980, 94 Stat. 2808, provided for termination of authority to collect taxes under this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1987, see section 511(c) of Pub. L. 99-499, set out as an Effective Date of 1986 Amendment note under section 4611 of Title 26, Internal Revenue Code.

§ 9654. Applicability of Federal water pollution control funding, etc., provisions

(a) Omitted

(b) One-half of the unobligated balance remaining before December 11, 1980, under subsection (k)¹ of section 1321 of title 33 and all sums appropriated under section 1364(b)¹ of title 33 shall be transferred to the Fund established under subchapter II¹ of this chapter.

(c) In any case in which any provision of section 1321 of title 33 is determined to be in conflict with any provisions of this chapter, the provisions of this chapter shall apply.

(Pub. L. 96-510, title III, § 304, Dec. 11, 1980, 94 Stat. 2809.)

REFERENCES IN TEXT

Subsection (k) of section 1321 of title 33, referred to in subsec. (b), was repealed by Pub. L. 101-380, title II, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507.

Section 1364(b) of title 33, referred to in subsec. (b), was repealed by Pub. L. 96-510, title III, § 304(a), Dec. 11, 1980, 94 Stat. 2809.

Subchapter II of this chapter, referred to in subsec. (b), was in the original “title II of this Act”, meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

¹ See References in Text note below.