# I. PURPOSE

This procedure describes the U. S. Environmental Protection Agency’s process for managing the financial aspects of Superfund program remedial state cost share provisions in Superfund state contracts and remedial cooperative agreements. Financial management of these provisions includes establishing cost share payment schedules, receiving and tracking payments and credits, using cost share resources and reconciling payments and credits against a state’s cost share liability.

The Comprehensive Environmental Response Compensation and Liability Act authorizes the President to take action through the EPA’s Superfund program whenever any hazardous substance, pollutant or contaminant is released or substantial threat of such release into the environment may present an imminent and substantial danger to the public health or welfare or the environment. CERCLA section 104, regulated through 40 C.F.R. Part 35 Subpart O, hereafter referred to as “Subpart O,” requires a state to make specific assurances, including provision for payment of state cost share, before the EPA can obligate or expend funds for remedial action. These assurances are documented in a SSC, when the EPA or a local government conducts the remedial action or a remedial cooperative agreement, under which a state conducts the remedial action. The SSC or remedial CA also contains a site-specific statement of work, a project schedule and cost share conditions that require financial administrative responsibilities. Some other Superfund CAs, not addressed in this procedure, have administrative, non-statutory, cost share requirements regulated through Subpart O and 40 C.F.R. Part 31.

# II. AREAS OF RESPONSIBILITY[[1]](#footnote-1)

This section provides a broad overview of areas of responsibility. Particular regional office responsibilities may vary depending upon how a region is organized and operates.

**A. Office of the Chief Financial Officer**

# 1. Office of Financial Management

1. Develops financial policies and procedures for remedial cost provisions in SSCs and CAs.
2. Establishes and maintains the accounting models in the general ledger for the accounting of SSCs and CAs.
3. Formulates the strategy for identifying reporting criteria to enable stakeholders to identify, track, monitor, and report SSC site-level financial information on a consistent basis.
4. Monitors SSC available balances at the site-level to ensure cumulative obligations do not exceed cumulative collections.

# 2. Office of Financial Services, Cincinnati Finance Center

1. Establishes the accounts receivable and records SSC billings and collections in the agency’s financial system of record for state cost share payments.

Notifies the designated regional office when SSC collections are received.

1. Issues bills prepared by the region to the state for payment of state cost share per an established payment schedule[[2]](#footnote-2).
2. In coordination with the regions and the Claims Officer, may forward delinquent state cost share debt to the Department of Justice for collection using the procedures contained in RMDS 2550D Chapter 14, *Superfund Receivables and Billings*.
3. Manages the lockbox depository for all regions.
4. Enters all reclassification transactions into the agency’s financial system of record.
5. Calculates, bills and records late payment interest penalties where appropriate. Consults with the regions on interest accrued before billing states.
6. Prepares remedial state cost share accrual spreadsheets for all SSCs which includes data provided by the regional contacts.
7. Records remedial state cost share credits into the agency’s financial system of record based on data provided by the regional contacts.
8. Records the state cost share accrual amounts into the agency’s official accounting system (Compass.)

# 3. Office of Budget

1. Requests the annual apportionment of reimbursable authority from the Office of Management and Budget.
2. Reviews and approves regional requests for reimbursable authority submitted via reprogramming requests through the agency’s financial system of record. Reimbursable authority must be approved for regional offices to obligate/expend Superfund cost share resources collected from states. These resources are tracked in the agency’s financial system of record using the fund code TR1 and are hereafter referred to as such.
3. Monitors TR1 resource balances.
4. Approves requests to recertify prior year Superfund appropriated resources.
5. Annually issues the deobligation recertification guidance memo. This and other guidance on the recertification process may be obtained at http://intranet.epa.gov/ocfo/budget/budgetmemos.htm.

**B. Regional Offices**

# 1. Office of Regional Comptroller, Regional Financial Management Office

Financial management functions are organized somewhat differently within each regional office. The generic term, RFMO, refers to the organization that handles all financial management, budgetary, accounting, planning and assistance agreement administration functions. This term RFMO includes the regional budget office even when the RBO is not located within the RFMO. In most regions, the RFMO:

1. If applicable, assists the regional program office in drafting the financial sections of the SSC.
2. Prepares bills for SSC accounts receivables and provides documentation to CFC to perform the billing. In some regions, this function may be performed in cooperation with the RPO or by the RPO in some regions. Completes and transmits the required A/R Control Form to aid CFC in recording the accounts receivable in the agency’s financial system of record.
3. Provides CFC copies of a new SSC, SSC amendment, or closeout document within 5 business days of receipt. This function may be performed by the RPO in some regions.
4. If applicable, performs review of SSC requests and supporting documentation to determine whether costs are eligible for credit and works with the RPO and office of regional counsel/legal enforcement office, evaluates and recommends to the Regional Administrator to approve/disapprove a state’s claim for cost share credit for use to pay for the state’s cost share at the site at which the credit was earned or at another site (in the case of excess credit).
5. As requested, provides CFC, on a quarterly basis, information with respect to new and/or amended SSCs, credits, and other information to support the preparation of the SSC accrual. This function may be performed by the RPO in some regions.
6. In coordination with CFC and the Claims Officer, may forward delinquent state cost share debt to the Department of Justice for collection using the

procedures contained in RMDS 2550D Chapter 14, *Superfund Receivables and Billings.* This function may be performed by the RPO in some regions.

1. Submits reprogramming requests in the agency’s financial system of record for reimbursable authority for TR1 resources.
2. If applicable, works with the RPO, ensures TR1 resources are utilized within a reasonable amount of time after receipt and resolves financial issues related to overspending and negative SSC balances.
3. Prepares, tracks, manages and reconciles SSC financial data by site.
4. In conjunction with the RPO and Office of Regional Counsel/Legal Enforcement Office, conducts the SSC financial closeout process, which includes the reconciliation of the state’s final cost share.
5. Prepares request to reclassify prior year Superfund appropriated resources (which are tracked in the agency’s financial system of record using the fund code T and are hereafter referred to as such) as current year TR1 expenditures.
6. Reconciles/validates financial SSC TR1 Available balance reports provided by OFM. Monitors available balances for negative amounts.

**2. Office of Regional Counsel/Legal Enforcement Office or its equivalent**

1. Works with the RPO to review SSCs and remedial CAs and provides legal advice as requested. Consults with the Office of General Counsel and the Claims Officer as appropriate.
2. In coordination with the RFMO and RPO, may evaluate and recommend to the Regional Administrator to approve/disapprove a state’s claim for cost share credit and/or use approved credit to pay for the state’s cost share at the site at which the credit was earned or at another site (in the case of excess credit).
3. In conjunction with the RFMO and RPO, conducts the SSC financial closeout process, which includes the reconciliation of the state’s final cost share.

# 3. Regional Program Office

1. Responsible for the overall management of SSCs in the region.
2. Works with the ORC/LEO to develop and/or review SSCs or remedial CAs or amendments, including the manner of payment (i.e., cash, services, or credit) and the state’s payment schedule. Collaborates with the RFMO in drafting the financial sections of the SSC or remedial CA.
3. May, in cooperation with the RFMO, prepare bills for remedial cost share accounts receivables and provide documentation to CFC to perform billing.
4. Provides CFC copies of the SSC, SSC amendment, or financial closeout document within 5 business days of receipt. This function may be performed by the RFMO in some regions.
5. Approves and monitors use of TR1 resources to ensure that response activities are consistent with the approved scope of work contained in the SSC.
6. If applicable, works with the RFMO and ORC/LEO, evaluates and recommends to the Regional Administrator to approve/disapprove a state’s claim for cost share credit for use to pay for the state’s cost share at the site at which the credit was earned or at another site (in the case of excess credit).
7. As requested, provides CFC, on a quarterly basis, information with respect to new and/or amended SSCs, credits, and other information to support the preparation of the SSC accrual. This function may be performed by the RFMO in some regions.
8. In coordination with CFC and the Claims Officer, may forward delinquent state cost share debt to the Department of Justice for collection using the procedures contained in RMDS 2550D Chapter 14, *Superfund Receivables and Billings*. This function may be performed by the RFMO in some regions.
9. In conjunction with the RFMO, ensures TR1 resources are utilized within a reasonable amount of time after receipt and resolves financial issues related to overspending and negative SSC balances.

In conjunction with the RFMO and ORC/LEO, conducts the SSC financial closeout process, which includes the reconciliation of the state’s final cost share.

# 4. Regional Administrator

1. Signs SSC and CA documents, as appropriate, pursuant to Subpart O requirements.
2. Approves or disapproves state claims for cost share credit.
3. May delegate SSC and CA authorities pursuant to the EPA’s Delegations Manual, Chapter 14-1, *Superfund State Contracts and Cooperative Agreements*.

# C. Office of General Counsel, Claims Officer

1. In coordination with the CFC and RFMO, may forward delinquent state cost share debt to the Department of Justice for collection using the procedures contained in RMDS 2550D Chapter 14, *Superfund Receivables and Billings.*
2. Upon request, provides consultation to the regions as appropriate.

# D. Office of Superfund Remediation and Technology Innovation

1. Serves as lead headquarters office for programmatic administration and revision of Subpart O.
2. Works with the RPO, and other regional and headquarters offices as appropriate, to review SSCs or remedial CAs as requested to ensure national consistency.
3. Reviews SSC balances to ensure effective utilization of TR1 resources for remedial action.

**III. PROCEDURE DETAILS**

# A. Cost Share Provisions

1. A signed SSC or remedial CA for remedial action contains five statutorily required assurances, including a remedial state cost share assurance that must be made by a state, before the EPA can obligate or expend funds for remedial action at a particular site. Subpart O contains full descriptions of these assurances, other requirements and the contents of a SSC or remedial CA as well as other types of Superfund CAs. The following paragraphs address the basic components of the cost share assurances. Unless otherwise specified, the remaining guidance applies generally to implementation of these assurances, though exceptions provided for in Subpart O, internal policies and legal interpretations may apply.

* 1. **Ten percent.** Where a facility, whether privately or publicly owned, was not operated by the state or political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances at the facility, the state must provide 10 percent of the cost of the remedial action, if CERCLA-funded[[3]](#footnote-3) (CERCLA 104(c)(3)(C)(i)); or
  2. **Fifty percent or more.** (Herein after referred to as 50 percent)*.* Where a facility was operated by a state or political subdivision either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances at the facility, the state must provide at least 50 percent of the cost of removal, remedial planning, and remedial action if the remedial action is CERCLA-funded (CERCLA 104(c)(3)(C)(ii).

1. Based on the terms of the SSC or remedial CA, the RPO, with assistance from the RFMO will use project and action-specific direct, extramural[[4]](#footnote-4) expenditures of Superfund appropriated resources (as well as any TR1 resources expended) to calculate the amount of remedial state cost share liability incurred. Typically, a state's 10 percent cost share will be calculated using specific action codes that correspond with the remedial action and long-term response action. Other or additional action codes (for planning and design) may be included in the cost share calculation depending on the SSC cost share provisions. The RPO should consult with ORC/LEO and headquarters program staff to confirm the scope of activities to be captured in the cost share calculation and to ensure consistent application across the regions. For the purposes of cost share accrual calculations, CFC may use a simplified methodology.

# B. Forms of Cost Share Payment

A state may pay for its share of response costs using cash, services, credit or any combination thereof. Greater detail of these cost share payment provisions and their requirements are described in Subpart O, Sections 35.6285 and 35.6815.

1. **Cash.** A state may pay for its share of response costs by direct cash payments to the EPA. Payment terms are specified in the SSC between the state and the EPA.

1. **Services.** This form of payment may be provided only through a CA. Where the EPA (or a political subdivision) is conducting the remedial action and a SSC is required, this form of payment must also be documented in the SSC. In-Kind Services are described in 40 C.F.R. Part 31.24.

1. **Credit[[5]](#footnote-5).** A state may satisfy its cost share requirement using credits, which are limited to state site-specific expenses that the EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-federal funds for remedial action as defined in CERCLA section 101(24), that are consistent with a permanent remedy at the site.

* 1. Credits are established on a site-specific basis and only a state may claim credit.
  2. For sites already listed on the National Priorities List, the state may be eligible for credit only if the state initiated the remedial action after obtaining the EPA’s written approval (authorization to conduct work).
  3. The state must first apply all credit to the site for which it was earned. With the approval of the EPA Regional Administrator, the state may use excess credit earned at one site for its cost share at another site. Excess credit at any site does not entitle a state to a cash refund. The EPA will not reimburse excess credit.

# C. Using Cash to Pay Cost Share

1. A SSC must include a negotiated cost share payment schedule. States must make their cost share payments according to the terms in the SSC. Any credits applied to the cost share requirements must be documented (i.e., payroll distribution, invoices) and audited.

1. When payment is in cash under a SSC, the state may use either of the following two alternatives for payment:

* 1. Lump sum, under which the full amount of the estimated state cost share is paid in accordance with the terms of the SSC.
  2. Incremental payments, under which amounts due from the state are paid throughout the duration of the project. Incremental payment options may include, but are not limited to payments based on actual expenditures on a reimbursement basis; fixed amount payments based on completion of project milestones; and fixed amount payments based on a scheduled timeframe.

1. Upon completion of activities in the site-specific statement of work, EPA shall invoice the state for its final payment, with the exception of any change orders and claims handled during reconciliation of the SSC.[[6]](#footnote-6) After final reconciliation of a SSC, a final bill may need to be issued to the state. If the state has overpaid its cost share, a refund will be issued or the excess payment may be transferred to another site.7

1. Interest may be assessed on overdue SSC cost share payments, unless the charging of interest is specifically prohibited under the terms of the SSC. Although CERCLA is silent on charging interest on overdue SSC payments, OGC has determined that the EPA may charge states with interest on debts arising from contractual agreements.[[7]](#footnote-7) Interest payments are deposited into the general Superfund Trust Fund and are not available for use by the agency until appropriated.

1. The signed SSC is the legal instrument that sets forth the terms and conditions for all bills to the state for remedial state cost share payments for a particular site. CFC establishes an accounts receivable in the agency’s financial system of record to record the state’s debt when the EPA is legally entitled to collect the funds. See RMDS 2550D-14, *Superfund Accounts Receivable and Billing*, for details on Superfund accounts receivables.

Accounts receivable for remedial state cost share payments are processed using the appropriate accounting data elements specific to SSCs. Guidance for accounts receivables is available in the RMDS 2550D, Financial Management of the Superfund Program, Chapter 14, *Superfund Accounts Receivable and Billing*.

* 1. To establish an accounts receivable, the RPO (or the RFMO in some regions) will send a copy of the SSC to the RFMO and CFC within 5 business days of receipt.
  2. CFC establishes a state remedial cost share accounts receivable when the following criteria are met:

* + 1. **A Legal Claim for Payment Exists**. The signed SSC ensures that both parties agree to share remedial action costs and, at some future point, establishes a debt (the EPA’s legal entitlement to collect funds). If the SSC requires an advance payment or installment payments on specified dates throughout the project, CFC establishes an accounts receivable after all parties have signed the SSC agreement. If the remedial cost share accounts receivable is contingent upon some action or series of actions by the EPA, CFC records an accounts receivable when the action or series of actions occurs.
    2. **The Amount or a Reasonable Estimate is Known.** The SSC must include the estimate of the response action cost (excluding EPA’s indirect costs) that requires cost share and the basis for arriving at this figure as well as the applicable cost share percentage. The SSC must also clearly document the schedule of payment(s).
    3. **Collectability is Reasonably Certain.** This criterion addresses the "going concern[[8]](#footnote-8)" aspects of the debtor. For states, the presumption is that they will pay the amounts owed to the EPA.

* 1. If a bill is not paid by the date on the payment schedule, CFC will follow-up with the appropriate regional contact and advise them of the late payment. The regional contact may assist in determining the cause of the late payment. CFC will then send a delinquent notice to the state and provide a copy to the regional contact.
  2. When a SSC accounts receivable becomes delinquent, CFC in coordination with the RPO and RFMO (who will consult with the appropriate headquarters offices), will complete a Certificate of Indebtedness and the designated CFC official will sign the document. In coordination with the Claims Officer, CFC will then prepare and send a referral package to the Department of Justice for collection.

# D. Using CAs to Conduct and Pay for Remedial Action

There are six types of CAs and an umbrella CA under which multiple CAs may be combined. These include the pre-remedial, remedial, enforcement, removal, core program and support agency CAs. They are described in detail in Subpart O. Two of these CAs are pertinent to state cost share provisions for remedial action.

1. Remedial (Subpart O, Sections 35.6105 – 35.6115). The Remedial CA is the mechanism in which the EPA provides funds to a state, Indian tribe or political subdivision to conduct a site-specific response action when that government entity is lead for the remedial action. State-lead Remedial CAs for remedial action are also used to document the state’s five statutory assurances.

* 1. Where a state provides the remedial action under a remedial CA, the state will generally meet its cost share requirement through expenditures of its own resources. The EPA will generally award its share of the cost of the remedial action at 90 percent to the state, and the state will use its own resources for the remaining portion of the project.
  2. The EPA will not award a single CA to conduct multiple remedial actions at multiple sites.
  3. Where a political subdivision is awarded a CA to conduct the remedial action, the EPA must enter into a parallel SSC with the State before the political subdivision can conduct the remedial action.

1. Support Agency (Subpart O, Sections 35.6240 – 35.6250). The Support Agency CA is the mechanism through which the EPA provides funds to a state, Indian tribe or political subdivision to ensure their meaningful and substantial involvement in response activities, as specified in sections 104 and 121(f) (1) of CERCLA.

* 1. When the state meets its cost share requirement through provision of services, where the EPA has the lead for the remedial action, the SACA is used to document the state’s cost shareable activities.
  2. The use of the SACA as a vehicle for providing cost share must be documented in the SSC.

1. To draw down CERCLA funds, the recipient must use the eight-character project code and the four character cost organization code to allow site-specific tracking and recovery of costs incurred under the CA.

1. Some multi-site and/or multi-activity CAs may be “bulk funded” to provide more flexibility to the recipient to re-budget funds. These costs must be redistributed at the time of payment, as described in RMDS Procedure 2550D-04-P1, *Direct Charging of Superfund Costs*, *Site-Specific Cost Accounting Methods*, available on the EPA Intranet at [http://intranet.epa.gov/ocfo/policies/resource.htm.](http://intranet.epa.gov/ocfo/policies/resource.htm) Remedial CAs may not be bulk funded and must use site-specific account codes at the time of obligation.

1. Record keeping requirements for the state leading the response action are described in Subpart O, Section 35.6700.

# E. Remedial Cost Share Credit Process

1. Once a state has conducted work for which it seeks credit, the state will submit a claim for credit to reduce all or part of its cost share requirements under the SSC

(or remedial CA) by providing the EPA with the following information in accordance with Subpart O, Section 35.6285(c)(2):

* 1. Specific dollar amounts claimed and supporting cost documentation

(evidence that the state incurred and paid out cost within the approved scope of the project).

* 1. Identity of the units of government (state agency, county, local) that incurred the cost at the site.
  2. Description of the specific functions/work performed.
  3. Certification (signed by the state’s fiscal manager or financial director for each unit of government) that the credit amount claimed has not been previously used for matching purposes under any other federal program or grant.
  4. Documentation, if requested by the EPA, to ensure the eligibility and consistency of the actions with CERCLA and the National Contingency Plan.

1. The RFMO reviews the credit requests and determines eligibility for credit. The

RFMO, ORC/LEO and RPO will evaluate and recommend to the Regional

Administrator to approve/disapprove the states claim for cost share credit and/or use of approved credit to pay for the state’s cost share at the site at which the credit was earned or at another site (in the case of excess credit). Claims are also subject to verification by audit or other financial review.

1. The RPO and RFMO together are responsible for tracking the disposition of the EPA authorizations for state work to earn credit and the disposition of credit claims and for ensuring approved credit and transfers of excess approved credit are documented. The RFMO will submit approved credit information to CFC, who will record remedial state cost share credits into the agency’s financial system of record general ledger and uses this information for calculating the remedial cost share accrual.

# F. Accrual

1. CFC prepares an accrual each fiscal quarter to properly recognize remedial cost share revenue, liabilities, and accounts receivables based on the cost share requirements, cumulative billings and remedial action expenditures at each site.

1. Quarterly, CFC will request the RFMO/RPO to provide information regarding new and/or amended SSCs, credits, and other information to assist the preparation of the accrual. Responses should be provided to CFC by the requested due date.

# G. Requests for TR1 Reimbursable Authority for State Cost Share Resources

SSC collections become part of the Superfund appropriation and are designated as reimbursable resources using the TR1 fund code. The EPA cannot obligate these funds until reimbursable authority has been issued by OB. OB annually issues a reimbursable authority guidance memo providing guidance to the regions on requesting reimbursable resources. This and additional guidance on reimbursable authority can be obtained at http://intranet.epa.gov/fmdvally/budget/budgetmemos.htm.

1. To receive reimbursable authority, the region enters a reprogramming document into the agency’s financial system of record to request site-specific available TR1 resources. The justification field of the reprogramming document will identify the site for which the resources are being requested.

1. OB will review the reprogramming request in comparison with a financial report on cumulative SSC collections and cumulative obligations or other data in the agency’s financial system of record to determine whether the remaining available balance for the site is sufficient to support the request for reimbursable authority. If sufficient funds are available, OB will approve the reprogramming request.

# H. Using Available TR1 Fund Code Resources

1. TR1 resources (including TR1 used for reclassifications) may be obligated only after OB issues the reimbursable authority for available TR1 resources for a site. Depending on the terms of the SSC, use of TR1 funds may be restricted to remedial action or may be used for other activities (e.g., in case of a 50 percent cost share agreement).

1. To maximize the use of Superfund appropriated T resources[[9]](#footnote-9) elsewhere in the program, the RPO with the assistance of the RFMO should annually assess the availability of TR1 resources at a particular site to determine whether these resources may be used in lieu of T resources. Generally, obligations of TR1 resources, relative to T obligations for remedial action, should roughly match the proportions specified in the SSC (e.g., TR1 obligations would equal 10 percent of the value of total remedial action costs obligations). Since resource use is a dynamic process, such estimates will necessarily be rough, and the precise calculation of cost share amounts will occur during SSC reconciliation. Further, the availability of TR1 resources will be dependent upon the payment schedule defined in the SSC, which, for example, may require lump sum payments, thus precluding the EPA from using TR1 resources concurrently with appropriated T resources.

# I. TR1 (Reimbursable) Resource Reclassification to Replace Superfund Appropriation Resources

1. In cases where the EPA has not used TR1 resources concurrently with T obligations,[[10]](#footnote-10) a TR1 resource reclassification may be appropriate. 12 A TR1 reclassification replaces Superfund T expenditures with TR1 reimbursable resources. A TR1 reclassification effectively de-obligates appropriated T resources and replaces them with TR1 resources. In cases where the EPA has not used TR1 resources concurrently with T obligations, a TR1 resource reclassification may be appropriate.

1. An SV transaction is processed at the general ledger level to effect the TR1 reclassification[[11]](#footnote-11). After reclassification, the de-obligated T resources must be recertified if they are from a prior fiscal year. Further guidance on reclassifying TR1 resources can be found in RMDS 2550D-09-T1, *Reclassify Superfund State Contract (SSC) TR1 Funds*.

# J. SSC Financial Closeout

1. The administrative conclusion (financial closeout) of a SSC officially records the final accounting of all project costs, the amount of the final billing, the collection or the excess cost share payment amount and the final disposition of any outstanding payments. The RPO notifies the RFMO when it is time to financially close out the SSC.

1. A SSC financial closeout is complete when:

* 1. All billings/collections/credits, refunds, and transfers are completed.
  2. All disbursements are recorded in the agency’s financial system of record.
  3. Disbursements have been reclassified when applicable.
  4. Advances in the agency’s financial system of record must equal zero.
  5. A final amendment to the SSC or closeout agreement, which may serve as a final SSC amendment when total costs exceed the original estimated amount, has been signed by all appropriate parties. The final SSC amendment or closeout agreement must include provisions that it does not alter or otherwise affect any other of the statutory assurances described in the SSC, including the state’s assurance to perform operation and maintenance.

1. Under the typical 10 percent cost share SSC, the RPO/RFMO reconciles the Superfund-financed remedial financial data. The region verifies that 10 percent of

the eligible cost-share is provided by the state and that 90 percent are charged to Superfund T resources. Under a 50 percent cost share SSC, the actions reconciled and the percentage amounts assigned among the different fund codes may differ. Also, when reconciling the Superfund-financed remedial financial data, the region should consider special account reclassifications, if applicable, at the site and their effect on the state’s cost share amount.[[12]](#footnote-12)

If the RFMO finds that, at the conclusion of an the EPA-lead remedial action, the amount received from the state is greater than that needed to meet its percentage share the state may direct the EPA to return the excess cost share payment or to use the excess cost share payment at one site to meet the cost share obligation at another site.[[13]](#footnote-13) If the amount received from the state is less than the percentage share, the EPA will issue a final bill.

1. A SSC accrual is not computed for a SSC financial closeout. If a SSC financial closeout reflects non-zero balances in the appropriate columns of the accrual spreadsheet, the SSC should be reviewed to determine any adjustments that may need to be made (billings/collections, refunds, disbursement, credits, SSC values, SSC percentage, etc).

1. After the financial closeout of the SSC, the EPA may monitor the signatory’s compliance with assurances to provide all future operation and maintenance as required and other assurances, as appropriate.

# IV. REFERENCES

1. RMDS 2550D, *Financial Management of the Superfund Program*, and its accompanying documents are available on the EPA’s Intranet at <http://intranet.epa.gov/ocfo/policies/resource.htm>

1. The EPA’s Delegations Manual Chapter, Chapter 14-1. *Superfund State Contracts and Cooperative Agreements*, lists the SSC and CA authorities delegated to the Regional Administrator and is available on the EPA’s Intranet at <http://intranet.epa.gov/ohr/rmpolicy/ads/dm/14-1_532.htm>

1. General Superfund information is available at both [http://www.epa.gov/Superfund/policy/index.htm](http://www.epa.gov/superfund/policy/index.htm) and [http://www.epa.gov/Superfund/about.htm](http://www.epa.gov/superfund/about.htm)

1. The CERCLA statute, codified in Chapter 42, Section 103 of the United States Code, is available at [http://frwebgate.access.gpo.gov/cgi-](http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=BROWSE&TITLE=42USCC103)

[bin/usc.cgi?ACTION=BROWSE&TITLE=42USCC103](http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=BROWSE&TITLE=42USCC103)

1. Title 40 of the United States Code at <http://www.epa.gov/lawsregs/search/40cfr.html>codifies the EPA’s responsibilities for the protection of the environment and human health. The EPA’s statutes are contained in Chapter 1. Part 35, Subpart O deals with state and local assistance and can be found at [http://frwebgate.access.gpo.gov/cgibin/get-cfr.cgi?TITLE=40&PART=35&SUBPART=O&TYPE=TEXT.](http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=35&SUBPART=O&TYPE=TEXT) Part 300 explains the EPA’s responsibilities in terms of responding to oil and hazardous substances pollution and is available at

<http://www.access.gpo.gov/nara/cfr/waisidx_00/40cfr300_00.html>

1. Other Superfund CA administrative, non-statutory, cost share requirements are regulated through 40 C.F.R. Part 31, available at [http://ecfr.gpoaccess.gov/cgi/t/text/text-](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=db621b38286225c91d55460df4dba9ef&tpl=/ecfrbrowse/Title40/40cfr31_main_02.tpl)

[idx?c=ecfr&sid=db621b38286225c91d55460df4dba9ef&tpl=/ecfrbrowse/Title40/40cf r31\_main\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=db621b38286225c91d55460df4dba9ef&tpl=/ecfrbrowse/Title40/40cfr31_main_02.tpl)

1. The National Contingency Plan is available at <http://www.epa.gov/oem/content/lawsregs/ncpover.htm>

# V. ACRONYMS

|  |  |
| --- | --- |
| **CA** | Cooperative Agreement |
| **CERCLA** | Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) |
| **CFC** | Cincinnati Finance Center |
| **CFR** | Code of Federal Regulations |
| **LEO** | Lead Enforcement Office |
| **OB** | Office of Budget |
| **OCFO** | Office of the Chief Financial Officer |
| **OGC** | Office of General Counsel |
| **ORC** | Office of Regional Counsel |
| **PRP** | Potentially Responsible Party |
| **RBO** | Regional Budget Office |
| **RFMO** | Regional Financial Management Office |
| **RPO** | Regional Program Office |
| **RMDS** | Resource Management Directives System |
| **SACA** | Support Agency Cooperative Agreement |
| **SSC** | Superfund State Contract |

# VI. DEFINITIONS

**Approved credit:** The value of work performed by a state, in lieu of cash payments, that the Regional Administrator has reviewed and approved for use to satisfy the state’s cost share requirement. This term does not include the EPA's approval for a state to conduct future work that, once completed, may be eligible for credit pending the EPA review and approval.

**Available credit:** For the purposes of the CFC accrual spreadsheet, the total amount of approved credit at a site (including excess credit transferred from another site) minus excess credit that has been transferred to another site.

**Excess credit:** The value of approved credit that exceeds the state’s required cost share at the site. The state must first apply credit at the site at which it was earned (i.e., where the work was conducted), but with approval of the Regional Administrator, may use the excess credit to meet its cost share requirement at another site.

# VII. MANDATORY REVIEW

The next review for this policy is 3 years. However, this policy will be reviewed and revised as warranted by new federal legislation, applicable Federal Accounting Standards Advisory Board releases, regulations, or the EPA policy.

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. The policy statement for charging only direct, extramural cost is in preamble to the rule, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions, 55 FR. 23007 (June 5, 1990). In addition, § 35.6805(j) "Cost-share conditions" has been revised to clarify state cost-share requirements. Previous negotiations of state cost-share obligations sometimes included the EPA's own intramural costs (as part of the total project cost to be shared by the state). However, it was never the EPA's intention that states share project costs to the same extent as Potentially Responsible Parties for whom the term "total project cost" means all costs incurred at the site, including the EPA's intramural costs (typically travel and payroll costs). States are heretofore required to cost-share only those direct, extramural costs incurred at the site.

   [↑](#footnote-ref-4)
5. Expenditures of non-federal funds for removal actions, as defined in CERCLA section 101(3), are not eligible for credit. [↑](#footnote-ref-5)
6. On March 9, 2009, a class deviation was issued to permit an additional option for when the EPA can invoice for final payment under the state’s payment schedule. As a result of this deviation, the EPA can invoice a state for its final payment on a final payment date as negotiated by the signatures to the SSC. Therefore, the state’s payment schedule can extend beyond completion of the site-specific activities in the statement of work for all SSCs signed or amended from February 17, 2009 to September 30, 2012. This class deviation was issued to facilitate implementation of the American Recovery and Reinvestment Act of 2009 and now applies to all sites. The deviation will expire at midnight on September 30, 2012. 7 Refer to note 4 above. [↑](#footnote-ref-6)
7. Further explanation is available in RMDS 2550D Chapter 14 at p. 15: Although CERCLA is silent on charging interest on overdue SSC payment, OGC has determined that the EPA may charge states with interest on debts arising from contractual agreements. OGC's opinion is based on a Supreme Court decision made in United States vs. Texas, 113 S. Ct. 631 (1993). The Supreme Court decision in this case reaffirmed the U.S. Government's common law right to charge states with interest on contractual debts. For further information, refer to Chapter 13, Debt Collection, Principles of Federal Appropriations Law: Volume III.

   [↑](#footnote-ref-7)
8. A going concern is a basic principle in accounting that assumes a company/business will continue to operate in the foreseeable future. [↑](#footnote-ref-8)
9. T resources may also include recertified funds currently coded as “TD.” [↑](#footnote-ref-9)
10. A reclassification occurs at the expenditure level and thus simulates a reversal of payment and de-obligation of past cost Superfund Trust Fund dollars, and re-obligation and expenditure of reimbursable funds. Note that the term “reclassification” also applies to reclassifications of “special account” resources, which replace T expenditures with TR2, TR2A and TR2B reimbursable funds and uses a “KV” transaction in the general ledger. 12 For example, when additional payment is required upon final reconciliation or in situations where cost share payments are received after work has been completed. [↑](#footnote-ref-10)
11. An SV transaction is an accounting adjustment that does not impact payments or obligations at the transactional level and thus does not require modification to contracts, interagency agreements or other agreements. [↑](#footnote-ref-11)
12. Please see OSWER Directive #9200.1-93, “Revised Guidance on Reclassification of Superfund Special Accounts” (January 23, 2009) for more information at http://www.epa.gov/compliance/resources/policies/cleanup/Superfund/reclassspec-acct-mem.pdf [↑](#footnote-ref-12)
13. The Office of Grants and Debarment issued a class deviation that modified the requirements under 40 C.F.R. Part 35.6805(k), permitting both options to the state. [↑](#footnote-ref-13)