



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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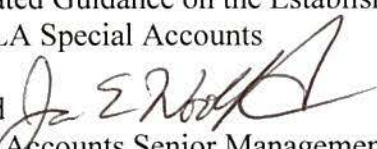
OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

NOW THE  
OFFICE OF LAND AND  
EMERGENCY MANAGEMENT

AUG - 5 2019

**MEMORANDUM**

**SUBJECT:** Updated Consolidated Guidance on the Establishment, Management, and Use of CERCLA Special Accounts

**FROM:** James E. Woolford   
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Director, Office of Superfund Remediation and Technology Innovation  
Office of Land and Emergency Management

**TO:** Assistant Regional Administrators, Regions I - X  
Superfund Division Directors, Regions I - X  
Regional Counsels, Regions I - X

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**I. INTRODUCTION**

This memorandum is issued on behalf of the U.S. Environmental Protection Agency's (EPA's or the Agency's) Special Accounts Senior Management Committee (SASMC).<sup>1</sup> EPA has issued numerous guidance documents that address different aspects of managing Superfund special accounts. The 2002 *Consolidated Guidance on the Establishment, Management, and Use of CERCLA Special Accounts* ("2002 Consolidated Guidance") addressed the key elements of the Agency's special account practice. This 2019 update to the 2002 Consolidated Guidance reflects how the management and use of special accounts has continued to evolve. The *Updated Consolidated Guidance on the Establishment, Management, and Use of CERCLA Special Accounts* ("2019 Consolidated Guidance") highlights some of the key aspects of EPA special account guidance documents, and provides additional guidance on several issues, including:

- When to establish a special account;
- Types of funds that can be deposited in a special account;
- Activities that may be funded through a special account;

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<sup>1</sup> The SASMC serves as the oversight body for the Agency's management and use of special accounts. The SASMC is comprised of senior managers from the Office of Superfund Remediation and Technology Innovation, Office of Site Remediation Enforcement, Office of the Controller, Office of Budget, and lead Regions for both Superfund and Management.

- Timing for use of special account funds;
- Providing special account funds to external parties to conduct response actions; and
- Management of special accounts.

The 2019 Consolidated Guidance supersedes the 2002 Consolidated Guidance and should be read in conjunction with other non-superseded guidance documents, as it supplements those guidance documents. Where a topic is more fully discussed in another guidance document, citation to that document is provided.<sup>2</sup> The appendices attached to the 2019 Consolidated Guidance provide an overview of superseded guidance documents and a crosswalk of other documents referenced in each section of this guidance.

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<sup>2</sup> This 2019 Consolidated Guidance, along with all other guidance documents mentioned herein can be found on the EPA's website:

[https://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm?action=3&sub\\_id=1235](https://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm?action=3&sub_id=1235).

## II. BACKGROUND

Section 122(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also referred to as Superfund) authorizes the President to retain and use funds received in a settlement agreement that resolves CERCLA liability (“settlement agreement”) and addresses CERCLA response actions contemplated at a given site. CERCLA Section 122(b)(3) provides that:

**(3) Retention of funds.** If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.<sup>3</sup>

By authorizing EPA to retain and use amounts that parties agree to pay to EPA, CERCLA Section 122(b)(3) is viewed as an exception to the Miscellaneous Receipts Act (MRA).<sup>4</sup> EPA retains these funds in site-specific accounts, called “special accounts,” within the EPA Hazardous Substance Superfund (Superfund Trust Fund). Special account funds are considered permanently appropriated funds that are available to EPA without further congressional action.

## III. ESTABLISHING SPECIAL ACCOUNTS

### A. Special Accounts Require a Settlement Agreement

Funds should not be placed in a special account unless there is a settlement agreement between EPA and a party. Settlement agreements that require a potentially responsible party (PRP) to pay an amount to EPA are typically memorialized in an administrative settlement agreement and order on consent (ASAOC) or in a judicial consent decree (CD) between EPA and the PRP.<sup>5</sup> In addition, funds EPA receives from prospective purchasers that enter into an agreement with the United States to resolve their CERCLA liability, or from a court-approved bankruptcy plan and agreement, also may be deposited into a special account.

Examples where funds should *not* be placed in a special account include: payments made in response to a demand letter, payments made pursuant to a unilateral order,<sup>6</sup> funds received pursuant to a court-ordered judgment, and non-binding exchange of letters or emails. In these situations, the funds are not being received pursuant to a settlement agreement.

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<sup>3</sup> 42 U.S.C. § 9622(b)(3) (Retention of Funds).

<sup>4</sup> The MRA requires that “money for the Government from any source” in the possession or custody of a federal official be deposited into the General Fund of the Treasury unless another statute authorizes a different disposition of the funds. 31 U.S.C. § 3302(b) (Custodians of Money).

<sup>5</sup> When the Department of Justice uses its inherent authority on behalf of EPA to enter into a settlement agreement that settles the CERCLA liability of a PRP, such as a bankruptcy settlement agreement with a PRP, the funds from the PRP may be deposited into a special account.

<sup>6</sup> EPA may deposit funds received for oversight of work performed by a PRP under a unilateral order if the PRP agrees to pay EPA for the cost of the oversight pursuant to a settlement agreement that is separate from the unilateral order. The effect is to create a separate settlement agreement (with any statutory protections for the PRP that go along with a settlement as opposed to a unilateral order) governing those costs the PRP is agreeing to provide to EPA. The response actions performed by the PRP would continue to be conducted under the unilateral order.

## B. Special Accounts Require Potential Future Work<sup>7</sup>

EPA will consider establishing or depositing funds in a special account when, at the time of the settlement agreement or at the time the payment under the settlement agreement is made, there is future work at a site.<sup>8</sup> For purposes of this guidance, “future work” means when:

- CERCLA response actions are underway or remain to be performed (e.g., remedial investigations, removals, oversight); or
- CERCLA costs remain to be incurred at a site (e.g., EPA has not received all invoices for work performed by EPA contractors).

Prior to establishing a special account, Regions should consider the anticipated future CERCLA work at the site and estimate the EPA CERCLA response costs remaining at the site to determine whether the funds should be placed into a special account, and if so, how much to deposit. Similarly, prior to depositing funds into an already existing special account, Regions should review the current special account balance, the anticipated future CERCLA response actions at the site, and the anticipated EPA CERCLA response costs remaining at the site to determine whether it is appropriate to deposit the funds into the special account, and if so, how much to retain for future response actions or costs.

Payments received under a settlement agreement for past response costs, or for future response costs, may be deposited in a special account so long as those funds are intended to be used to finance future CERCLA work remaining at the site.

If a PRP agrees to pay EPA’s oversight costs at a site, Regions should generally retain those payments in a site-specific special account to fund EPA’s ongoing oversight and thus conserve annually appropriated Superfund Trust Fund money for use at other sites where funding is not otherwise available.<sup>9</sup> In some instances, a PRP may agree to pre-pay EPA’s future oversight costs.<sup>10</sup>

If there is no future CERCLA work at a site, or if funds to be received exceed EPA’s future CERCLA costs remaining at the site, the amounts received by EPA in excess of anticipated future CERCLA costs for the site should *not* be placed in a special account. Instead, those funds should be deposited in the Superfund Trust Fund. Additionally, if the total amount of funds to be

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<sup>7</sup> See *Effective Utilization of Superfund Special Accounts* (April 2, 2012): <https://semspub.epa.gov/work/HQ/175865.pdf>.

<sup>8</sup> See *Placement of Proceeds from CERCLA Settlements in Special Accounts* (January 2000): <https://semspub.epa.gov/work/HQ/100001776.pdf>.

<sup>9</sup> Regions should make every attempt to use special account funds for oversight of PRP activities in accordance with the memorandum, *Use of Special Accounts for Oversight Costs* (March 28, 2014): <https://semspub.epa.gov/work/HQ/100001758.pdf>.

<sup>10</sup> See *Additional Guidance on Prepayment of Oversight Costs and Special Accounts* (December 22, 2006): <https://semspub.epa.gov/work/HQ/100001730.pdf>. Model language for prepayment of oversight costs can be found in paragraph 36 of the “CERCLA Model Remedial Design/Remedial Action Consent Decree” issued September 29, 2014 ([https://cfpub.epa.gov/compliance/models/view.cfm?model\\_ID=81](https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=81)).

received is very small (e.g., less than \$25,000), Regions should consider whether the burden of managing the special account may outweigh the benefit.<sup>11</sup>

### C. Model Settlement Agreement Language for Depositing Funds into a Special Account

Section 122(b)(3) of CERCLA provides EPA with the discretion to establish and use special accounts. Although the statute does not require specific language for EPA to be able to establish a special account, EPA has developed model language (which generally is appropriate for all types of settlement agreements<sup>12</sup>) to address the establishment and use of a special account. This language provides:

The total amount to be paid by Settling [Defendants or Parties] shall be deposited in the [Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by the EPA to the Hazardous Substance Superfund.<sup>13</sup>

Even in instances where a settlement agreement is silent on the use of a special account (i.e., model language was not included), EPA may still place funds into a special account if there is potential future work at a site. These settlements generally state that the payments made to EPA to address past or future response costs will be deposited in the Superfund Trust Fund. No amendment of the settlement agreement is necessary for EPA to deposit funds in a special account. However, to ensure appropriate documentation of the redirection of funds, a note should be included in the site file.<sup>14</sup>

### D. Financial Management and Accounting of Funds in Special Accounts

Payments received pursuant to settlement agreements may be characterized differently for the purposes of a settlement agreement, as opposed to financial recording and reporting purposes; however, this characterization does not affect the ability to place these funds in a special account. The Office of the Chief Financial Officer (OCFO) has issued procedures for the financial management and accounting of funds received under Superfund, including the establishment of

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<sup>11</sup> See *Effective Utilization of Superfund Special Accounts* (April 2, 2012):

<https://semspub.epa.gov/work/HQ/175865.pdf>.

<sup>12</sup> All of EPA's current cleanup enforcement model language and sample documents can be found at:

<https://cfpub.epa.gov/compliance/models/>.

<sup>13</sup> Pursuant to this model language, EPA uses special account funds to fund direct site costs. In appropriate circumstances, the Agency would support maximizing utilization of special account funds for other site-related FTE costs, including FTE-related indirect costs. Regions should consult with the HQ Office of Site Remediation Enforcement if there is a need to further delineate the use of special account funds for specific response activities or if there is an opportunity to use special account funds for other site-related expenses (e.g., FTE-related indirect site costs). Additionally, different variations of this model language allow for splitting payments between the Superfund Trust Fund and a special account. See paragraphs 35.b ("Deposit of Past Response Costs Payment"), and 36.d ("Deposit of Future Response Costs Payments") in the "CERCLA Model Remedial Design/Remedial Action Consent Decree," issued September 29, 2014 ([https://cfpub.epa.gov/compliance/models/view.cfm?model\\_ID=81](https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=81)).

<sup>14</sup> See *Change to Requirements for Notifying Headquarters of Intent to Establish or Deposit Funds in a Special Account When the Agreement is Silent on Special Accounts* (September 13, 2013): <https://semspub.epa.gov/work/HQ/175864.pdf>.

unique fund codes to account for the receipt of each type of payment. Table 1 (Financial Description of Special Account Fund Codes for Collections) describes these fund codes.

<b>Table 1. Financial Description of Special Account Fund Codes for Collections</b>	
<b>Fund Code</b>	<b>Description</b>
HSSA	<p><b>Non-Federal Special Accounts <u>Future Cost Revenue</u></b> Represents amounts received under non-federal cashout settlement agreements. This code pertains to collections related to costs to be incurred in the future, including prepayment of oversight.</p> <p>For purposes of financial recording and reporting, Regions should continue to use Fund Code <u>TR2</u>.</p>
HSSAA	<p><b>Federal Special Accounts <u>Future and Past Cost Revenue</u></b> Represents amounts received under federal cashout and past cost settlement agreements. The difference is identified by the reporting category on the account receivable transaction (33 is for future costs and 26 or 29 is for past cost).</p> <p>For purposes of financial recording and reporting, Regions should continue to use Fund Code <u>TR2A</u>.</p>
HSSAB	<p><b>Non-Federal Special Accounts <u>Past Cost Revenue</u></b> Represents amounts received for past cost collections, late payment interest collections from PRPs, and interest revenue earned on special account balances that have not been spent. This code pertains to collections related to costs <i>previously</i> incurred and includes collections for oversight of work performed by parties.<sup>15</sup></p> <p>For purposes of financial recording and reporting, Regions should continue to use Fund Code <u>TR2B</u>.</p>

#### IV. USE OF SPECIAL ACCOUNT FUNDS

##### A. General Use of Special Account Funds

The use of specific special account funds is governed by the terms of the settlement agreement pursuant to which they were received. For this reason, Regions should use EPA's model language, discussed above, in all applicable settlement agreements, as the language provides EPA with an appropriate degree of flexibility as to the use of special account funds. The model

<sup>15</sup> Even though the payment section of the settlement usually describes the payment as being a future response cost, OCFO classifies the funds as past cost revenue because the party's oversight payment occurs after the Agency's oversight costs are incurred.



language provides that amounts in a special account shall be retained and used to conduct or finance CERCLA response actions at, or in connection with, the site.<sup>16</sup>

This language allows the special account to be used for any CERCLA response action at the site. Section 101(25) of CERCLA defines “response” as “remove, removal, remedy, and remedial action, [and] all such terms (including the terms “removal” and “remedial action”) including enforcement activities related thereto.” Special account funds may be used for both intramural (e.g., government personnel salaries and travel) and extramural (e.g., contract) site-specific expenses at a site. Although, in some cases, costs incurred under other statutes, such as the Resource Conservation and Recovery Act (RCRA), could potentially meet the definition of a “response cost” under CERCLA,<sup>17</sup> EPA may only retain funds recovered on behalf of the Superfund under CERCLA<sup>17</sup> and may only use special account funds to conduct response actions authorized under CERCLA.<sup>18</sup>

EPA may disburse special account funds to entities, such as federal agencies, states, political subdivisions of a state, and federally recognized Indian tribes, for those parties to conduct EPA-selected response actions, and to community groups for them to obtain technical assistance and support.<sup>19</sup>

As a matter of policy, and consistent with current EPA practice, special account funds may be used to fund all aspects of a response action, including the performance of operation and maintenance (O&M) of remedial actions. Additionally, EPA will not request that states provide a cost share on special account funds used for remedial action while the remedial action is being financed using funds received through a settlement agreement. However, if special account funds will not fully fund a remedial action, a state cost share will be required for the remaining portion of the response action. Even when using special account funds, some state assurances may still be required under Section 104, such as the requirement under Section 104(c)(9) that a state will assure the availability of hazardous waste treatment or disposal facilities. Also, as a matter of policy, and consistent with current EPA practice, special account funds are not subject to cost caps for removal actions.

If a settlement agreement resolves the CERCLA liability of parties at more than one site and the settlors want their payments to be available at more than one site, the settlement agreement should contain a clear allocation of the funds among the different sites. In that situation, EPA should establish a separate special account for each site because special account funds should generally not be transferred from one site to another.<sup>20</sup> However, special account funds may be used for any operable unit or subsite of one site, unless otherwise provided in the settlement

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<sup>16</sup> Where a settlement agreement is silent on the establishment and use of the special account, EPA generally expects to use the funds consistent with the EPA model language (i.e., to conduct or finance response actions at or in connection with the site).

<sup>17</sup> See 26 U.S.C. § 9507(b).

<sup>18</sup> See *Use of CERCLA § 122(b)(3) Special Accounts at RCRA Corrective Action Sites* (December 20, 2012): <https://semspub.epa.gov/work/HQ/100001727.pdf>.

<sup>19</sup> See *Final Guidance on Disbursement of Funds from EPA Special Accounts to Parties Performing CERCLA Response Actions* (March 27, 2018): <https://semspub.epa.gov/work/HQ/100001089.pdf>.

<sup>20</sup> If a settlement agreement authorizes the use of funds at more than one site, funds may be transferred between accounts for more than one site if consistent with the terms of the settlement agreement.

agreement. Regions should generally not agree to limit the use of funds to a particular activity or operable unit as later site developments may warrant using those funds for other activities or portions of the site.

### B. Hierarchy for Using Special Account Funds

The planning and use of special account funds generally should follow the recommendations in the General Hierarchy of Special Account Use, discussed in the “Guidance on the Planning and Use of Special Account Funds” (September 28, 2010) (“Planning and Use Guidance”).<sup>21</sup> The EPA’s hierarchy of priorities for planning and using special account funds are as follows:

1. Use to facilitate settlement with PRPs for response action;
2. Use to fund EPA’s costs for response actions;
3. Apply to previous EPA site expenditures through reclassification;<sup>22</sup> and
4. Transfer to the Superfund Trust Fund.

In general, special account funds should be used before annually appropriated Superfund Trust Fund money for CERCLA response activities at a site. In addition, Regions should try to minimize the retention of special account funds for potential contingencies (e.g., takeover of response work being conducted by PRPs, concerns over future remedy protectiveness); retaining funds for such purposes is discussed more fully in the Planning and Use Guidance.

Finally, in addition to considering the general hierarchy of special account use, Regions generally should follow existing EPA guidance regarding the use of special account funds consistent with the following fund code priority order, so long as doing so is consistent with the terms of the settlement agreement:

1. TR2A (Federal Special Accounts Past and Future Cost Revenue)
2. TR2 (Non-Federal Special Accounts Future Cost Revenue)
3. TR2B (Non-Federal Special Accounts Past Cost Revenue)

### C. Disbursing Special Account Funds to PRPs and BFPPs<sup>23</sup>

Special account funds may be disbursed as a settlement incentive to PRPs who agree to undertake EPA-selected response actions, or to a bona fide prospective purchaser (BFPP) as a means of incentivizing cleanup. EPA provides for disbursements of special account funds to PRPs or BFPPs through special account disbursement language within a settlement agreement. Special account funds should not be disbursed to a PRP performing the response action pursuant to a unilateral administrative order. Prior written approval from Headquarters (Office of Site Remediation Enforcement/Regional Support Division) is required *before* making an offer or

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<sup>21</sup>See *Guidance on the Planning and Use of Special Account Funds* (Sept. 28, 2010): <https://semspub.epa.gov/work/HQ/100001729.pdf>.

<sup>22</sup> Reclassification of special account funds is discussed in further detail in the *Revised Guidance on Reclassification of Superfund Special Accounts* (January 23, 2009): <http://www2.epa.gov/enforcement/guidance-reclassification-superfund-special-accounts-revised-guidance>.

<sup>23</sup> This topic is discussed in detail in the *Final Guidance on Disbursement of Funds from EPA Special Accounts to Parties Performing CERCLA Response Actions* (March 27, 2018): <https://semspub.epa.gov/work/HQ/100001089.pdf>.



providing settlement agreement language for disbursement of funds from a special account to a PRP.

#### D. Timing for Use of Special Account Funds

The timeframe for use of special account funds at a specific site typically depends on several factors, including any specific requirements for use of funds outlined in the settlement agreement, the stage of site cleanup, the viability of other responsible parties to conduct site cleanup, and the nature and scope of the site contamination. At sites where EPA is conducting the response actions, Regions generally should use all available special account funds prior to accessing annually appropriated Superfund Trust Fund money for conducting response work at those sites, unless the settlement agreement specifies otherwise.

Regions should review the need for retaining special account funds beyond 15 years after the site achieves construction completion. Generally, where CERCLA remedies are performing as anticipated and states have agreed to conduct future O&M, any future CERCLA response costs at the site beyond this time frame will be funded from annually appropriated Superfund Trust Fund money where EPA is required by statute to conduct those activities (e.g., five-year reviews).<sup>24</sup> Funds may be retained in a special account beyond the timeframe noted above if warranted by site-specific circumstances, specific language in the settlement agreement that requires funds to be retained, or where EPA will be continuing oversight of PRP-lead CERCLA activities more than 15 years after site construction completion and the PRP is providing ongoing payments that are deposited in a special account to fund EPA's CERCLA oversight activities at the site.<sup>25</sup>

#### E. Reclassifying and Transferring Funds to the Superfund Trust Fund

If a Region can reasonably estimate that a special account contains more funds than are needed to address remaining known and potential future CERCLA work at a site, EPA may undertake a reclassification, or replacement, of annually appropriated Superfund Trust Fund money expended for response actions at the site with available special account funds. This transaction allows the annually appropriated Superfund Trust Fund money to be recertified for use at other sites.<sup>26</sup> Any remaining special account funds that cannot be reclassified (because there are no remaining expenditures of annually appropriated Superfund Trust Fund money for that site) should be transferred to the general portion of the Superfund Trust Fund, where they are available for future appropriation by Congress. Regions should close a special account when no further deposits are expected, and all obligations have been liquidated (more information on when to close an account can be found later in this document).

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<sup>24</sup> See *Effective Utilization of Superfund Special Accounts* (April 2, 2012): <https://semspub.epa.gov/work/HQ/175865.pdf>.

<sup>25</sup> See *Use of Special Accounts for Oversight Costs* (March 28, 2014): <https://semspub.epa.gov/work/HQ/100001758.pdf>.

<sup>26</sup> More information regarding special account reclassifications can be found in the *Revised Guidance on Reclassification of Superfund Special Accounts* (January 23, 2009): <http://www2.epa.gov/enforcement/guidance-reclassification-superfund-special-accounts>.

Generally, EPA should not continue to deposit funds into a special account if a reclassification or transfer of funds to the Superfund Trust Fund has occurred or is planned to occur with funds already available in the account, given that these actions usually occur when there are excess funds in an account.

However, there may be instances where deposits into a special account may be appropriate even after a reclassification or transfer to the Superfund Trust Fund has occurred. One such situation is where EPA is performing oversight and receives regular oversight payments from PRPs.<sup>27</sup> EPA may reclassify excess funds in the special account and later decide to deposit oversight payments into the special account on an as-needed basis to continue to fund EPA's oversight activities for the site. Another example is where unanticipated CERCLA work is required at a site after a reclassification of special account funds has been completed, and EPA places future deposits in the special account to fund the unanticipated future CERCLA work.

## **V. MANAGEMENT OF SPECIAL ACCOUNTS<sup>28</sup>**

In 2009, EPA established the Special Accounts Senior Management Committee ("Committee") to further improve management, transparency, and accountability among the offices in Headquarters and the Regions involved with special accounts.<sup>29</sup> The Committee is comprised of senior career officials in the Office of Superfund Remediation and Technology Innovation (OSRTI), Office of Site Remediation Enforcement (OSRE), Office of the Controller (OC),<sup>30</sup> Office of Budget (OB), the Lead Region for Superfund, and the Lead Region for Management. The Committee meets semi-annually to ensure effective management and utilization of these funds.

EPA manages special accounts to: (1) ensure available special account funds are needed for future CERCLA site response work and are being used as expeditiously as possible; (2) ensure special account funds, rather than annually appropriated Superfund Trust Fund money, are used for CERCLA response work, as appropriate; (3) reclassify and transfer funds to the general portion of the Superfund Trust Fund when they are no longer needed for future CERCLA response work at a particular site; (4) close special accounts where funds are no longer required for CERCLA work at the site and no future deposits are expected; and (5) effectively monitor the planned and actual uses of these funds.

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<sup>27</sup> See *Use of Special Accounts for Oversight Costs* (March 28, 2014): <https://semspub.epa.gov/work/HQ/100001758.pdf>.

<sup>28</sup> Management of special accounts is discussed in detail in the *Superfund Special Accounts Management Strategy for 2019–2021* (May 9, 2019): <https://semspub.epa.gov/work/HQ/100002037.pdf>.

<sup>29</sup> See *Charter for Superfund Special Accounts Senior Management Committee* (December 2014): <https://semspub.epa.gov/work/HQ/100001760.pdf>.

<sup>30</sup> A reorganization in FY 2016 consolidated OCFO's Office of Financial Management (OFM) and Office of Financial Services (OFS) into the Office of the Controller (OC).

### A. Planning the Use of Special Accounts<sup>31</sup>

Regions are required to develop plans for the use of available special account funds and enter those plans into the Superfund Enterprise Management System (SEMS). Initial plans should generally be recorded in SEMS within three months of receipt of proceeds.<sup>32</sup> Regions should continually reevaluate the planned uses of special account funds, as warranted by site activity, to ensure the effective and efficient use of special account funds. At a minimum, Regions must update their plans in SEMS twice a year as part of the Headquarters and Regional mid-year and work planning review process. As part of this process, Regions should plan reclassifications and transfers to the Superfund Trust Fund for the current fiscal year plus two out-years.

### B. Monitoring Special Accounts

The *Superfund Special Accounts Management Strategy for 2019 – 2021* outlines the activities EPA will undertake to monitor special account data in SEMS and EPA's financial system, Compass.<sup>33</sup> In addition to the work planning and mid-year reviews conducted by the Regions and Headquarters, Regional Superfund Division Directors are to review, on an annual basis, special accounts that meet at least one of the following criteria: (1) accounts with available balances greater than \$1 million; (2) accounts with less than \$25,000 available; or (3) accounts with no obligation or disbursement activity in the past five fiscal years.

Monthly, the Cincinnati Finance Center monitors accounts with negative funds available and coordinates with the Regions to correct the appropriate transactions within those accounts.

### C. Notifications

As part of EPA's oversight and management of special accounts, Regions are required to notify Headquarters of milestone decisions concerning the use of special accounts. As of September 2013, Regions are no longer required to notify Headquarters of the intent to establish or deposit funds into a special account in instances where the original settlement agreement does not contain special account language, but they should make a note in the site file regarding placement of the funds.<sup>34</sup>

Regions must notify Headquarters of the intent to: (1) reclassify special account funds; (2) transfer special account funds to the general portion of the Superfund Trust Fund; or (3) close a special account.

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<sup>31</sup> See *Guidance on the Planning and Use of Special Account Funds* (September 28, 2010): <https://semspub.epa.gov/work/HQ/100001729.pdf>.

<sup>32</sup> Large proceeds received through a settlement agreement may take longer than 3 months to plan, but should nevertheless be planned as quickly as possible.

<sup>33</sup> See *Superfund Special Accounts Management Strategy for 2019–2021* (May 9, 2019): <https://semspub.epa.gov/work/HQ/100002037.pdf>.

<sup>34</sup> See *Change to Requirements for Notifying Headquarters of Intent to Establish or Deposit Funds in a Special Account When the Agreement is Silent on Special Accounts* (September 13, 2013): <https://semspub.epa.gov/work/HQ/175864.pdf>.

If the intent is to close a special account, to reclassify less than \$200,000, or to transfer less than \$200,000 to the Superfund Trust Fund, such notification may be done by e-mail.<sup>35</sup> Multiple notifications concerning a single site may be made in a single e-mail.

If the intent is to reclassify \$200,000 or more, or to transfer \$200,000 or more to the Superfund Trust Fund, such notification must be done by memorandum.<sup>36</sup> Multiple notifications concerning a single site, including notification of the intent to close a special account, may be made in a single memo.

#### D. Closure of Special Accounts

After special account funds have been used for all known or estimated future response work at the site, and reclassifications of prior expenses have been completed to the extent practicable, special accounts should be closed and any remaining balances in an account transferred to the general portion of the Superfund Trust Fund for future appropriation by Congress.

It is generally appropriate to close an account when:

- All known response work at a specific site is finished and all obligations have been liquidated;
- Other resources are available to address all remaining work and costs (e.g., solvent PRPs are doing the work and paying all costs, including oversight); or
- There are minimal funds in the account (e.g., less than \$25,000), all obligations have been liquidated, and no anticipated future deposits for site work.<sup>37</sup>

All obligations must be fully liquidated or deobligated before a special account can be closed.

## **VI. CONCLUSION**

Special accounts are an important part of the Superfund program and play a critical role in achieving cleanup of contaminated sites nationwide. As the number of special accounts has grown, so has the importance of appropriate management controls. Multiple offices in the Regions and Headquarters have responsibility for the establishment and management of special accounts, which increases the importance of extensive coordination among the Regions and Headquarters offices. Questions about special accounts may be directed to the lead special account contact in each Region, to OSRTI's special account contact, or to OSRE's special account contact who will work across the EPA offices and Regions to respond to questions. OSRTI's special account contact is Tracey Stewart, who may be contacted at [stewart.tracey@epa.gov](mailto:stewart.tracey@epa.gov) or 703-603-8791; OSRE's special account contact is Jacquie Huynh-Linenberg, who may be contacted at [huynh-linenberg.jacquie@epa.gov](mailto:huynh-linenberg.jacquie@epa.gov) or 202-564-0547.

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<sup>35</sup> See *Model Notifications to Headquarters of Milestone Special Account Transactions* (April 22, 2011): <https://semspub.epa.gov/work/HQ/100001728.pdf>.

<sup>36</sup> See *Model Notifications to Headquarters of Milestone Special Account Transactions* (April 22, 2011): <https://semspub.epa.gov/work/HQ/100001728.pdf>.

<sup>37</sup> See *Superfund Remedial Program Review: First Status Report* (June 2015): [https://www.epa.gov/sites/production/files/2015-09/documents/spr\\_first\\_status\\_report\\_released\\_june\\_30\\_2015\\_updated\\_links\\_september\\_30.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/spr_first_status_report_released_june_30_2015_updated_links_september_30.pdf).

cc: Cynthia Mackey, OECA/OSRE  
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Angelia Talbert-Duarte, OGC  
Special Accounts National Contacts, Regions I – X  
Superfund Regional Branch Chiefs, Regions I – X  
Regional Comptrollers, Regions I – X

## APPENDIX A: Superseded Guidance

The following chart provides an overview of previously issued guidance documents that have been superseded by subsequent guidance.

Guidance	Superseded By
Interim Final Guidance on Disbursements of Funds from EPA Special Accounts to Responsible Parties (November 3, 1998)	Final Guidance on Disbursement of Funds from EPA Special Accounts to Parties Performing CERCLA Response Actions (March 27, 2018)
Special Accounts: Guidance on Key Decision Points in Using Special Account Funds (September 28, 2001)	Guidance on the Planning and Use of Special Account Funds (September 28, 2010)
Consolidated Guidance on the Establishment, Management, and Use of CERCLA Special Accounts (October 4, 2002)	Updated Consolidated Guidance on the Establishment, Management, and Use of CERCLA Special Accounts (“2019 Consolidated Guidance”) (August 5, 2019)
Management of Special Accounts (August 4, 2005)	Superfund Special Accounts Management Strategy for 2019–2021 (May 9, 2019) and Data Monitoring Plan for Special Accounts (March 6, 2014)
Model Memoranda for Transferring Funds from a Special Account to the Superfund Trust Fund and Closing Out a Special Account (January 21, 2009)	Notification Process for Milestone Special Account Transactions (April 22, 2011)
Superfund Special Accounts Management Strategy (January 27, 2009)	Superfund Special Accounts Management Strategy for 2019–2021 (May 9, 2019)
Superfund Special Accounts Management Strategy for 2011–2012 (February 7, 2011)	
Superfund Special Accounts Management Strategy for 2013–2015 (March 15, 2013)	
Superfund Special Accounts Management Strategy for 2016–2018 (April 11, 2016)	



## APPENDIX B: Special Account Related Documents Referenced by Section

Consolidated Guidance Section	Guidance Document References
<b>III. Establishing Special Accounts</b>	
B. Special Accounts Require Potential Future Work	<ul style="list-style-type: none"> <li>• <a href="#">Effective Utilization of Superfund Special Accounts (April 2, 2012)</a></li> <li>• <a href="#">Placement of Proceeds from CERCLA Settlements in Special Accounts (January 27, 2000)</a></li> <li>• <a href="#">Use of Special Accounts for Oversight Costs (March 28, 2014)</a></li> <li>• <a href="#">Additional Guidance on Prepayment of Oversight Costs and Special Accounts (December 22, 2006)</a></li> <li>• <a href="#">CERCLA Model Remedial Design/Remedial Action Consent Decree (September 29, 2014)</a></li> </ul>
C. Model Settlement Agreement Language for Depositing Funds into a Special Account	<ul style="list-style-type: none"> <li>• <a href="#">Change to Requirements for Notifying Headquarters of Intent to Establish or Deposit Funds in a Special Account When the Agreement is Silent on Special Accounts (September 13, 2013)</a></li> <li>• <a href="#">CERCLA Model Remedial Design/Remedial Action Consent Decree (September 29, 2014)</a></li> </ul>
<b>IV. Use of Special Account Funds</b>	
A. General Use of Special Account Funds	<ul style="list-style-type: none"> <li>• <a href="#">Use of CERCLA 122(b)(3) Special Accounts at RCRA Corrective Action Sites (December 20, 2012)</a></li> <li>• <a href="#">Final Guidance on Disbursement of Funds from EPA Special Accounts to Parties Performing CERCLA Response Actions (March 27, 2018)</a></li> </ul>
B. Hierarchy for Using Special Account Funds	<ul style="list-style-type: none"> <li>• <a href="#">Guidance on the Planning and Use of Special Account Funds (September 28, 2010)</a></li> <li>• <a href="#">Revised Guidance on Reclassification of Superfund Special Accounts (January 23, 2009)</a></li> </ul>
C. Disbursing Special Account Funds to PRPs	<ul style="list-style-type: none"> <li>• <a href="#">Final Guidance on Disbursement of Funds from EPA Special Accounts to Parties Performing CERCLA Response Actions (March 27, 2018)</a></li> </ul>
D. Timing for Use of Special Accounts	<ul style="list-style-type: none"> <li>• <a href="#">Effective Utilization of Superfund Special Accounts (April 2, 2012)</a></li> <li>• <a href="#">Use of Special Accounts for Oversight Costs (March 28, 2014)</a></li> </ul>

Consolidated Guidance Section	Guidance Document References
E. Reclassifying and Transferring Funds to the Superfund Trust Fund	<ul style="list-style-type: none"> <li>• <a href="#">Revised Guidance on Reclassification of Superfund Special Accounts (January 23, 2009)</a></li> <li>• <a href="#">Use of Special Accounts for Oversight Costs (March 28, 2014)</a></li> </ul>
<b>V. Management of Special Accounts</b>	
Introduction	<ul style="list-style-type: none"> <li>• <a href="#">Superfund Special Accounts Management Strategy for 2019–2021 (May 9, 2019)</a></li> <li>• <a href="#">Charter for Superfund Special Accounts Senior Management Committee (December 2014)</a></li> </ul>
A. Planning the Use of Special Accounts	<ul style="list-style-type: none"> <li>• <a href="#">Guidance on the Planning and Use of Special Account Funds (September 28, 2010)</a></li> </ul>
B. Monitoring Special Accounts	<ul style="list-style-type: none"> <li>• <a href="#">Superfund Special Accounts Management Strategy for 2019–2021 (May 9, 2019)</a></li> </ul>
C. Notifications	<ul style="list-style-type: none"> <li>• <a href="#">Change to Requirements for Notifying Headquarters of Intent to Establish or Deposit Funds in a Special Account When the Agreement is Silent on Special Accounts (September 13, 2013)</a></li> <li>• <a href="#">Model Notifications to Headquarters of Milestone Special Account Transactions (April 22, 2011)</a></li> </ul>
D. Closure of Special Accounts	<ul style="list-style-type: none"> <li>• <a href="#">Superfund Remedial Program Review: First Status Report (June 2015)</a></li> </ul>