

# Working Together to Achieve Cleanup:

## A Guide to the Cooperative Agreement Process



April 2016 (Final)



The Department of Defense and State Memorandum of Agreement/Cooperative Agreement (DSMOA/CA) Program

## FOREWORD

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This guidance is issued by the Department of Defense (DoD) for use by officers and employees of DoD, Components, and States/Territories (States) to assist with the efficient and cooperative administration of the Department of Defense and State Memorandum of Agreement (DSMOA) Program. It is intended to promote mutual understanding of the procedures used in administration of the DSMOA Program. It is not a rule or regulation, and does not create rights in or obligations on any federal department or agency, State or its agencies, or any third party or individual. It is not enforceable in any proceeding. Federal law and regulation, Office of Management and Budget (OMB) Circulars, the DSMOA, the DSMOA Cooperative Agreement (CA), and the Defense Environmental Restoration Program (DERP) Management Guidance will, in all instances, take precedence over this guidance. Whether and how this guidance is applied to any particular situation will depend on the facts and circumstances, and is subject to the discretion of authorized DoD officials. DoD may periodically review this guidance and may amend, modify, or rescind it at any time.

A DSMOA Steering Committee, comprised of representatives from States and DoD Components, was formed in 2009 to promote top-level understanding and cooperation. The Office of the Assistant Secretary of Defense (OSD) for Energy, Installations, and Environment facilitates DoD Component participation in the Steering Committee. Subcommittees are formed for specific purposes.

As one of its initiatives, the DSMOA Steering Committee elected to review and revise the 2006 version of the DSMOA CA Guide, titled *Working Together to Achieve Cleanup: A Guide to the Cooperative Agreement Process*. The purpose of this DSMOA CA Guide revision is to capture the current business practices of the DSMOA Program and to serve as a reference for successful participation in the DSMOA Program. The following items were considered beyond the scope of the DSMOA CA Guide revision effort:

1. Changes to the model language for DSMOA found in the Federal Register or individual Defense-State agreements.
2. Changes to an individual DSMOA CA.
3. Changes to regulations.
4. Changes to decisions that the Grants Officer has previously rendered.

The DSMOA Steering Committee acknowledges the efforts of representatives of the following States and DoD Component organizations in drafting and publishing the 2016 version of the DSMOA CA Guide.

Alabama	OSD
Alaska	Air Force
California	Army
Colorado	Navy
Illinois	United States Army Corps of Engineers (USACE) Headquarters FUDS
Ohio	USACE DSMOA Team
New York	
Virginia	
Wyoming	

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## **SECTION 1 – INTRODUCTION AND PURPOSE**

### **1.1 INTRODUCTION**

The DSMOA Program was established pursuant to 10 U.S.C. (United States Code) 2701(d). The DSMOA Program supports environmental restoration and assists DoD in maintaining compliance with applicable State laws. Section 2701(d) authorizes the Secretary of Defense to enter into agreements on a reimbursable or other basis for services provided by State agencies to assist the Secretary in carrying out the Secretary's responsibilities that arise under the Defense Environmental Restoration Program (DERP). The goals of the DSMOA Program are to support and expedite environmental restoration at active installations, Base Realignment and Closure (BRAC) locations, and Formerly Used Defense Sites (FUDS) through financial reimbursement for requested services provided by the States.

A DSMOA is an agreement between DoD and a State that provides a framework for partnership at specified DoD installations. These relationships are fostered through improved communication, coordination, and cooperation between States and DoD Components in order to facilitate progress on projects to protect human health and the environment. After signing a DSMOA with DoD, a State must apply for and be awarded a DSMOA CA in order to obtain financial reimbursement for its services and activities (hereafter, services) in support of DoD restoration activities (as outlined by the DSMOA). Under a DSMOA CA, the State may receive financial reimbursement from DoD for eligible services in support of environmental cleanup at listed installations. Only a State that has a completed and signed DSMOA is eligible to apply for a DSMOA CA under the DSMOA Program.

This DSMOA CA Guide (Guide) is the product of a collaborative effort among States and DoD Components to communicate the various DSMOA processes, such as:

- Establishing a plan for State support of DoD executed cleanups
- Participating in the DSMOA 6 Step Process
- Updating Joint Execution Plans (JEPs)
- Requesting reimbursements for eligible State activities
- Reporting State services under the DSMOA CA
- Conducting Annual Funding Reviews (AFRs)
- Closing out the DSMOA CA

This Guide follows regulations for CAs promulgated in 32 Code of Federal Regulations (CFR) Part 33, the DoD Grant and Agreement Regulations (DoDGARs) DoD 3210.6-R, and OMB Circulars A-87, A-102, and A-133. Efforts have been made to minimize administrative burdens, increase flexibility, and optimize use of existing resources.

### **1.2 TERMINOLOGY**

Definitions to key terms and acronyms are located in Appendix A. Appendix A definitions are consistent with the DERP Manual, except in cases where they are specific to the DSMOA Program (e.g., for the purposes of this manual, the definition of "Installation" includes FUDS and non-installation specific projects being conducted as services to DoD under the DSMOA) and in cases where the definition is not in the DERP manual.

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### **1.3 PURPOSE**

The purpose of this Guide is to establish uniform procedures for developing JEPs and DSMOA CAs while allowing for flexibility under the DSMOA Program and to present the procedures as guidance for use by States and DoD participants in the DSMOA Program. The procedures described in this Guide are intended to encourage consistency, create efficiencies, and simplify the process of working together under the DSMOA Program.

The processes encompassed by the DSMOA Program are dynamic. Consequently, this Guide is a living document subject to refinement as necessary. The DSMOA Steering Committee will convene to refine the details of the processes, as necessary, and develop updated versions of the Guide.

The DSMOA CA Guide consists of seven sections and two appendices. The contents of the sections and appendices are summarized below:

- Section 1 Provides an introduction to the DSMOA Program, statement of purpose, summary of key updates since the last Guide revision, and brief description of the DSMOA Portal.
- Section 2 Discusses DSMOA eligibility.
- Section 3 Discusses the DSMOA CA Process, including DSMOA Portal roles, Pre-6 Step Process, 6 Step Process, JEPs, post-award CA maintenance, and modifications.
- Section 4 Discusses DSMOA financial management, including State reimbursement, 80% obligation notification, AFR, and DoD budget deadlines and impacts.
- Section 5 Describes the purpose and procedures for Performance Reports.
- Section 6 Provides background and processes for Dispute Resolution and Alternative Dispute Resolution.
- Section 7 Explains the DSMOA CA closeout process.
- Appendix A Contains a Glossary of Key Terms (as used in this document).
- Appendix B Contains a List of Acronyms.

### **1.4 REVIEW OF KEY PROGRAM UPDATES**

The Guide was last issued in July 2006. Since that time the DSMOA Program has undergone several modifications, including:

- Standardization of annual Performance Report
- Integration of the DSMOA Portal to fully include the 6 Step Process, JEP development and updates, Component Approvals, and Performance Report
- Introduction of real-time DSMOA reports
- Introduction of the DSMOA Portal Payment Process

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- Consolidation of BRAC funding accounts to BRAC Legacy
- Clarification of DSMOA Eligibility
- Clarification of DSMOA Dispute Resolution

### 1.5 DSMOA PORTAL

The DSMOA Portal is a secure, restricted DoD website available only to registered users who participate in the DSMOA Program. These registered users form the DSMOA Community and consist of DoD Components and associated installation Points of Contact (POCs), States, and the DSMOA Team. The DSMOA Community utilizes the DSMOA Portal to facilitate communication and conduct official DSMOA business.

The DSMOA Portal is accessible at <https://dsmoa.usace.army.mil>.

In order to access the DSMOA Portal, one must:

- be a member of the DSMOA Community (i.e. have an active role in the DSMOA Program, as described in Section 3.2);
- have a current DoD or State government email; and
- complete the registration process on the DSMOA Portal sign-in page.

Once a DSMOA Community member's DSMOA Role has been verified by the DSMOA Team, they will be able to log into and have access to the DSMOA Portal.

A variety of tools are available on the DSMOA Portal to assist the DSMOA Community throughout the DSMOA process. Some major features of the DSMOA Portal tools are described below.

The DSMOA Policy and Guidance Page of the DSMOA Portal is a reference section for the DSMOA Community, containing pertinent regulation and guidance documents pertaining to the DSMOA Program, including:

- DoDGAR
- OMB Circulars A-87, A-102, and A-133
- Federal Register Notices related to the DSMOA Program
- DoD Policy Memoranda concerning the DSMOA Program
- Useful links

The DSMOA Portal CA Management Page allows States and DoD to complete the 6 Step Process for new DSMOA CA applications, manage installations and POCs, update JEPs, manage Component Approved Amounts for active and pending DSMOA CAs, submit State payment requests, and complete Performance Reports. These processes are discussed in further detail in Sections 3-5 of this Guide.

The Document Management Page archives documents related to States' past and present DSMOAs and CAs, including applications and modifications.

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Up-to-date DSMOA Program POCs for all DSMOA Community members are also available on the DSMOA Portal. A complete listing of the Component, States and DSMOA Team POCs are presented in various tables.

The Training Page of the DSMOA Portal provides the DSMOA Community with a variety of training materials related to the DSMOA Program and DSMOA Portal.

The DSMOA Community can also access several real-time reports on a variety of DSMOA data to assist them in management of and participation in the DSMOA Program.



## **SECTION 2 – DSMOA ELIGIBILITY**

### **2.1 OVERVIEW**

In order to participate in the DSMOA Program, there must be a DSMOA that is jointly signed by the State and the Assistant Secretary of Defense (Energy, Installations, and Environment).<sup>1</sup> Further information regarding DSMOAs may be obtained from the DSMOA Team.

Once a State has signed a DSMOA, it must then apply for and be awarded a CA in order to obtain funding for eligible services in support of DoD response and restoration at eligible DoD installations. The DSMOA CA application process is described in Section 3 of this Guide.

This section of the Guide discusses:

- Eligible funding
- Eligible State services
- Ineligible State services

### **2.2 ELIGIBLE FUNDING**

For a State to receive reimbursement for eligible environmental restoration services they have provided, DoD restoration activities must be funded from one of the five specific environmental restoration accounts (environmental restoration – Air Force, Army, Navy, Defense wide, and FUDS) established by Congress<sup>1</sup> or from Base Realignment and Closure (BRAC) environmental restoration funds. A State's CA identifies the funding designations that are applicable for that State on the Attachment B. Funding types are distinct and separate and CANNOT be interchanged. A State is required to track costs by Component funding type for each installation, and must submit their payment requests accordingly.

A State can only obtain reimbursement for environmental restoration services at installations listed on the State's CA Attachment A using obligated funds identified on the CA Attachment B, as agreed in the JEP between the DoD Component and the State. The CA Attachment A is part of the scope of the CA, and lists only those installations identified by the DoD Component where eligible work is planned during the CA period. Changes to the CA Attachment A can be made at any time during the performance period by means of a bilateral modification to the CA. Bilateral modifications are made between the State and the Grants Officer, following mutual concurrence of the State and Component to the change (see Section 3.5.3).

Note: The DSMOA Attachment A and the CA Attachment A do not need to be identical or agree with each other. The DSMOA Attachment A is a static document and is not modified for administrative changes. The CA Attachment A is the living document, including all modifications to date, that sets forth the list of installations covered by the CA by Component fund type and installation name. In the fall of 2012 many States amended their DSMOA's to acknowledge that

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<sup>1</sup> Or predecessor office

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the current CA Attachment A replaces the initial DSMOA Attachment A, thereby clarifying which installations are eligible for DSMOA funding.

### 2.3 ELIGIBLE STATE SERVICES

Costs associated with providing State services are eligible for DSMOA reimbursement if the services are:

- incorporated in the current CA;
- identified as eligible in the State's DSMOA; and
- agreed to and recorded in a JEP for the installation.

A summary of the types of eligible services, consolidated from State DSMOAs, is provided below, but will vary from DSMOA to DSMOA. To be eligible, the State activities listed below must be in furtherance of the DERP funded DoD environmental restoration activities at installations listed on a State's CA Attachment A.

There are three requirements for State activities to be eligible for reimbursement under the DSMOA:

1. statutory;
2. the DSMOA, as implemented in accordance with the DoDGARs (32 CFR Parts 21-37, DoD 3210.6-R); and
3. the CA.

To be eligible for reimbursement under the DSMOA, services provided by a State must meet all three of the requirements as well as certain general Federal requirements such as those contained in OMB Circulars A-87, A-110, and A-128.

The DSMOAs are based on the authority of 10 U.S.C. § 2701(d) to obtain, by agreement, services from certain other entities to assist the DoD in carrying out the responsibilities of the Secretary of Defense under section 2701. The Secretary's authority under section 2701(d) has been delegated to the Secretaries of the Military Departments by DoD Instruction 4715.7, *Environmental Restoration Program*. The first requirement of section 2701(d) is that the services received must be in furtherance of the responsibilities of the Secretary of Defense under 10 U.S.C. § 2701, not in furtherance of the responsibilities of the other party. This limitation only allows payment under section 2701(d) of costs of services sought by the DoD. Any service that is not in furtherance of the Secretary's responsibilities under the DERP would be ineligible for reimbursement. One important factor indicating that a service may be within the Secretary's responsibilities under the DERP is that the activity is eligible for funding from one of the five environmental restoration accounts or from the BRAC account. A second requirement of section 2701(d) is that the DoD must receive services. Section 2701(d) only provides for payments to an otherwise eligible entity for services in furtherance of the DERP.

The DoDGARs are a set of policies and rules authorized in DoD Directive 3210.6, "Defense Grant and Agreement Regulatory System" and published as DoD 3210.6-R, "DoD Grant and Agreement Regulations." They apply to all DoD-awarded and -administered CAs. The DoDGARs specify that CAs are signed and administered by a Grants Officer.

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The Grants Officer is normally the final authority in determining whether State support services are eligible or ineligible. States may dispute Grants Officer decisions using the formal dispute resolution process in the DSMOA and appealed in accordance with the DoDGARs.

### **2.3.1 DSMOA/CA Administration**

Administrative costs associated with the preparation, administration, and determination of scope and applicability of the DSMOA, CAs, and JEPs, excluding any costs which may be incurred in anticipation of litigation against the U.S. Government, are eligible for reimbursement under the DSMOA Program.

### **2.3.2 Environmental Responses**

Eligible services under the Environmental Responses category include:

- Technical reviews, comments, and recommendations on all documents or data submitted to the State under an agreement for such review between the State and a DoD Component, all documents or data that a DoD Component requests the State to review, and all documents or data that are provided by a DoD Component to the State for review as a result of a request from the State made under applicable State law.
- Identification and explanation of State applicable, or relevant and appropriate cleanup requirements related to response actions at installations. (40 CFR 300.5)
- Site visits to review DoD response actions.
- Participation with DoD in public education and public participation activities in accordance with applicable cleanup requirements for public involvement. This includes services provided at the request of DoD in connection with participation in Restoration Advisory Boards (RABs) and Technical Review Committees.
- Technical reviews, comments, and recommendations on all documents and data regarding prioritization of sites pursuant to Section II.B of the DSMOA.
- Performance of independent quality assurance/quality control (QA/QC) efforts by the State associated with DoD sampling activities.
- Land Use Control (LUC) implementation reviews and participation in 5-year reviews, where performed by a DoD Component.

### **2.3.3 Property Transfer**

Eligible services under the Property Transfer category include:

- Property transfer documents or data are generally not prepared for DoD to carry out response actions on environmental restoration site; reviews of these documents may not be eligible. Nevertheless, technical reviews, comments, and recommendations of

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sections of the following property transfer documents or data that concern environmental restoration actions may be requested by a DoD Component because they address DERP funded issues, and, if requested and included in a JEP, may be eligible under a DSMOA:

- Environmental Baseline Survey (EBS)
  - Environmental Condition of Property (ECP)
  - Finding of Suitability to Transfer (FOST)
  - Finding of Suitability to Lease (FOSL)
- Technical reviews of sections of a Finding of Suitability for Early Transfer (FOSET)/Covenant Deferral Request (CDR) documents or data addressing DERP funded issues.
  - Technical review of an Environmental Services Cooperative Agreement (ESCA) and, where DoD retains direct responsibility for conducting restoration activities, services provided to implement an ESCA. Where the ESCA transfers the implementation responsibility to a non-DoD entity, the ESCA also provides funding to the recipient to cover future State support services; such services would not be eligible under the DSMOA.
  - Clean Parcel Determination. State review of sections of the document addressing DERP funded actions may be eligible under limited circumstances. In order for a Clean Parcel Determination to be eligible, it must meet the following three requirements:
    1. DoD has a reasonable basis to believe that environmental contamination may have occurred on the subject parcel;
    2. The DoD Component generated written materials as a result of an investigation that supports no contamination on the parcel; and
    3. Such written materials were not previously provided to the State to give the State an opportunity to review and comment on the issue of whether a release has occurred that requires a response action.
  - Drafting Administrative Orders on Consent (AOC) that are not being prepared for enforcement purposes, but to document agreed environmental restoration actions to be taken. This may be eligible if in support of DERP activities and at DoD request (e.g. early transfer). AOCs are not eligible if related to enforcement against DoD or any other party.
  - Technical review of Operating Properly and Successfully (OPS) documentation.
  - Review of a LUC Implementation Plan describing a land use notice, covenant, environmental easement, or equivalent, developed by the DoD as part of the remedial selection process.

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### 2.3.4 Other Services

Other eligible services include:

- Other State services as set out in the State-specific DSMOA.
- Participation in any DoD established committee, sub-committee, or workgroup as set out in the State-specific DSMOA.
- Training when it provides technical knowledge to a State to assist DoD in carrying out DERP funded DoD activities for an installation listed on the CA Attachment A, is not otherwise covered by State overhead, is requested in advance by a DoD Component and included in a JEP, and is not otherwise ineligible.
- Formal and informal dispute resolution.
- State participation in internal State meetings/actions that do not include representatives of the DoD Component may be eligible when they are conducted in furtherance of a DoD response action that is DERP funded (e.g. technical meetings that assist the State to review a document submitted by DoD for their review). There are a number of external meetings that may or may not be eligible. As a general rule, attendance at external meetings would need to be DERP related, facility relevant, and requested by a DoD Component to be eligible.
- Review and comment on prioritization of eligible sites if included in Section II B. of the State's DSMOA.
- Interpretation and implementation of interagency agreements between the State and DoD concerning the conduct of environmental restoration actions by DoD (e.g., Federal Facility Agreements (FFA), installation-specific agreements, State/DoD Component voluntary agreements).

### 2.4 INELIGIBLE STATE SERVICES

Ineligible State Services include, but are not limited to:

- Activities not associated with projects funded by environmental restoration or BRAC funds.
- Activities associated with regulatory enforcement. Examples include:
  - preparation of stipulated penalties assessment.
  - preparation of an enforcement order, unless that enforcement order is an AOC as set forth above, such that it is in support of DERP activities and at the DoD's request (e.g., early transfer).
  - preparation of a Notice of Violation (NOV).
  - costs incurred in anticipation of and preparation for litigation, or the preparation or submission of a claim.

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- Services that could be performed by a contractor under a government contract in accordance with the Federal Acquisition Regulation (e.g., well drilling or landfill cover maintenance or repair).
- Services associated with projects at an installation not listed in the State's current CA Attachment A.
- Services that create a conflict of interest, or appearance of a conflict of interest, between DoD and the State or a private sector entity.
- Any activities constituting project execution required to be performed by DoD.
- Regulatory activities associated with the development or promulgation of State regulations, development of State guidance documents, or other State regulatory issuances.
- Sampling and monitoring activities (other than independent QA/QC by the State).
- Activities which are disallowed under Federal law, the DoDGAR, or any OMB Circular applicable to grants and CAs with States, including Circulars A-87, A-133, or any other guidance or regulation published at 2 CFR Subtitles A or B.
- State support services related to response actions undertaken by parties other than DoD.
- Real Property Transfer Documents – National Environmental Policy Act Record of Decision (ROD), Environmental Impact Statements (EIS), Environmental Assessments (EA), or deeds and any other real property conveyance instruments except that portion of a deed or conveyance document that includes a LUC.
- Potentially Responsible Party (PRP) Site – A site where more than one party, as defined in CERCLA section 107, has contributed to any contamination present. PRP sites are generally not eligible for DSMOA funding because response actions at PRP sites are typically conducted by PRPs other than DoD. State regulatory costs for PRP sites (PRP investigation, research and negotiations) are paid by the PRPs executing the response actions. DoD contribution to these costs, if determined to be appropriate under the circumstances, will be included in any settlement agreements. If DoD is performing the remedial action work, and the State certifies that it is receiving funding from no other source for activities otherwise eligible for DSMOA funding, the DoD site may be added to the DSMOA CA if found to be appropriate under the circumstances.

## SECTION 3 – DSMOA COOPERATIVE AGREEMENT PROCESS

### 3.1 OVERVIEW

Under the DSMOA Program, a State must apply for and be awarded a CA in order to obtain reimbursement for eligible services in support of DoD response and restoration at eligible DoD installations. The DSMOA CA is the contractual agreement which allows a State to be reimbursed for their eligible services.

This section of the Guide describes the process to apply for and obtain a CA, as well as post-award CA maintenance, and addresses:

- DSMOA Portal roles
- Pre-6 Step Process
- 6 Step Process
- State budget estimate for the CA
- Component approval process
- Steps in preparing the CA application
- Responsibilities of all parties in the preparation of the CA, including specifically identifying the State official with the authority to submit a CA application
- JEP update, addition and deletion processes
- Unilateral and bilateral modifications

The DSMOA Portal is essential for CA application and administration, and it is important for all DSMOA Community members to know their DSMOA Portal role and how to navigate in the DSMOA Portal.

### 3.2 DSMOA PORTAL ROLES

Each member of the DSMOA Community is assigned a DSMOA Portal Role, described as follows:

State POC	The representative from the State responsible for the overall coordination of their State's DSMOA Cooperative Agreement. In addition, they finalize State JEP activities, JEP estimates/budgets, and Performance Reports.
State Alternate POC	The representative(s) from the State assigned to support activities on a JEP and to perform activities in support of the State POC. There may be more than one State Alternative POC assigned to an installation.
State Financial POC	The representative(s) from the State responsible for financial issues related to the DSMOA Cooperative Agreement, and who has the authority to submit a payment request on behalf of the State. There may be more than one State Financial POC.
Step 2 POC	The installation representative from the DoD Component responsible for developing the JEP in coordination with the State POC or State Alternate POC. The Step 2 POC is the representative responsible for locking the JEP.

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Step 2 Alternate POC	The installation representative(s) from the DoD Component assigned to support the Step 2 POC in performing actions associated with JEP tasks.
Step 4 POC	The representative(s) from the DoD Component responsible for acting as an intermediary between Step 2 POC and Component POC. The Step 4 POC may have varying organizational or regional responsibilities within their DoD Component organizational structure.
Step 4 Alternate POC	The representative(s) from the DoD Component assigned to support the Step 4 POC as necessary.
Component POC	The representative from the DoD Component responsible for all JEPs and Component Approved Amounts for their Component funding type(s) in the DSMOA Program. Only the Component POC can finalize a Component Approved Amount.
Component Alternate POC	The representative(s) from the DoD Component assigned to support the Component POC as necessary. Component Alternates have similar responsibilities to those of the Component POC, with the exception of not having the ability to grant Component Approved Amounts in the DSMOA Portal.
DSMOA State Manager	The representative from DSMOA Team assigned as the Primary POC to assist States and DoD Components in administration of the DSMOA Program. Each State is assigned a DSMOA State Manager.
DSMOA Financial Manager	The representative from DSMOA Team assigned as the Primary POC to assist States in financial matters related to their DSMOA Cooperative Agreement. Each State is assigned a DSMOA Financial Manager.
Grants Officer	The DoD official with the authority to enter into, administer, and terminate a Cooperative Agreement on behalf of the Federal Government. The Grants Officer is responsible for obligating funds and administering DSMOA Cooperative Agreements on behalf of DoD, as well as making determinations on DSMOA eligibility.

### 3.3 PRE-6 STEP PROCESS

In order to begin the 6 Step Process, each installation covered during the CA period must be both listed on the DSMOA Portal and the appropriate POCs (i.e. Step 2 POC, Step 4 POC, Component POC, State POC, and State Alternate POC) assigned. The Pre-6 Step Process allows Component POCs and State POCs to make the necessary updates to the installation information for the upcoming CA period and assign POCs the various roles for each installation.

**Objective:** Ensure the list of installations is updated for the upcoming CA period and a POC for each DSMOA role is assigned to each installation.

**Schedule:** The Pre-6 Step process takes place during mid-May through mid-July of the calendar year preceding the effective date of the new CA period. The Pre-6 Step process is four weeks in duration.



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**Responsibilities:** Component POC – Identifies to the DSMOA Team all installations to be added or removed from the DSMOA Portal for the upcoming CA period; and assigns Step 2 POC(s), Step 4 POC(s) and any alternates to each installation.

State POC – Assigns State POC Alternates to each installation.

**Process:** To update the list of installations, the Component POC navigates to the “Installations” page, under the “CA Mgt” tab, for CA period XX-XX. (Detailed instructions are available on the DSMOA Portal.)

To assign POCs to each installation, the Component POC and the State POC navigate to the “CA Mgt” tab and select the “POC Mgt” tab. (Detailed instructions are available on the DSMOA Portal.)

### 3.4 6 STEP PROCESS FOR PREPARING THE COOPERATIVE AGREEMENT

The 6 Step Process was developed to encourage consistency, create efficiencies, ensure compliance with DoDGAR and simplify the JEP development and CA application for States and DoD. With use of these procedures, a CA will reflect actual cleanup and program activities at installations, create a common vision of the cleanup, and coordinate State and DoD budget cycles.

A State’s CA application is developed through continuous, mutual planning between State and DoD from initiation of the installation cleanup through site closeout. Although JEPs and a State’s CA application will be developed by those individuals who are most knowledgeable about the installation, it is understood that estimates of current and future workload and funding are likely to change as time passes, and therefore the JEPs may be updated at any time during the CA period.

For the DSMOA CA 6 Step Process to flow smoothly, all parties must adhere to the 6 Step schedule, perform their role, and communicate with each other.

The 6 Step Process consists of:

- Step 1 – State Election
- Step 2 – JEP Development
- Step 3 – State Budget Estimate
- Step 4 – Component Approved Amount
- Step 5 – State CA Application
- Step 6 – CA Award

A JEP establishes the agreed scope of services for the State, and covers a two-year CA period and a subsequent four-year (years 3 through 6) out-years period. The intent of the 6 Step Process is to produce and validate the CA application and award a CA to the State. Two primary program purposes are satisfied through the 6 Step Process. The first is to accurately project program funding requirements and provide support and documentation necessary for planning, programming, and budgeting. Secondly, the JEP generated in Step 2 defines the

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anticipated installation work plan and associated State activities for each installation listed on the CA Attachment A.

A Direct Program Support (DPS) JEP is developed for State support that is attributable to most or all installations, to eliminate having to distribute costs proportionately to each installation. Examples of DPS are listed in Section 3.4.3.1.3. A DPS JEP is developed for each funding type. If there is only one installation for a particular funding type, it is not necessary to create a DPS JEP.

A JEP is developed and maintained through mutual planning and coordination between the State POC and Step 2 POC. Ongoing communication throughout the process:

- Allows the States and Components to plan workload, thereby improving program efficiency
- Minimizes processing and approval delays
- Maximizes the accuracy and effectiveness of the JEP
- Expedites resolution of questions and concerns that may arise over the life of the JEP

All involved parties should be aware of the steps, expectations, and deadlines included in the 6 Step Process. No later than the first week of Step 2, the Step 2 POC and State POC (or State POCs) should review all significant work items and deadlines to ensure that all parties are aware of the dates and expectations (e.g., when the JEP will be finalized, expectations for document review and revision times, how delays should be communicated between the parties) for each step in the process. As each deadline approaches, the Step 2 POC and State POC should be in contact to increase the potential for a quality, timely product at the end of the process. If any Step 2, 3, or 4 deadline are missed for an installation(s), the installation(s) will not be on the initial Attachment A. If an installation needs to be added to the CA Attachment A after the CA is awarded, a JEP will need to be added (See Section 3.5.1.2 JEP Additions) and a bilateral modification will add it to the CA Attachment A (see Section 3.5.3 Bilateral Modifications).

During the 6 Step Process a calendar of the entire CA 6 Step schedule is available on the DSMOA Portal.

The DSMOA Team is responsible for the execution of the CAs, and will send out periodic global email reminders to Step 2, Step 4, Component and State POCs to provide guidance about where they should be in the 6 Step Process.

### 3.4.1 Step 1 – State Election

**Objective:** A State elects to participate in the upcoming CA period.

**Schedule:** Step 1 begins in late July of the calendar year preceding the effective date of the new CA period. Step 1 is two weeks in duration.

**Responsibilities:** The designated representative for the State (i.e., State POC) must elect to participate in the upcoming CA period on behalf of the State.

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**Process:** The State POC navigates to Step 1 page, under the “CA Mgt” tab, and elects to participate in the upcoming DSMOA CA period via the DSMOA Portal. Detailed instructions for completing this step are available on the DSMOA Portal.

### 3.4.2 Step 2 – JEP Development

**Objective:** The State POC and Step 2 POC (or their Alternate POCs) jointly develop JEPs for all installations to be included on the State’s CA Attachment A for the upcoming CA period. The JEP is developed in two sections:

1. Years 1 and 2 (planned work during the upcoming CA period)
2. Years 3 through 6 (planned work for the out years, to assist DoD Components in budgeting and requesting adequate funding for future CA periods)

JEPs are signed using an electronic submittal process for both the State POC and Step 2 POC and identify installation Tasks and Subtasks, as well as State Activities.

**Schedule:** Step 2 begins in August of the calendar year preceding the effective date of the new CA. Step 2 is completed in December. Step 2 consists of five sub-steps (Installations Tasks, State Activities, JEP Lock, Open Season and DSMOA Team Admin) and the entire duration is 19 weeks.

**Responsibilities:** The State POC and the Step 2 POC are jointly responsible for:

- Creating the JEPs for Years 1 and 2 based on each installation’s schedule of planned environmental restoration for the two-year CA period
- Creating the Out-Years Description of Work for Years 3 through 6
- Signing the JEP and Out-Years Description of Work to signify that they have been jointly prepared
- Updating and re-signing JEPs, as necessary during the CA period, after the CA Award (see Section 3.5.1 JEP Updates, Additions and Deletions).

**Process:** The Step 2 POC and the State POC navigate to the Step 2 page, under the “CA Mgt” tab for CA XX-XX in the DSMOA Portal. The Step 2 POC initiates the JEP and enters the Tasks and Subtasks. The State POC (or their assigned alternate) then enters the associated State Activities. Once the Activities are complete, the Step 2 POC and the State POC sign the JEP, and finally the Step 2 POC locks the JEP.

Following JEP Lock, a two week JEP Open Season will allow the Step 2 POC and the State POC to revisit incomplete JEPs and/or add new JEPs, in an effort to capture all the anticipated work in the upcoming CA period prior to Step 3. If a JEP is not completed before the final Step 2 deadline, it

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will be deleted and not advance to Step 3, and will not be included in the State's CA Attachment A. Installations which are not included in the State's CA Attachment A may be added after the CA Award (see Section 3.5.1 JEP Updates, Additions and Deletions).

### 3.4.2.1 Joint Execution Plan

JEPs should be developed on an installation-wide basis rather than by site-wide or on an operable unit-specific basis. Note that for installations with more than one source of funds, such as the Installation Restoration Program (IRP) and Military Munitions Response Program (MMRP), two JEPs are needed.

For each installation, the Step 2 POC initiates the development of the JEP and coordinates with the State POC (or State Alternate POC) to create a mutually agreed JEP covering Years 1 and 2 of the CA. The JEP should be based on the installation's schedule of planned activities during the two-year period of the CA, as well as a general plan for upcoming work in Years 3 through 6 of the JEP.

Step 2 POCs should be proactive during JEP development to ensure that JEPs are consistent with Component Management Action Plan (MAP).

Each Component must develop a MAP for each installation where activities under the DERP have yet to be completed. The MAP is used to identify and monitor environmental restoration requirements, schedules, and estimates of cost. The MAP also serves as the basis for an installation's input to overall program planning, programming, budget development, and execution decisions. In sum, the MAP describes an integrated, coordinated approach for conducting all environmental restoration activities required at an installation. As these restoration activities usually require several years to complete, the MAP shall address all required actions, by year, up to and including the year when the environmental restoration requirements are expected to be complete.

Step 2 POCs should ensure that information in the MAPs and JEPs is consistent and that as a MAP is updated, the JEP is updated as well.

The State POC should have an understanding of the budget requirements for the installation's restoration activities during the CA period. The Step 2 POC should provide general budget information to the State POC to assist the State POC in understanding funding strategy, levels and limitations, the magnitude of planned projects, and the potential impact of periodic program reviews on restoration program requirements.

The State POC and the Step 2 POC mutually agree upon the estimated work to be accomplished by the installation and the State during Years 1 and 2 of the next CA. The State POC and the Step 2 POC should fully identify and resolve any issues surrounding activities that will be included in the JEP (for example, deliverable details, involvement of specialists, issues of concern, special equipment purchases or training, community outreach requirements, and regulatory participation at briefings or conferences). During this step there should be a discussion and mutual understanding of the level of effort and estimated hours required to conduct restoration activities. The JEP should include only those activities that are anticipated to occur during the period of the CA. The JEP should be reviewed during the CA period, and must be revised if the scope of the restoration changes significantly. Milestones should be

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identified for the installation, along with corresponding actions by the State. Limits on State resources may become apparent at this time, and their impacts discussed. These limitations should be noted in the comments section on the JEP.

Detailed instructions for building a JEP are available on the DSMOA Portal.

### 3.4.2.2 Out-Years Description of Work

Concurrent with the planning for Years 1 and 2, the State POC and the Step 2 POC discuss and agree on a summary of activities and anticipated plans for Years 3 through 6. Although plans for Years 3 through 6 may not be well defined and conditions may change, it is still important that the installation share with the State the prevailing thoughts for these out-years. Using the best information available at the time, these out-year plans will show trends for the future DSMOA Program that are useful in overall DoD planning. The installation's MAP provides plans through the completion of the restoration program and should be used as guidance for developing the out-year plan. As with any plan, MAPs are living documents, and the installation and State should ensure that the two-year JEPs and out-years plans are consistent with the latest working version of the MAP.

Following completion of the JEP, the State POC and the Step 2 POC verify their discussions and agreement by jointly electronically signing the JEP. The resulting JEP for Years 1 and 2 becomes the basis for the new CA.

### 3.4.2.3 Additional Information

The signatures of the State POC and the Step 2 POC on the JEP are denoted by electronic submittals made by each party and that are captured in the DSMOA Portal database and displayed on the JEP. These signatures validate the mutual understanding of both parties of the best estimates of the work anticipated in the future. The DSMOA Community understands that, as a result of the dynamic nature of environmental restoration, Federal budgets, and State resource capacities, such estimates of work may change, especially the estimate for the out-years. The State POC and the Step 2 POC should maintain communications and notify each other when significant changes are anticipated. Upon mutual agreement of necessary changes to the JEP, both the State POC and the Step 2 POC should sign and retain copies of the original and revised plans.

### 3.4.3 Step 3 – State Budget Estimate

**Objective:** A State develops a budget estimate for the activities to be performed during the upcoming two-year CA period.

**Schedule:** Step 3 begins in January of the calendar year of the new CA period. Step 3 is four weeks in duration.

**Responsibilities:** A State develops a budget estimate in the DSMOA Portal for the costs of the activities for each JEP. The State POC:

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- Estimates the site-specific costs and non-site-specific costs of providing direct technical and program support on the basis of the agreement reached in Step 2 for Years 1 and 2 of the JEP.
- Prepares an estimated cost (level of effort) for State services for Years 3 through 6.
- Enters and submits the State budget estimate for each JEP in the DSMOA Portal.

**Process:** A State develops an estimate of the total funding required by the State for eligible activities to support the accomplishment of environmental restoration for each installation and the DPS JEPs covered under their proposed CA Attachment A for activities on the JEP. The total funding estimate is calculated by adding all direct and indirect costs. Backup data includes a breakdown of estimates for direct technical, program support, and totals by installation for each year of the CA period. The estimate should reflect the work identified on the signed JEP. A State also develops budgetary estimates for State services for Years 3 through 6 that should reflect the activities identified in the signed Out-Years Description of Work (Years 3-6). Detailed instructions for completing this step are available on the DSMOA Portal.

A State retains information it used to develop estimates for its State Budget Estimates. The system a State uses to develop cost estimates must be acceptable to subsequent audit review.

### 3.4.3.1 State Cost Categories and Determining State Costs

Cost estimates for a State to provide services in support of the DERP may include costs in the following categories:

- Direct salary costs
- Other direct costs
- Direct program support costs
- Agency indirect costs

In a CA application, each cost must be shown for each DoD Component and funding program, specifying IRP, MMRP, or BRAC category. Each of the cost categories is explained below.

#### 3.4.3.1.1 Direct Salary Costs

Costs of hours worked and other benefits required by law to be paid to employees working on DSMOA eligible services related to DoD installations on the CA Attachment A.

Examples include the estimates of hourly costs expended by:

- Engineers
- Geologists
- Hydrogeologists

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- Environmental Scientists
- Toxicologists
- Project Managers
- Attorneys
- Public Information Officers (for joint activities or activities requested by a Component)

### 3.4.3.1.2 Other Direct Costs

Costs incurred as a direct result of the work of agency staff on DSMOA eligible services related to a DoD installation on the CA Attachment A.

Examples include the costs of:

- Supplies
- Travel
- Printing and publishing of documents
- Purchase or rental of equipment
- Laboratory services
- Contractor services
- Any other direct costs related to a specific installation

### 3.4.3.1.3 Direct Program Support (DPS)

Non-site-specific direct program costs necessary to support a State's ability to provide services supporting DoD's implementation of their environmental restoration program.

Examples include the costs of:

- General program management and supervision
- Participation in conferences, seminars, or work groups related to DERP eligible site restoration
- Clerical support
- Computer support and database management
- Development of CAs

### 3.4.3.1.4 Agency Indirect Costs

Additional overhead costs calculated using the indirect rate approved by the cognizant Federal audit agency for the State. For many States, this Federal agency is the U.S. Department of Health and Human Services.

## 3.4.4 Step 4 – Component Approved Amount

**Objective:** The Component POC develops and enters a Statewide Component Approved Amount for each funding type.



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**Schedule:** Step 4 begins in February of the calendar year of the new CA period. Step 4 consists of three sub-steps (Component Approval Amount, Reconciliation and DSMOA Team Admin) and the entire duration is seven weeks.

**Responsibilities:** A State’s detailed estimates by installation for Years 1 and 2, as well as general estimates for Years 3 through 6, are available on the DSMOA Portal for the appropriate Step 4 and Component POCs to access. The Step 4 POC and the Component POC review the State Budget Estimate for reasonableness and determine whether the levels of State effort appropriately reflect the nature of activities, size and complexity of the planned six-year restoration for the JEP. The Component POC enters a two-year CA Component Approved Amount for each funding type.

The DSMOA Team performs administrative duties to ensure Steps 2-4 are properly captured on the DSMOA Portal to ensure correct data is available for the remaining 6 Step Process and JEPs for the upcoming CA period.

**Process:** The Step 4 POC and the Component POC review a State’s estimates to verify that the data submitted accurately addresses the activities or services reflected on the respective JEPs and schedule during the two-year CA and the out-years period. The DoD Component Step 4 POC and the Component POC also verify that the levels of effort are appropriate for the nature of activities, size and complexity of the restoration program.

After reviewing the State Budget Estimates, the Component POC enters a Component Approved Amount for each installation and then locks each funding type by State. Detailed instructions for completing this step are available on the DSMOA Portal.

Any significant difference of opinion on budget costs should be resolved during Step 4. The Component should communicate with the State during the Reconciliation week of the Step 4 Process if there is a discrepancy between a State Budget Estimate and the Component Approved Amount.

### 3.4.5 Step 5 – State CA Application

**Objective:** The State POC prepares the State’s CA Application and submits it to the DSMOA Portal.

**Schedule:** Step 5 begins in late March or early April of the calendar year in which the new CA will become effective, and is four weeks in duration.

**Responsibilities:** The State POC prepares the State’s CA Application and submits it to the DSMOA Team for processing.

**Process:** The State POC navigates to the Step 5 page, under the “CA Mgt” tab for CA XX-XX in the DSMOA Portal. The State POC utilizes the DSMOA Portal reports to prepare the State’s CA Application. The State POC then submits its State’s CA Application to the DSMOA Team for processing. Generally, the cost estimates in the State’s CA Application should be the



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same as the estimates submitted in Step 3, and do not need to match the Component Approved Amount. There may be circumstances which cause the amounts to differ (i.e. additional work is accounted for that did not make it through Steps 2 through 4, but is anticipated to be added once the CA period begins). Detailed instructions for completing this step are available on the DSMOA Portal.

The CA Application consists of:

- **Transmittal Letter** – Includes a statement acknowledging that the data in the application were obtained as a result of following the 6 Step CA process.
- **Standard Form (SF) 424, Application for Federal Assistance** – Provides information about the State applicant and the proposed project(s).
- **SF 424A, Budget Information – Non-Construction Programs** – Provides budget estimates and funding information (Note: Supporting application breakdown information to complete SF 424A is available to States in a downloadable report generated by the DSMOA Portal based on the State's input to the 6 Step Process). The form requires information in the following sections:
  - Section A – Budget Summary
  - Section B – Budget Categories (personnel, fringe benefits, travel, equipment, supplies, contractual, other, and indirect charges)
  - Section C – Non-Federal Resources
  - Section D – Forecasted Cash Needs (for Year 1, by quarter)
  - Section E – Budget Estimates of Federal Funds Needed for Balance of the Project
  - Section F – Other Budget Information
- **SF 424B, Assurances – Non-Construction Programs** – Indicates that the State official has the authority to apply for Federal assistance and that the State has the institutional, managerial, and financial capabilities to ensure proper planning, management, and completion of the project described in the application. The form also acknowledges that the State will comply with certain applicable Federal laws and statutes.
- **Reports generated by the DSMOA Portal** (available on the Step 5 page):
  - DSMOA Supporting Application Breakdown (used in SF 424A)
  - State Step 3 Budget Summary
  - State Step 3 Budget Detail
  - State Budget Breakdown - Totals Step 3
  - State Budget Out-Years Summary - Step 3
  - State Pending CA Attachment A

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- **Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements** – Certifies that the State applicant is in compliance with requirements pertaining to lobbying; debarment, suspension, and other responsibility matters; and a drug-free workplace.
- **Certification of Signature Authority** – Statement by the legal authority for the State that designates the individual who may sign the CA on behalf of the State.
- **Financial Signature Authority** – Individual(s) authorized to sign the SF 270 on behalf of the State. The form must be updated if a new individual is added during the CA period.
- **Indirect Rate Information** – The State’s most current Indirect Rate, as determined by the Cognizant Audit Agency. If a State’s rate changes during the CA period, the State’s new rates must be provided to the DSMOA Team.
- **Audit Information** – The State’s most current A-133 Single Audit Report. The State can be the actual report or a link to the report.

Timely State submittal of the complete CA Application is essential to ensure that progress in Step 6 is not affected. After the State POC submits its State’s CA Application to the DSMOA Portal, the DSMOA Team ensures the application is complete. The DSMOA Community may track the status of Steps 5 through 6 on-line for all States, via the DSMOA Portal.

The DSMOA Team provides summary information, separated by funding type, to the DoD Component POCs and coordinates with the DoD Component POCs to obtain their final concurrence.

### 3.4.6 Step 6 – CA Award

**Objective:** To award a CA to a State.

**Schedule:** Step 6 begins in late April or early May of the calendar year in which the new CA will become effective. The new CA period begins on July 1. DoD Component POCs should complete their Step 6 responsibilities by early May. The DSMOA Team prepares the CA for State signature in late May. A State should complete its Step 6 responsibilities by mid-June. The DSMOA Team obligates funding to the State signed CA, and the Grants Officer signs and awards the CA by July 1. Step 6 is nine weeks in duration.

**Responsibilities:** The DSMOA Team verifies a State’s CA Application is complete, posts the status for Step 6 on the DSMOA Portal, prepares the CA and issues it to a State that has a complete CA Application.

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The DoD Component POCs forward DSMOA Year 1 funds to the DSMOA Team.

A State signs and returns its CA to the DSMOA Team for funds obligation and Grants Officer's signature.

The DSMOA Team obligates the funding to a State's CA and the Grants Officer signs and awards the CA to the State.

**Process:** The DSMOA Team verifies that the content of the State's CA Application is acceptable and follows up with the State as necessary for clarification or correction of the State's CA Application content. The DSMOA Team posts the status of Step 6 on the DSMOA Portal as they become available, for the DSMOA Community to track.

The DoD Components forward approved funding to the DSMOA Team in early May.

Once funding is available and a State's Application is complete, the DSMOA Team prepares and issues the CA for State signature.

The State signs and returns the CA to the DSMOA Team.

The Grants Officer signs and awards the CA, obligating the funds for use in support of installations and DPS on the CA Attachment A.

Detailed instructions for completing this step are available on the DSMOA Portal.

### 3.5 POST-AWARD COOPERATIVE AGREEMENT MAINTENANCE

After the CA is awarded, additional modifications may be required to add or remove funding and installations over the two-year period, as a result of changes in the work plan. Post-award maintenance to the CA consists of:

- Updating, adding and removing JEPs from the DSMOA Portal
- Unilateral modifications (adding funding and administrative changes to CA)
- Bilateral modifications (removing funding from the CA, adding and removing installations from the CA)

Each of these topics is discussed below in further detail.

#### 3.5.1 JEP Updates, Additions, and Deletions

During the CA period, the installation work plan may change, requiring JEPs to be updated, added or deleted. Similar changes may also occur with respect to the DPS. The changes are addressed and accomplished on the DSMOA Portal, by accessing the Draft JEP tab on the JEP Update page. The JEP Update Page is located under the "CA Mgt" tab, under "CA XX-XX".

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### 3.5.1.1 JEP Updates

A JEP should be updated when there is a significant change to the work plan or funding. Updating an existing JEP follows a similar process to Steps 2 through 4 in the 6 Step Process.

These are the steps to update a JEP:

1. The Step 2 POC initiates the JEP update and updates the Tasks and Subtasks.
2. The State POC updates the State Activities.
3. The Step 2 POC locks the JEP.
4. The State POC updates the State Budget Estimate and requests any necessary funding.
5. The Component POC updates the Component Approved Amount, if necessary.

All of the above Steps must be complete to update a JEP. Once a JEP update is finalized, the updated JEP will overwrite the current JEP in the DSMOA Portal. Only the most current version of a JEP is available on the DSMOA Portal. Users are encouraged to print out and retain a hard copy of all JEPs of interest, if they want a history of the JEP changes.

### 3.5.1.2 JEP Additions

Any installations or DPS that did not make it through the 6 Step Process at CA Award and should be on a State's CA Attachment A, will need to be added after CA Award via a bilateral modification. In order to add an installation or DPS to the CA, a JEP must first be added.

These are the steps to adding a new JEP:

1. The Component POC coordinates with the DSMOA Team to add the proposed installation to the DSMOA Portal database.
2. The Step 2 POC initiates the JEP and adds the Tasks and Subtasks.
3. The State POC adds the State Activities.
4. The Step 2 POC locks the JEP.
5. The State POC completes the State Budget Estimate and requests any necessary funding.
6. The Component POC adds the Component Approved Amount, if necessary.

Once the JEP addition process is finalized, the DSMOA Team will initiate a bilateral modification to add the new installation or DPS, as well as any necessary funding to a State's CA.

### 3.5.1.3 JEP Deletions

The Component POC will notify the DSMOA Team that an installation has been proposed for deletion. Once notified, the DSMOA Team will initiate a bilateral modification to delete the installation from a State's CA. The DSMOA Team will coordinate with the Component POC and State POC and State Financial POC to ensure the final payment for the deleted installation is issued to a State.

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### **3.5.2 Unilateral Modifications**

The Grants Officer, representing the Federal Government, can implement administrative changes to the CA as unilateral modifications. For the purpose of the CA, administrative changes include any increase in grant funds as specified in the CA Attachment B for any work currently included in the JEP, or administrative changes regarding the Grants Officer or POC specified in the CA for the Federal Government or State, such as name, address, phone number, e-mail address, typographical or calculation error changes. Unilateral modifications are issued with the signature of the Grants Officer only. Unilateral modifications are administratively initiated and processed by the DSMOA State Manager following the instructions of the Grants Officer. Unilateral CA Attachment B modifications involving funds transfer are typically drafted by the DSMOA State Manager and forwarded to the DSMOA Financial Manager for fund verification prior to forwarding to the Grants Officer for issuance. Once issued, the unilateral modification is posted on the DSMOA Portal in a State's folder.

### **3.5.3 Bilateral Modifications**

Bilateral modifications can be issued by the Grants Officer and require the signature of both the Grants Officer and the authorized representative of the State prior to being effective. Bilateral modifications are issued when:

- adding or removing installations on the CA Attachment A
- decreasing funds specified on CA Attachment B

Bilateral modifications are initiated by the DSMOA State Manager at the instruction of the Grants Officer following prior negotiations/agreement between the Grants Officer, State, and the Component. The DSMOA State Manager drafts the bilateral modification, which includes the agreed-upon changes, and sends the modification electronically to a State for signature. A State indicates formal concurrence by signing the bilateral modification, and returns the signed modification to the DSMOA State Manager. The DSMOA State Manager then forwards the signed modification directly to the Grants Officer in the case of JEP or CA Attachment A changes, or to the DSMOA Financial Manager for verifying CA Attachment B funding changes prior to forwarding to the Grants Officer for issuance. Once issued, the bilateral modification is posted on the DSMOA Portal in the State's folder.

## **SECTION 4 – DSMOA FINANCIAL MANAGEMENT**

### **4.1 OVERVIEW**

This section of the CA Guide discusses the financial aspects of DSMOA, and is organized by the following topics:

- State reimbursement procedures
- 80% Obligation notification procedures and funding requests
- AFR
- In-Progress Review (IPR)
- DoD budget deadlines and impacts

The DSMOA Portal provides DSMOA Community members access to real-time financial reports pertaining to the DSMOA Program to assist them with DSMOA financial management matters that pertain to them. Some examples of financial reports and information available on the DSMOA Portal include:

- Component Approved Amounts
- State Obligated Amounts
- State Paid to Date Amounts

### **4.2 State Reimbursement**

A State is required by the DoDGAR and CA to submit payment requests at a minimum on a quarterly basis. However, States are encouraged to submit payment requests on a monthly basis, if possible. Section 4.2.1 describes the procedures a State Financial Manager follows to request a reimbursement. Section 4.2.2 describes the DSMOA Financial Manager process for making a payment to the State.

#### **4.2.1 Procedure for State Reimbursement**

A State seeking payment for eligible services must submit an electronic payment request on the DSMOA Portal and email or fax a signed SF 270 to the DSMOA Financial Manager. The State Financial POC follows these steps:

1. Collects all paperwork for the performance period and activities for which the payment request will be submitted.
2. Sorts all cost information by DoD Component, funding type, then installation (this is the order in which the information will need to be entered into the system) and verifies the accuracy and eligibility of each cost entry.
3. Logs onto the DSMOA Portal.
4. Navigates to CA Mgt > DSMOA CA XX-XX > State Billing.

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5. Enters the payment request dates which identify the period of time for which the State has incurred expenses and is requesting payment. The DSMOA Portal automatically generates a unique identifier for the bill (labeled as “Bill ID”) on the DSMOA Portal.
6. The State Financial POC has the option of attaching its own identifier to the payment request (labeled as “State Bill ID” on the DSMOA Portal) which the State may use in identifying correlating data in their own finance and accounting system. DoD does not use this information in any way and its entry and use is solely at the discretion of the State.

Final Bill Submittal: The “Final Billing” box on the electronic payment request is **ONLY** selected when a State is submitting the last and final payment request for a particular DSMOA CA period. Once checked, no additional payment request will be allowed against that DSMOA CA.

7. Enters the cost for each installation in the appropriate box. Negative amounts are not allowed. If a State Financial POC has issues entering the payment request, they may contact the DSMOA Financial Manager for instructions. If a State Financial POC wishes to enter a comment concerning the payment request, text edit boxes are available.
8. Saves and prints any necessary reports.
9. Submits the payment request.
10. Faxes or emails an electronic copy of the completed SF 270 with the required signature to the designated DSMOA Financial Manager. A State should retain the original, signed copy of the SF270 in its records. A blank SF 270 can be found on the DSMOA Portal under the “Docs” tab, DSMOA Forms, Reimbursement Forms.

A Financial Signature Authority form of the individual(s) authorized to sign the SF 270 on behalf of the State must be on file with the DSMOA Team. For each CA period, a new Financial Signature Authority form is submitted during the CA Application during Step 5 (see Sec 3.4.5). If the signatory authority changes, a State must submit a new Financial Signature Authority form containing the signature(s) of the individual(s) who are authorized to sign SF 270 and the individual who can authorize certification along with SF 270. A copy of Financial Signature Authority form can be found on the DSMOA Portal.

The signed SF 270 serves as notification to the DSMOA Financial Manager that a payment request has been submitted. The State Financial POC may log in to the DSMOA Portal in order to check on the status of a payment request at any time. Detailed instructions are available on the DSMOA Portal.

A State is required to maintain backup data associated with costs for personnel, administrative charges, benefits, travel, equipment, supplies, contract, indirect, and other costs. A State should be able to link costs invoiced with services provided as outlined on the JEP. This data does not need to be submitted with a State’s payment request; however, the data must be made available, if requested by the DSMOA Team or Component POC.

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### **4.2.2 USACE Voucher Processing and Quality Assurance**

A SF 270 is submitted by a State to their DSMOA Financial Manager. Improperly prepared payment requests will be returned immediately to the State Financial POC.

Properly prepared payment requests will be processed as follows:

1. The payment request is processed electronically through USACE to the payment center. The payment center disburses payment via electronic funds transfer (EFT) to the State.
2. State POCs and State Financial POCs, Step 2 POCs and 4 POCs, and Component POCs may review State reimbursements using the DSMOA Portal. A State must provide documentation of reimbursable expenses if requested by the Component POC or DSMOA Team.
3. If a Component POC identifies questionable expenses submitted on a payment request or reimbursement, the Component POC first contacts the State POC. If, after contacting the State POC, the Component POC still questions the eligibility of reimbursable expenses under the DSMOA or the DSMOA CA, the Component POC will notify the Grants Officer in writing, identifying the State activities in question and the related expenses. The Grants Officer will investigate the questioned expenses and determine the eligibility. The Grants Officer will notify, in writing, the State POC, Component POC, and DSMOA State Manager on the determination of eligible or ineligible charges.

### **4.3 80% OBLIGATION NOTIFICATION AND FUNDING REQUESTS**

The CA requires a State to notify the Grants Officer when they are approaching 80% of the obligated amount for any funding type on their CA. The purpose of the 80% notification is to establish a standard process for requesting additional funding during the CA and prevent the State from incurring costs above the obligated amount on their CA Attachment B. The procedure for making the 80% obligation notification and subsequent funding, if needed, request is described below.

The Component Approved Amount is the two-year CA budget amount approved by the Component during the 6 Step Process for a State and may be revised as needed at any time during the CA period. The Grants Officer may obligate funding up to, but not exceeding the Component Approved Amount, without prior approval from the Component.

Obligated funding is the amount of DoD funding awarded to a State on their CA Attachment B, which may be utilized to reimburse a State for DSMOA eligible services performed during the performance period of the CA.

There are three types of 80% Notifications a State may make:

- 80% Notification with No Funding Request
- 80% Notification with Request for Funding within the Component Approved Amount
- 80% Notification with Request for Funding above the Component Approved Amount



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### **4.3.1 80% Notification with No Funding Request**

States must send an email notification when they are approaching 80% of the obligated amount for any funding type within the CA (e.g. Army MMRP, Air Force IR, FUDS MMRP, Navy MMRP, etc.).

The State POC sends the email notification to the following parties:

- Grants Officer
- DSMOA State Manager
- DSMOA Funds Manager
- DSMOA Program Manager

The notice shall include a statement that the State has reached 80% of their funding, but does not require any additional funding to complete the CA period. The DSMOA State Manager sends an acknowledgement to the State and informs the rest of the DSMOA Team.

### **4.3.2 80% Notification with Funding Within the Component Approved Amount**

States must send an email notification when they are approaching 80% of the obligated amount for any funding type within the CA (e.g. Army MMRP, Air Force IR, FUDS MMRP, Navy MMRP, etc.). The State POC sends the email notification to the following parties:

- Grants Officer
- DSMOA State Manager
- DSMOA Funds Manager
- DSMOA Program Manager
- Component POC

The notice shall include the following:

- The amount of additional funding the State is requesting, if necessary.
- The date the current funds will be expended and/or the date the additional funds must be received.
- A description of the task(s) to be completed with the additional funding if it is outside of the original JEP activities (additional activities).
- Any other information the State determines necessary to support their request.

The DSMOA State Manager responds to the State POC's email notification as follows:

- If the DSMOA Team has the funding available, the DSMOA State Manager sends an email notifying all parties in the State POC's initial email that a unilateral modification will be executed to add additional funds.
- If the DSMOA Team does not have funding available, the DSMOA State Manager sends an email informing all parties in the State POC's initial email that no funds are currently available. The DSMOA Funds Manager will coordinate and request additional funding from the Component. Once the funding is received, a unilateral modification will be executed to add additional funds.

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If funding is **NOT** available, the State **SHALL NOT** expend funds greater than the amount obligated unless it has written authorization from the Grants Officer. If this procedure is not followed, the State is operating at its own risk.

### 4.3.3 80% Notification with Funding Above the Component Approved Amount

States must send an email notification when they are approaching 80% of the obligated amount for any funding type within the CA (e.g. Army MMRP, Air Force IR, FUDS MMRP, Navy MMRP, etc.). The State POC sends the email notification to the following parties:

- Component POC
- Grants Officer
- DSMOA State Manager
- DSMOA Funds Manager
- DSMOA Program Manager

The notice shall include the following:

- The amount of additional funding the State is requesting.
- The date the current funds will be expended and/or the date the additional funds must be received.
- A description of the task(s) to be completed with the additional funding if it is outside of the original JEP activities (additional activities).
- Any other information the State determines necessary to support their request.

The Component POC responds to the State POC's email notification by:

- Acknowledging the receipt, via e-mail to all parties in the State POC's initial email, within seven working days from receipt of request.
- Reviewing the request and coordinating with the State POC on any additional information needed.
- Notifying the Grants Officer, State POC, DSMOA Funds Manager, DSMOA Program Manager and the DSMOA State Manager, via e-mail, of their approval or disapproval.
- Increasing the Component Approval Amount and providing additional funding, if necessary.

If the State's request is approved, the DSMOA Team will issue a unilateral modification as soon as funding is available. The State shall not exceed the amount obligated without prior written approval from the Grants Officer.

If disapproved, the State may request a conference call between the Component POC, DSMOA State Manager, DSMOA Program Manager and the Grants Officer, to discuss any differences.

If funding is **NOT** available, the State **SHALL NOT** expend funds greater than the amount obligated unless it has written authorization from the Grants Officer. If this procedure is not followed, the State is operating at its own risk.

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### 4.4 ANNUAL FUNDING REVIEW (AFR)

An AFR is conducted each year to allow a State to review its State budget estimates and make adjustments based on its actual and anticipated support during the CA period.

Successful completion of the AFR process allows DoD to make the best possible use of available funding. This process identifies funding excesses and shortages, and funds are redistributed accordingly.

**Objective:** A State reviews its current and future funding requirements and reports any necessary adjustments to the DSMOA Team.

**Schedule:** A State participates in the AFR for Year 1 in April after the CA award and for Year 2 in February before the CA period ends.

**Responsibilities:** The State POC and Step 2 POC are jointly responsible for reviewing their JEPs and making any necessary updates.

State POC reviews their funding requirements, completes the AFR reporting form, and returns the results to the DSMOA Team.

The DSMOA Team distributes AFR forms to the State POCs, and compiles the results of the AFR and distributes them to the Component POCs.

**Process:** The DSMOA Team provides the State POC with the AFR reporting form, which includes the State's current CA Attachment B obligated amount, for each funding type.

The State POC contacts the Step 2 POC to learn of any anticipated work plan changes that may affect workloads. The State POC assesses the estimated CA costs for Years 1 and 2 documented in the original Component Approved Amount, available on the DSMOA Portal, to determine whether the obligated funds on their CA Attachment B are sufficient to complete the State activities described in the JEP(s) in the current year or whether adjustments are required (increases or decreases in funding levels). The State POC enters the revised two year total for each funding type, and returns the AFR reporting form to the DSMOA Team.

The DSMOA Team compiles all the results of the AFR for each State, by Component fund type, and provides the results to the Component POCs.

### 4.5 COMPONENT IN-PROGRESS REVIEW (IPR)

The DSMOA Team conducts an IPR for the Components after the AFR to discuss the results and any necessary funding requirements. The Component POCs then review and adjust their Component Approved Amounts. Any funding surpluses identified in the AFR may be de-obligated via a bilateral modification and applied to other States with shortages in the same funding type or returned to the DoD Components. The Component POCs provide any additional funding required to the DSMOA Team. A State's CA may be adjusted to reflect the AFR.

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- Objective:** The Component POC makes any required funding adjustment to the Component Approved Amount and provides any additional funding necessary for a State's CAs.
- Schedule:** The IPR is held after the completion of the AFR. Components provide any additional funding to the DSMOA Team by the end of May.
- Responsibilities:** The Component POC adjusts the Component Approved Amount and provides the DSMOA Team with any additional funding required as a result of the AFR.
- The DSMOA Team secures adequate funds for the State and issues the associated modification to the CA Attachment B, if required.
- Process:** The DSMOA Team conducts an IPR for the Components to discuss the results of the AFR. Any funding surpluses identified in the AFR may be applied to other States with shortages in the same funding type or returned to the DoD Components, as appropriate.
- If the AFR reveals funding shortages, the DSMOA Team requests additional funds from the DoD Components. Once the additional funds are received, a unilateral modification will be issued to add additional funding to the State's CA. Out of cycle funding requests follow this same process.

### 4.6 BUDGET DEADLINE AND IMPACTS

The goal of the 6 Step CA process is to develop a timely, accurate projection of eligible State Activities and to plan Component funding to maximize remediation by providing reimbursement for eligible services to the States for their support of response actions. Funding for State participation in the DERP through the DSMOA comes from DoD Component Defense ER or BRAC accounts. The funding levels are based on the State budgets developed during the 6 Step Process, for Years 1-2, as well as Years 3-6. No State Budget Estimate is necessary for Years 3-6, if cleanup at the installation will be completed during the current CA period, and no future funding for that installation is needed.

The fixed deadlines for DoD Component and State completion of the 6 Step Process, particularly the submittal of State CA applications and budgets, are driven by the need to optimize use of funds and mitigate the adverse effects of late submittals. During the 6 Step Process, incomplete JEPs will not move forward in the DSMOA Portal and therefore will not be included as an installation on the State's CA. JEPs may be updated, added, or deleted at any time during the CA period (see Section 3.5.1).

CA applications that are submitted after the deadline may experience delays in funding, or potentially no funding at all, because DoD Components may have obligated available funds elsewhere within the restoration program. Additionally, throughout the year, a State may experience a budget shortfall for some DoD Component projects and excesses for others because of changes in activities and schedules. The DSMOA funding process can accommodate the changes in schedules and activities that DoD Components and the State experience if the CA application and budgets are submitted on time. It is in the best interest of all parties involved to complete the 6 Step Process on schedule.

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CAs must be fully funded to the extent of agreed State activities, as required by fiscal law and regulations and subject to availability of funds.

## SECTION 5 – PERFORMANCE REPORTS

### 5.1 OVERVIEW

Per the DoDGAR 32 CFR §33.40, States are required to submit a Performance Report containing a comparison of actual accomplishments to the objectives established for the CA period. States complete the Performance Report on an annual basis, which is due 90 days after the reporting period ends (i.e. NLT September 30 of each year). For each installation, the State indicates if the objectives were met, partially met or not met for the reporting period. The State POC completes the Performance Report via the DSMOA Portal for each year for each JEP of their CA Attachment A. State Alternate POCs may also complete the Performance Reports, however only the State POC may submit the final report.

The Performance Report is not the forum to notify DSMOA participants of critical issues; critical issues should be raised through the proper management chains.

### 5.2 PERFORMANCE REPORT TERMINOLOGY

Pertinent terminology that applies to DSMOA Performance Reports is listed below:

**Performance Reports** – A non-financial report required by federal regulation, designed to provide an assessment of a Grantee’s effectiveness regarding completion of grant related tasks. In general, Performance Reports should contain the following:

- A brief comparison of actual accomplishments with the goals and objectives established for the period;
- Reason(s) why established goals were not met, if appropriate; and
- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

For the purposes of the DSMOA CA, the Component requested Tasks and Subtasks are supported by the State who provides eligible State Activities for installations on their CA Attachment A. The State Activities are the objectives rated in the Performance Report.

The Performance Report format includes three options for rating objectives:

- Met
- Partially Met
- Not Met

The Performance Report is a reflection of all the State Activities completed at the installation and is installation-specific, but not specific to individual sites within the installation.

Per the DODGARs, Performance Reports are provided on an annual basis. Because the DSMOA CA has a performance period of two years, there are two Performance Reports for each CA period. The first report, due 90 days after the end of the first year, covers performance in the first 365 days of the CA. The second report, due 90 days after the closing date of the CA, covers the performance of the second 365 days of the CA. The combination of these two reports satisfies the DODGAR Performance Report requirement.

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**Objectives Met** - The Performance Report reflects “Met” when a State has completed all of the eligible State Activities related to the Tasks requested by DoD for an installation for the CA performance period. No explanation is required for facilities where the objectives have been met. In the case where a State has received a State Activity request (e.g. request for comments on a document) just prior to the close of the CA performance period, and both the Component and State agreed that a response to that request is not due before the end of that CA performance period, that work should be excluded from reporting in that CA performance period.

**Objectives Partially Met** – The Performance Report reflects “Partially Met” when the State has completed some, but not all, of the eligible State Activities related to the Tasks requested by DoD for an installation in the reporting year. For example, a State received a request for comments on four documents, but only submitted comments on three of the documents. Per the DODGARs, the State must provide an explanation for the Partially Met report request.

**Objectives Not Met** – The Performance Report reflects “Not Met” when a State has not completed any State Activities related to the Tasks requested by DoD for an installation for the CA performance period. Per the DoDGARs, a State must provide an explanation for each Not Met State Activities.

To assist States in efficiently completing their Performance Report, a dropdown menu of common reasons for partially meeting or not meeting State Activities is available, and includes the following:

- Insufficient funds
- Insufficient staff
- Component requested more work than planned
- Other (States may enter their own brief explanation for partially meeting or not meeting objectives)

States also have an optional Notes field, which they may use to record any additional information related to the Performance Report they wish to include.

### 5.3 PROCEDURE TO SUBMIT PERFORMANCE REPORT

1. Select Performance Year. The State POC (or State Alternate POC) selects the correct performance period (i.e., Year 1 or Year 2).
2. Objective Rating. Under the “Rating” tab, the State POC (or State Alternate POC) chooses a rating of either “Met”, “Partially Met” or “Not Met” in the “JEP Objectives” column, for each installation or DPS on a State’s CA Attachment A, based on the Tasks and related State Activities on the JEPs.
  - Both the State POC and State Alternate POCs have permission to set the objective rating.
  - If “Met” is selected, no additional information is required; however, a note may be entered by clicking the note icon in the Note column.

## SECTION 5 – PERFORMANCE REPORTS

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- If “Partially Met” is selected, provide a reason from the drop down list of common reasons. If the applicable reason is not in the drop down list, select “Other” and provide additional details.
  - If “Not Met” is selected, a reason must be selected from the drop down menu of common reasons. If the applicable reason is not in the drop down list, select “Other” and provide additional details.
3. Submit State Performance Report. Only the State POC may submit the Performance Report. Prior to submitting the State Performance Report, the State POC should:
- Verify that all installations with objects of “Partially Met” or “Not Met” have provided a reason. Those ratings without reasons provided will have red note icons in the “Reasons” column. To correct, click on the red note icon and complete the required information.
  - Verify that all installations have been given a rating by selecting the “Summary” tab to review the Total JEPs and JEPs rated entries for the State.

The State POC submits the Performance Report. When the Performance Report is submitted, the DSMOA Portal automatically verifies that all installations with objectives of “Partially Met” or “Not Met” have a reason provided. If any information is missing, the submission will be unsuccessful. The required information must be provided in order to successfully submit.

If there are no issues with the Performance Report information, the submission will be successful. Once successfully submitted, the State POC will no longer be able to make changes to the performance period and the DSMOA Community will be able to view the Performance Report information.

### 5.4 COMPONENT REVIEW OF STATE PERFORMANCE REPORTS

Once a State has submitted their Performance Report, the DSMOA Portal will send an automatic email to notify Step 2 POCs, Step 4 POCs, Component POCs, and their assigned Alternate POCs that the State’s Performance Report is available for review. The Component POC should review the State’s Performance Report. The State POC should be contacted if any questions arise or to resolve any differences.



## SECTION 6 – DISPUTE RESOLUTION

### 6.1 OVERVIEW

The dispute resolution process is an essential part of the DSMOA Program providing both States and DoD Components a framework for resolving issues. Dispute resolution is preferable to regulatory enforcement or litigation, which could damage working relationships, delay cleanup, and be expensive. An established dispute resolution process ensures decision-making remains in the hands of the policy makers.

In order to participate in the DSMOA Program, the DoD and each State signs a DSMOA that contains provisions for the State and the DoD Component to engage in a non-binding dispute resolution process when disagreements arise over any environmental restoration issue, including those related to reimbursement.

DoD and the States are committed to the DSMOA Dispute Resolution process to ensure:

- Resolution of issues as quickly as possible;
- Preservation of processes to resolve disputes as efficiently as possible;
- Protection of human health and the environment; and
- Preservation of legal authorities.

This section summarizes key aspects of the DSMOA Dispute Resolution process. See DoDM 4715.20, *Defense Environmental Restoration Program Management* for a complete explanation of DoD guidance.

### 6.2 APPLICABILITY

The DSMOA Dispute Resolution process only applies to restoration actions covered by the signed DSMOA and CA for that State.

In some cases, the State is a party to an applicable comparative tiered alternative dispute resolution process (e.g. FFA). In these cases the alternative process will supersede the dispute resolution provisions in the DSMOA.

The dispute resolution process does not apply to other regulatory programs that are not part of the restoration action. Regulatory enforcement actions by a State under its compliance authority for projects not included in the DSMOA (e.g., the installation compliance program under the Clean Air Act, Clean Water Act, and the Solid Waste Disposal Act) are not subject to the DSMOA dispute resolution process.

The following scenarios involving NOV illustrate applicability of the DSMOA Dispute Resolution process:

**Example 1:** The State agency's Bureau of Air has cited an installation for violations under the Clean Air Act related to non-DERP activities. This enforcement action was initiated pursuant to the State's compliance regulatory authority and is not covered by DSMOA, so dispute resolution requirements of the DSMOA do not apply and are not subject to the DoDGARs.

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**Example 2:** The State agency has observed that the DoD Component failed to obtain a National Pollutant Discharge Elimination System Permit for a discharge from a landfill being remediated under DERP, in spite of the State agency's previous determination that the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 121(e) exemption did not apply to this activity. Because this activity is covered by the DSMOA Program, the State agency is required to consider the dispute resolution provisions of the DSMOA prior to initiating enforcement activities.

If an agency, division or program, other than the designated State lead agent, takes an enforcement action at a DERP funded restoration/remediation activity, which is identified as part of the DSMOA Program, the lead State agency will assist the DoD Component in the response to such action to ensure continued progress at the installation. The State agency that is party to the DSMOA will seek to have the enforcement action addressed through the dispute resolution provisions of the DSMOA. The parties to the agreement understand that DERA/BRAC funds, per federal law, may not be used to reimburse States for time allocated to enforcement activities. When considering an enforcement action a breach of the DSMOA, the Grants Officer will consider each occurrence in light of relevant facts and circumstances.

### **6.3 TERMS**

#### **6.3.1 Informal Dispute Resolution**

First attempts to resolve technical and DSMOA Program disagreements are informal and involve the DoD Step 2 POC and State POC.

#### **6.3.2 Formal Dispute Resolution**

Formal dispute resolution, for resolving technical and DSMOA Program disagreements between parties, abides by the terms of the DSMOA or any agreed to comparative alternative process (e.g. FFA).

### **6.4 PROCESS**

Ideally, disagreements will be resolved at the lowest level possible. Parties should first attempt to resolve any disagreements informally at the DoD Step 2 POC and the State POC. If a disagreement cannot be resolved informally, DSMOA Dispute Resolution is followed as described below.

#### **6.4.1 Notification**

Should the informal process fail to resolve the disagreement, a party should clearly state in writing to the DSMOA Grants Officer and the other party it is invoking dispute resolution, in order to ensure that the record clearly indicates that the DSMOA Dispute Resolution process is occurring and the minimum timeframes for discussions have begun. All subsequent notices made during the DSMOA Dispute Resolution process should also be in writing.

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### **6.4.2 Levels of Dispute Resolution**

The DSMOA Dispute Resolution has three levels and concludes at a senior political level (e.g., Governor/Secretary). The designated three levels are detailed in each State's DSMOA. If an alternative dispute resolution process, not already established in an existing agreement (e.g., FFA), is used and delegation of authority from the DSMOA provision is warranted, the following standards should apply:

- The official receiving the delegation should be of approximately equal authority with the delegator or by mutual consent may be a direct subordinate within the same office.
- No person should be a dispute resolution official for more than one level.
- The State and DoD Component should decide their delegations prior to invoking dispute resolution in order to avoid delays, as mutual consent is required.

### **6.4.3 Formal Dispute Process**

The actual process used by dispute resolution officials is highly flexible and differing methods may be applied at any level upon agreement of the parties. The parties may, in writing, mutually agree to an alternative dispute resolution process. The State and DoD Component will ensure the process is described in writing and clearly identifies the procedures, participants, and timelines that will apply. The State and DoD Component should discuss and arrange for delegations of the dispute resolution officials identified in the DSMOA for each level well in advance of disputes.

### **6.4.4 Procedures for Completing Dispute Resolution**

A dispute can be resolved at any level in the process, however, dispute resolution does not require resolution of the dispute to be deemed complete. The following are possible outcomes and steps in completing the DSMOA Dispute Resolution process:

- If unanimous resolution is reached, the terms should be documented in writing and concurrence of the participating individuals recorded.
- During both the first and second level of dispute resolution, either party may determine that dispute resolution discussion is exhausted after reaching any minimum timeframe required by the DSMOA. A party notifies the other party in writing of the determination when it wishes to elevate the matter to the next level. Mutual consent is not required to elevate a dispute.
- For the third level of dispute resolution, either party may decide when it has completed discussion and may do so by notifying the other party. Mutual consent is not required to terminate the dispute resolution process at the third level, nor is there any required timeframe.
- Since either party may, subject to first exhausting the minimum DSMOA discussion timeframes, terminate further discussion at any level of dispute resolution, it is the

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responsibility of that party to affirmatively notify the other party that it is elevating the dispute to the next level or, in the case of the third level, that the process is being terminated.

- Because the parties engage in dispute resolution in good faith, the State and DoD Component should not terminate discussions prematurely even if a minimum timeframe has been exhausted.

A party should clearly state in writing that it is invoking dispute resolution in order to ensure the record clearly indicates that the dispute resolution process is occurring and the minimum DSMOA discussion timeframes have begun. All subsequent notices should also be in writing.

If the parties fail to resolve the dispute after using the DSMOA Dispute Resolution process, either party may resort to whatever legal avenues are available to it.

### 6.5 CLARIFYING STATE ENFORCEMENT AND DSMOA DISPUTE RESOLUTION

During the development of the 2006 DSMOA CA Guide, the States participating on the DSMOA Steering Committee were made aware of new DoD interpretations of the 1980 model language. One of the issues related to the interpretation that under the DSMOA, States were required to “engage in dispute resolution specified in the DSMOA prior to pursuing any other enforcement authority that may be available to States with regard to any matter in dispute related to the programs and projects included in the DSMOA” (Morgan, Sep 2005). Under this new interpretation of Section IV of the DSMOA, the Grants Officer would consider failure to exhaust the dispute resolution provision prior to enforcement action a breach of the DSMOA. As discussion of this interpretation and implementation of it continued over the next several years, confusion about the State’s ability to enforce against a DoD installation grew and required clarification.

Ultimately, the States communicated to DoD that the DSMOA Program should not inhibit a State’s right to take an enforcement action without first exhausting the DSMOA Dispute Resolution process. The following items are meant to address the States’ concerns and clarify the interpretation:

- If the DoD Component and the State agree that a proposed enforcement action is not subject to dispute resolution, the DSMOA Dispute Resolution process does not apply;
- The DSMOA CA requires both States and DoD Components to raise their disputes and follow the DSMOA Dispute Resolution process. The Grants Officer may determine that a pre-emptive State enforcement action is a material breach of the DSMOA and its CA. The Grants Officer must be satisfied that any required DSMOA Dispute Resolution process has occurred prior to a State instituting an enforcement action and should consult with the relevant DoD Component to inform this decision;
- If the Grants Officer determines that failure to engage in required dispute resolution does constitute a material breach of the DSMOA, the Grants Officer will consider the impact of a proposed remedy on the overall cleanup program in the State in conformance with the DoDGARs. The remedy should be designed to return the parties to compliance with the

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DSMOA and minimize the impact on DoD's cleanup program and the State's budgetary planning;

- In those instances where a State claims that, because of the nature of the violation, it could not wait until the dispute resolution process was completed before taking enforcement action, the Grants Officer should also consider the validity of the basis for the State's enforcement action and any legitimate necessity for expedited action by the State in determining the appropriate remedy for the State's failure to comply with the dispute resolution provision of the DSMOA;
- If the DSMOA Dispute Resolution process is completed without reaching a mutual agreement, a State may then institute an enforcement action without violating the DSMOA.

**Example:** A State environmental regulator conducts a field inspection of a DoD DERP project to verify that the DoD Component is conducting the action according to the approved work plan. The approved work plan includes criteria that meet the substantive requirements required by State discharge permitting for a storm water pollution prevention plan (SWPPP). While in the field, an authorized State representative notes a serious discharge violation of the approved work plan SWPPP substantive requirements that is causing significant damage to an anadromous stream. The State representative brings the violation of the work plan to the attention of the local DoD Component requesting the Component take immediate steps to correct the work plan violation. The local DoD Component refuses to take action without first going through the DSMOA dispute resolution process. The State objects, claiming that during the time it would take to go through dispute resolution, the violation of the work plan would continue to damage the stream and that the DoD Component was not following the agreed upon and approved work plan. The State believes that immediate corrective action is needed to stop the damage to the stream, action that cannot await the completion of DSMOA dispute resolution. The State issues an emergency NOV to the DoD Component for not complying with the work plan and damaging the stream. At the same time the State contacts its DSMOA Step 2 POC, explaining the need for the enforcement action<sup>2</sup>.

The State has exercised its option to choose between fully complying with the requirements of the DSMOA or applying its enforcement authority. In this instance, it has chosen to exercise its enforcement authority, even though doing so will likely place it in technical breach of the DSMOA. The Grants Officer will need to review the facts of the situation to determine what, if any, corrective action is necessary to remedy the breach. Since the facts of the situation will largely determine the remedy for breach, it is desirable for the State to communicate the reasons for its actions to the Grants Officer. It is also highly desirable for the State to

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<sup>2</sup> As defined in DoD Instruction 4715.06, "Environmental Compliance in the United States," May 5, 2015, an enforcement action is a formal, written notification by the EPA or other authorized federal, State, tribal, or local environmental regulatory agency of violation of any applicable statutory or regulatory requirement. Enforcement action does not include warning letters or informal notices of deficiencies or notices of deficiencies to permit applications. One written notice, regardless of the number of individual violations, findings, or citation listed in it, counts as one enforcement action. If a written enforcement action cites violations of more than one statutory requirement, it counts as multiple enforcement actions, one in each of the applicable statutory requirement categories. Items found to be out of compliance during an internal or other DoD Component review, compliance review, or audit, are not included in this definition of enforcement action.

## **SECTION 6 – DISPUTE RESOLUTION**

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communicate those reasons, preferably in advance of taking formal enforcement action, to the senior environmental policy official of the DoD Component or to the Office of the Assistant Secretary of Defense for Energy, Installations, and Environment. In doing so, the State allows the DoD to quickly review the matter and determine if resort to dispute resolution is even necessary. Such communication also allows the DoD Component to consider whether site specific guidance needs to be provided to the local DoD Component. Such actions are most likely to result in the quickest practical favorable results while consuming the least amount of resources of both the State and DoD.

### **6.6 COST REIMBURSEMENT**

State costs of engaging in the Dispute Resolution process are DSMOA eligible for reimbursement as long as they are not related to enforcement actions. State costs related to enforcement actions are not eligible for DSMOA reimbursement.

## **SECTION 7 – CLOSEOUT OF THE DSMOA COOPERATIVE AGREEMENT**

### **7.1 OVERVIEW**

Closing out a DSMOA CA is a requirement of the DoDGARs. Closeout confirms a State was reimbursed for its total costs for DSMOA eligible services provided during the DSMOA CA period and ends the DSMOA CA that had been in effect.

To closeout a DSMOA CA, a State must submit a final SF 270 to the DSMOA Financial Manager. In addition, all Performance Reports must have been submitted by the State, via the DSMOA Portal. The final SF 270 and Performance Reports are due to the DSMOA Team no later than 90 days after the DSMOA CA expiration date. If this timeframe cannot be accommodated, the State must request an extension from the Grants Officer as explained in the following section.

### **7.2 STATE RESPONSIBILITIES AND PROCEDURES**

When submitting the final SF 270 for DSMOA CA closeout, the State Financial POC must indicate that a final request is being made by marking the appropriate box on the form and on the DSMOA Portal. The final SF 270 should be submitted within 90 days after the DSMOA CA expiration date (i.e. September 28th). A State should ensure that it includes all allowable expenditures at the time of the final payment request. After the DSMOA Team closes a State's DSMOA CA, no additional payment requests will be accepted.

The State POC also ensures that all Performance Reports for the DSMOA CA period have been submitted in the DSMOA Portal within 90 days after the DSMOA CA expiration date.

If a State is unable to fulfill the closeout requirements within 90 days, they must request an extension from the Grants Officer no later than September 15<sup>th</sup>. The procedure for requesting an extension for DSMOA CA closeout is as follows:

1. The State POC submits the "State Request for an Extension for DSMOA CA Closeout" letter to the Grants Officer, providing both a justification and requested timeframe for the extension request. A sample extension request letter is available on the DSMOA Portal.
2. The Grants Officer evaluates the State's extension request and will notify the State POC within 10 days with a decision.
3. If the extension is approved, the Grants Officer will specify the length of the extension period. The State must complete the closeout requirements prior to the end of the extension period.

### **7.3 DSMOA TEAM RESPONSIBILITIES AND PROCEDURES**

During DSMOA CA closeout, the DSMOA Team verifies the SF 270 is acceptable and all of the State's Performance Reports have been received. The Grants Officer issues a DSMOA CA closeout letter to the State after:

## **SECTION 7 – CLOSEOUT OF THE DSMOA COOPERATIVE AGREEMENT**

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1. resolving all funding issues,
2. receiving all financial paperwork, and
3. verifying all Performance Reports are available on the DSMOA Portal.



## APPENDIX A

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### APPENDIX A: GLOSSARY OF KEY TERMS (As Used In This Document)

**Base Realignment and Closure (BRAC)** – A congressionally authorized process to close and realign military installations.

**Component(s)** – As used in this document and the DSMOA Program, the following Military Departments, DoD Components, agencies, or program: Department of the Army, Department of the Navy, Department of the Air Force, Defense Logistics Agency, Defense Energy Support Center, Defense Logistics Agency Strategic Materials, and the Formerly Used Defense Sites Program.

**Component POC** – The representative from DoD responsible for all JEPs and Component Approved Amounts for their Component funding type in the DSMOA Program. Only the Component POC can finalize a Component Approved Amount.

**Component Alternate POC** – The representative from DoD assigned to support the Component POC as necessary. Component Alternates have similar responsibilities to those of the Component POC, with the exception of not having the ability to grant Component Approved Amounts in the DSMOA Portal.

**Cooperative Agreement (CA)** – The agreement between a State and the USACE Grants Officer on behalf of the United States that defines the financial assistance available for reimbursement of a State's eligible services under the DSMOA for the specified CA period, the installations in the State's DSMOA/CA program, and any terms affecting that funding or its use.

**Component Approved Amount** - The two-year CA budget amount approved by the Component during the 6 Step Process for a State and may be revised as needed at any time during the CA period. The Grants Officer may obligate funding up to, but not exceeding the Component Approved Amount, without prior approval from the Component.

**Cooperative Agreement Attachment A** – The list of those installations that will require work in the two-year period of the CA. Attachment A to the CA lists installations according to the type of funds that will be used for restoration activities. The CA Attachment A and the DSMOA Attachment A do not need to agree with each other.

**Cooperative Agreement Attachment B** – The table showing CA obligated amounts for each State for the period of the CA, identified by Component and fund type. As funds are obligated, the CA Attachment B is updated to reflect the latest obligation of funds, by Component and fund type.

**Cognizant Federal Audit Agency** – The federal agency responsible for determining a State's indirect rate. The designated Cognizant Agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific Cognizant Agency for audit assignment.

**Defense Environmental Restoration Program (DERP)** – The program established by 10 U.S.C. §§ 2700 to 2710. Section 2701(a) states that the: "Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary."

**Department of Defense and State Memorandum of Agreement (DSMOA)** – The agreement between a State and the DoD that establishes a partnership for environmental restoration

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fostering communication and cooperation on specified installations. A State must have a valid DSMOA prior to entering into a DSMOA Cooperative Agreement.

**Direct Program Support (DPS)** – A JEP that is developed for State support that is attributable to most or all installations, to eliminate having to distribute costs proportionately to each installation. A DPS JEP is developed for each funding type. If there is only one installation in a particular funding type, there is no need to create a DPS JEP.

**DSMOA Community** – The active DoD and State participants in the DSMOA Program.

**DSMOA Financial Manager** - The representative from USACE DSMOA Team assigned as the Primary POC to assist States in financial matters related to their DSMOA Cooperative Agreement. Individual DSMOA Financial Managers are assigned to specific States.

**DSMOA Funds Manager** - The representative from the USACE DSMOA Team responsible for coordinating and distributing the Component funding.

**DSMOA Portal** – The website which the DSMOA Community uses to conduct official DSMOA business. The address is <https://dsmoa.usace.army.mil>.

**DSMOA State Manager** - The representative from USACE DSMOA Team assigned as the Primary POC to assist States and DoD in administration of the DSMOA Program. Individual DSMOA State Managers are assigned to specific States.

**DSMOA Team** – The U.S. Army Corps of Engineers (USACE) personnel who administer the DSMOA Cooperative Agreements, and includes: the Grants Officer, DSMOA Program Manager and Team Leader, DSMOA State Managers, DSMOA Financial Managers, and legal support.

**Enforcement** – Regulatory enforcement, other litigation, or claim costs for activities determined ineligible for reimbursement under the DSMOA Program are defined as any costs incurred for any action or activity by a State/Territory:

1. That is part of a process which may lead under Federal or State law to administrative or judicial enforcement by a State regulatory agency against DoD or a Component, including, but not limited to, any notice of violation, order, or enforcement-related actions at an ER- or BRAC-funded site.
2. Taken in anticipation of litigation against the United States, including action by regulatory staff or legal staff at an ER- or BRAC-funded site.
3. Taken to prepare or present a written claim to the Grants Officer under the CA.
4. Involving the investigation or prosecution of criminal charges against a DoD or Component officer, employee, or agent, or the military department itself, an ER- or BRAC-funded site.

**Formerly Used Defense Site (FUDS)** – A FUDS is defined as a facility or site (property) that was under the jurisdiction of the Secretary of Defense and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances. The FUDS program is limited to those real properties that were transferred from DoD control prior to October 17, 1986. Properties must be located within the United States.

**Grants Officer** - The DoD official with the authority to enter into, administer, and/or terminate a Cooperative Agreement on behalf of the Federal Government. The Grants Officer is

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responsible for obligating funds and administering the DSMOA Cooperative Agreements on behalf of DoD, as well as making determinations on DSMOA eligibility.

**Installation** – The term installation means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or Guam. The term includes installations transferred outside of DoD and FUDS. Attachment A may also list DPS under installations.

**Installation Restoration Program (IRP)** - Refers to one of three (3) categories or types of restoration conducted under DERP. The IRP generally addresses CERCLA hazardous substances or pollutants and contaminants as well as petroleum, oil, or lubricants (POL) (as appropriate) and DoD unique materials (the DERP Management Guidance contains a complete list).

**Joint Execution Plan (JEP)** – The mutually agreed (Component and State POC) plan of action for DSMOA eligible State services to be provided for each installation listing type of funds to be used, the military Component involved, milestones, environmental restoration actions, State tasks, estimated dates that State involvement will be required, and the current status for each milestone/task.

**Management Action Plan (MAP)** – The DoD Component document which describes an integrated, coordinated approach for conducting all environmental restoration activities required at an installation. Each Component may have a specific name for their particular MAP.

**Military Munitions Response Program (MMRP)** – This category was established to meet the DERP goals in sections 2710 and 2701(b)(2) of Reference (i) and includes munitions response areas and munitions response sites that are known or suspected to contain UXO, discarded military munitions, or munitions constituents. The MMRP does not include UXO, discarded military munitions, or munitions constituents at operational ranges, operating storage or manufacturing facilities, or facilities that are used for or were permitted for the treatment or disposal of military munitions. The DoD Component may also include in the MMRP category sites where addressing the release of hazardous substances or pollutants or contaminants is incidental to the munitions response. It is one of three DERP program categories.

**Obligated Funding** – The amount of DoD funding awarded to a State in their Cooperative Agreement, which may be utilized to reimburse a State for DSMOA eligible services performed during a Cooperative Agreement period. Obligations are awarded by Component funding types and may not be interchanged or exceeded.

**Performance Report** - A non-financial report required by federal regulation, designed to provide an assessment of a Grantee's effectiveness regarding completion of grant related tasks.

**Potentially Responsible Party (PRP) Site** – A site where more than one party, as defined in CERCLA section 107, has contributed to any contamination present. PRP sites are generally not eligible for DSMOA funding because response actions at PRP sites are typically conducted by PRPs other than DoD. State regulatory costs for PRP sites (PRP investigation, research and negotiations) are paid by the PRPs executing the response actions. DoD contribution to these costs, if determined to be appropriate under the circumstances, will be included in any settlement agreements. If DoD is performing the remedial action work, and the State certifies

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that it is receiving funding from no other source for activities otherwise eligible for DSMOA funding, the DoD site may be added to the DSMOA Cooperative Agreement if found to be appropriate under the circumstances.

**Restoration Funded Sites** – The areas where environmental restoration or other eligible work is performed by or for a DoD Component that is funded from one of the five environmental restoration accounts. The five accounts are: environmental restoration, Army; environmental restoration, Navy, environmental restoration, Air Force; environmental restoration, FUDS; and environmental restoration, Defense-wide (includes DLA, DESC, etc.).

**State** – Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Marianas.

**State POC** – The one representative from the State responsible for the overall coordination of their State's DSMOA Cooperative Agreement. In addition, they finalize State JEP activities, JEP estimates/budgets, and Performance Reports.

**State Alternate POC** – The representative(s) from the State assigned to support activities on a JEP and performs activities in support of the State POC.

**State Financial POC** – The representative(s) from the State responsible for financial issues related to the DSMOA Cooperative Agreement, and who has the authority to submit a payment request on behalf of the State.

**Step 2 POC** – The one installation representative from DoD responsible for developing the JEP in coordination with the State POC or State Alternate POC. The Step 2 POC is the representative responsible for locking the JEP.

**Step 2 Alternate POC** – The representative(s) from DoD assigned to support the Step 2 in performing actions associate with JEPs tasks.

**Step 4 POC** – The representative(s) from DoD responsible for acting as an intermediate between Step 2 POC and Component POCs. The Step 4 POC may have varying organizational or regional responsibilities within their DoD command structure.

**Step 4 Alternate POC** – The representative(s) from DoD assigned to support the Step 4 as necessary.

## APPENDIX B

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### APPENDIX B: LIST OF ACRONYMS

AFR	Annual Funding Review(s)
AOC	Administrative Orders on Consent
BRAC	Base Realignment and Closure
CA	Cooperative Agreement
CDR	Covenant Deferral Request
CERCLA	Comprehensive Environmental Restoration Account
CFR	Code of Federal Regulations
DERA	Defense Environmental Restoration Account
DERP	Defense Environmental Restoration Program
DESC	Defense Energy Support Center
DLA	Defense Logistics Agency
DLASM	Defense Logistic Agency Strategic Materials
DoD	Department of Defense
DoDGAR	Department of Defense Grant and Agreement Regulations
DPS	Direct Program Support
DSMOA	Department of Defense and State Memorandum of Agreement
EBS	Environmental Baseline Survey
ECP	Environmental Condition of Property
EFT	Electronic Funds Transfer
EIS	Environmental Impact Statement
ESCA	Environmental Services Cooperative Agreement
FFA	Federal Facility Agreement
FOST	Finding of Suitability of Transfer
FOSET	Finding of Suitability of Early Transfer
FOSL	Finding of Suitability of Lease

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FUDS	Formerly Used Defense Site
IPR	In-Progress Review
IRP	Installation Restoration Program
JEP	Joint Execution Plan
LUC	Land Use Control
MAP	Management Action Plan
MMRP	Military Munitions Response Program
NOV	Notice of Violation
OMB	Office of Management and Budget
OPS	Operating Properly and Successfully
OSD	Office of the Secretary of Defense
POC	Point of Contact
PRP	Potentially Responsible Party
QA/QC	Quality Assurance/Quality Control
RAB	Restoration Advisory Board
SARA	Superfund Amendments and Reauthorization Act of 1986
SF	Standard Form
SEPPP	Storm Water Pollution Prevention Plan
U.S.C.	United States Code
USACE	U.S. Army Corps of Engineers