# TITLE 45
# LEGISLATIVE RULE
# DEPARTMENT OF ENVIRONMENTAL PROTECTION
# AIR QUALITY

## SERIES 25
## CONTROL OF AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

### §45-25-1. General.

1.1. Scope.

1.1.a. This rule establishes and adopts a program of regulation over air emissions and emission standards for the treatment, storage, and disposal of hazardous waste promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act, as amended. This rule codifies general procedures and criteria to implement emission standards set forth in the 40 C.F.R. Parts 260, 261, 262, 264, 265, 266, 270, and 279 as listed in Table 45-25 below. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications, and other test methods that are appended to these standards.

1.1.b. The purpose of this rule is to achieve and maintain levels of air quality that will protect the public health and safety and the environment from the effects of improper, inadequate or unsound treatment, storage or disposal of hazardous waste. Further, all persons engaged in the treatment, storage or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by hazardous waste or any constituent thereof in quantities that would cause ambient air concentrations that may be injurious to human health or welfare or that would interfere with the enjoyment of life or property.

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonation of any emission that is released in any locality in a manner or amount that would cause or contribute to statutory air pollution. Neither does it exempt nor excuse any person from complying with other applicable laws, ordinances, regulations or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§ 22-5-4 and 22-18-6. Recognizing that each article has its own enforcement sections, it is the intent of the Secretary that enforcement shall be implemented in accordance with W.Va. Code § 22-18-1, et seq., where practicable.

1.1.e. Permit applications shall be processed in accordance with the permitting procedures set forth in W.Va. Code § 22-18-1, et seq., 33CSR20, and this rule.

1.2. Authority. -- W.Va. Code §§ 22-5-4 and 22-18-6.

1.3. Filing Date. -- ~~March 22, 2018~~.

1.4. Effective Date. -- ~~June 1, 2018~~.

1.5. Sunset Provision. -- Does not apply.

1.6. Incorporation by reference.

~~1.5.a~~ 1.6.a. Federal counterpart regulation. -- The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference the provisions contained in 40 C.F.R. Parts 260, 261, 262, 264, 265, 266, 270, and 279 as listed in Table 45-25 below, effective June 1, ~~2017~~ 2018.

~~1.5.b~~ 1.6.b. This rule incorporates by reference the provisions contained in 33CSR20, "Hazardous Waste Management System" that are in effect on the date this rule becomes effective, except for any provision in 33CSR20 that incorporates by reference the Code of Federal Regulations.

**§45-25-2. Definitions.**

2.1. "Air pollutants" means solids, liquids or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air pollution" or "statutory air pollution" mean, and are limited to, the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner, and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

2.3. "Air pollution control equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage or disposal facilities.

2.4. "Best Available Control Technology" or "BACT" means an emission standard based on the maximum degree of reduction for each pollutant that would be emitted from any hazardous waste treatment, storage or disposal facility that the Secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for the facility through application of production processes or available methods, systems or techniques. If the Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard shall, to the extent possible, set forth the emission reduction achievable by implementation of the design, equipment, work practice or operational standard and shall provide for compliance by means that achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. § 7401, et seq.

2.6. "C.F.R." means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.7. "Department" or "DEP" means the West Virginia Department of Environmental Protection.

2.8. ~~"Facility mailing list" means the mailing list for a facility maintained by U.S. EPA in accordance with 40 CFR § 124.10(c)(1)(ix).~~

~~2.9.~~ "Hazardous waste" means a hazardous waste as defined in 40 C.F.R. § 261.3.

~~2.10~~ 2.9. "Infectious medical waste" shall have the meaning ascribed to it in 64CSR56 "infectious medical waste" promulgated by the West Virginia Bureau for Public Health.

~~2.11~~ 2.10. "Pathological waste" means waste material consisting of only human or animal remains, anatomical parts or tissue, the bags or containers used to collect and transport the waste material, and animal bedding (if applicable).

~~2.12~~ 2.11. "RCRA" means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. § 6901, et seq.

~~2.13~~ 2.12. "RCRA Permit" means "West Virginia Hazardous Waste Management Permit". The following additional requirements shall apply to obtain a Hazardous Waste Management Permit in West Virginia. All references in 40 C.F.R. Part 270 to 40 C.F.R. Part 124 shall be deemed to be references to the applicable provisions of subsections 5.1 through 5.14. of this rule. To the extent of any inconsistency with 40 C.F.R. Part 270, the specific provisions contained herein shall govern.

~~2.14~~ 2.13. "Secretary" means the Secretary of the West Virginia Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§ 22-1-6 or 22-1-8.

~~2.15~~ 2.14. "U.S. EPA" means the United States Environmental Protection Agency.

~~2.16~~ 2.15. Other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W. Va. Code §§ 22-5-2 or 22-18-3 or 33CSR20 "Hazardous Waste Management System" governing the State Hazardous Waste Management Act.

**§45-25-3. Adoption of standards.**

3.1. The Secretary hereby adopts and incorporates by reference the definitions, lists, tables, appendices, conditions, and requirements from 33CSR20, "Hazardous Waste Management System", effective June 1, ~~2017~~ 2018, except ~~for any provisions in 33CSR20 which incorporate by reference the Code of Federal Regulations. In case of a conflict between the Division of Air Quality and the Division of Water and Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Secretary has final administrative authority to resolve the conflict~~ as follows:

3.1.a. Any provisions in 33CSR20 which incorporate by reference the Code of Federal Regulations (C.F.R.);

3.1.b. The application fees and permit requirements under 11.3 through 11.18, inclusive. The permit provisions under §45-25-5 shall apply exclusively to the Division of Air Quality permitting activities;

3.1.c. In case of a conflict between the Division of Air Quality and the Division of Water and Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Secretary has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the Secretary hereby adopts and incorporates by reference the provisions contained in 40 C.F.R. Parts 260, 261, 262, 264, 265, 266, 270, and 279 as listed in Table 45-25, including any reference methods, performance specifications and other test methods appended to these Parts and contained in Parts 60, 61, 63, 260, 261, 262, 264, 265, 266, 270, and 279, effective June 1, ~~2017~~ 2018, with the following modifications:

3.2.a. Whenever the term "United States" is used, it shall also mean the State of West Virginia;

3.2.b. Whenever the terms "Administrator," "Regional Administrator," "Assistant Administrator for Solid Waste and Emergency Response" or "Secretary" are used, the term means the Secretary of the West Virginia Department of Environmental Protection;

3.2.c. Whenever the term "Environmental Protection Agency" is used the term also means the West Virginia Department of Environmental Protection; and

3.2.d. The distance provisions of 40 C.F.R. § 265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), in effect as of the effective date of this rule, apply otherwise.

**§45-25-4. Requirements.**

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a list of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the Secretary, where appropriate:

4.1.a. Hazardous Waste Management Program under W. Va. Code § 22-18-1, et seq. and the rules promulgated thereunder;

4.1.b. Prevention of Significant Deterioration (PSD) Program under W. Va. Code § 22-5-1, et seq. and 45CSR14 or the CAA;

4.1.c. Nonattainment program under W. Va. Code § 22-5-1, et seq. and 45CSR19 or the CAA;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under W. Va. Code § 22-5-1, et seq. and 45CSR34 or the CAA;

4.1.e. Standards of Performance for New Stationary Sources under W. Va. Code § 22-5-1, et seq. and 45CSR16 or the CAA; and

4.1.f. Other relevant air pollution control permits, including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule must comply with the personnel training requirements as specified by 40 C.F.R. § 264.16.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate these facilities to minimize the possibility of a fire, explosion or any unplanned, sudden or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of Hazardous Waste Management facilities that treat, store or dispose of ignitable or reactive wastes or mix incompatible waste or incompatible wastes and other materials shall comply with the general requirements for ignitable, reactive or incompatible wastes set forth in 40 C.F.R. § 264.17.

4.5. The owners and operators of the hazardous waste treatment, storage, and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable air emission requirements as listed in Table 45-25 below.

4.6. The owners and operators of the hazardous waste treatment, storage, and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission requirements as listed in Table 45-25.

4.7. The owners and operators of the hazardous waste treatment, storage, and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission requirements as listed in Table 45-25.

4.8. The owners and operators of the hazardous waste treatment, storage, and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 C.F.R. 264, including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of the potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. The Secretary may, on a case-by-case basis, establish performance standards for hazardous waste combustion for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that the standards are necessary to limit the emission rates of these constituents to levels that do not pose an unacceptable risk to human health and environment. The Secretary may require the following data from the permit applicant:

4.13.a. Emissions of POHCs, hazardous combustion by-products, metals, and hydrogen halides, including:

4.13.a.1. Mass emission rates from the stack, and

4.13.a.2. Concentration in the gas stream exiting the stack; and

4.13.b. Air dispersion estimates for those substances, including:

4.13.b.1. Meteorological data, and

4.13.b.2. Description of the air dispersion models, and

4.13.b.3. Assumptions underlying the air dispersion models used; and

4.13.c. Expected human and environmental exposure, including:

4.13.c.1. Topographic considerations,

4.13.c.2. Population distributions,

4.13.c.3. Population activities, and

4.13.c.4. Modes, intensity, and duration of exposure; and

4.13.d. Consequences of exposure, including:

4.13.d.1. Dose-response curves for carcinogens,

4.13.d.2. Health effects based on human or animal studies for other toxic constituents,

4.13.d.3. Potential for accumulation of toxic constituents in the human body, and

4.13.d.4. Statements of expected risk to individuals or populations.

4.14. Emergency Permit. -- Notwithstanding any other provision in 40 C.F.R. § 270.61, in the event the Secretary finds an imminent and substantial danger to human health or the environment, the Secretary may issue a temporary permit to a facility to allow treatment, storage or disposal of hazardous waste at a non-permitted facility or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

4.14.a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;

4.14.b. Shall not exceed ninety (90) days in duration;

4.14.c. Shall clearly specify the hazardous wastes to be received and the manner and location of the treatment, storage or disposal;

4.14.d. May be terminated by the Secretary at any time without prior notice, if the Secretary determines that termination is appropriate to protect human health or the environment; and

4.14.e. Shall be accompanied by public notice that includes the following:

4.14.e.1. Name and address of the office granting the emergency authorization,

4.14.e.2. Name and location of the permitted Hazardous Waste Management facility,

4.14.e.3. A brief description of the wastes involved,

4.14.e.4. A brief description of the action authorized and reasons for authorizing it, and

4.14.e.5. Duration of the emergency permit; and

4.14.f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. -- The owner or operator of a pathological waste incinerator is not subject to the requirements of this rule, unless the incinerator is charged with any mixture of infectious medical waste and hazardous waste listed in 40 C.F.R. 261, Subpart D. The owner or operator of a pathological waste incinerator shall design, construct, and operate the facility in accordance with all applicable rules promulgated by the Secretary including, but not limited to, this rule, 45CSR6, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR30, and 45CSR34, as applicable.

**§45-25-5. Permit Process.**

5.1. Pre-application public meeting and notice.

5.1.a. Applicability. -- The requirements of subsection 5.1 shall apply to West Virginia Hazardous Waste Management Part B permit applications seeking initial permits for Hazardous Waste Management units. These requirements shall also apply to West Virginia Hazardous Waste Management Part B permit applications seeking renewal of permits for Hazardous Waste Management units, where the renewal application is proposing a significant change in facility operations. A "significant change" is any change that would qualify as a Class 3 permit modification pursuant to 40 C.F.R. § 270.42. These requirements do not apply to permit modifications under 40 C.F.R. § 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.1.b. Prior to the submission of a West Virginia Hazardous Waste Management Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed Hazardous Waste Management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses or email addresses.

5.1.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subdivision 5.1.b. and copies of any written comments or materials submitted at the meeting, to the Secretary ~~as a part of~~ for inclusion with the Part B application, in accordance with 40 C.F.R. § 270.14(b).

5.1.d. The applicant must provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant must maintain, and provide to the Secretary upon request, documentation of the notice.

5.1.d.1. The applicant shall provide public notice in all of the following forms:

5.1.d.1.A. A newspaper advertisement. -- The applicant shall publish a notice, fulfilling the requirements in paragraph 5.1.d.2, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that the publication is necessary to inform the affected public. The notice must be published as a display advertisement;

5.1.d.1.B. A visible and accessible sign. -- The applicant shall post a notice on a clearly

marked sign at or near the facility, fulfilling the requirements in paragraph 5.1.d.2. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site;

5.1.d.1.C. A broadcast media announcement. -- The applicant shall broadcast a notice, fulfilling the requirements in paragraph 5.1.d.2, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Secretary; and

5.1.d.1.D. A notice to the Department. -- The applicant shall send a copy of the newspaper notice to the Secretary and to the appropriate units of state and local government having jurisdiction over the area where the facility is or is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of the facility.

5.1.d.2. The notices required under paragraph 5.1.d.1 must include:

5.1.d.2.A. The date, time, and location of the meeting;

5.1.d.2.B. A brief description of the purpose of the meeting;

5.1.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

5.1.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

5.1.d.2.E. The name, address, and telephone number of a contact person for the applicant.

5.2. Public notice requirements at the application stage.

5.2.a. Applicability. -- The requirements of subsection 5.2 shall apply to all West Virginia Hazardous Waste Management Part B permit applications seeking initial permits for Hazardous Waste Management units. These requirements shall also apply to Hazardous Waste Management Part B permit applications seeking renewal of permits for Hazardous Waste Management units upon the expiration of the existing permit. These requirements do not apply to permit modifications under 40 C.F.R. § 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.2.b. Notification at application submittal. -- The Secretary shall provide public notice as required in subsection 5.2 when a Part B permit application has been submitted. The Secretary shall provide public notice to:

5.2.b.1. The applicant;

5.2.b.2. All persons on a mailing <u>or e-mail</u> list developed under subparagraph 5.8.d.1.D;

5.2.b.3. The appropriate units of state and local government having jurisdiction over the area where the facility is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of the facility that a Part B permit application has been submitted to the Secretary and is available for review; and

5.2.b.4. Any person otherwise entitled to receive notice under subdivision 5.2.b may waive the right to receive notice for any classes and categories of permits.

5.2.c. The notice shall be published within 30 days after the complete application is received by

the Secretary. The notice must include:

5.2.c.1. The name and telephone number of the applicant's contact person;

5.2.c.2. The name and telephone number of the Secretary's contact office and a mailing and e-mail address to which information, opinions, and inquiries may be directed throughout the permit review process;

5.2.c.3. An address to which people can write in order to be put on the facility mailing or e-mail list;

5.2.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

5.2.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

5.2.c.6. The date that the application was submitted.

5.2.d. Concurrent with the notice required under subdivision 5.2.b, the Secretary must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Department's headquarters.

5.3. Information repository.

5.3.a. Applicability. -- The following requirements apply to all applicants seeking West Virginia Hazardous Waste Management Permits for Hazardous Waste Management units.

5.3.b. The Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Secretary shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Secretary shall notify the facility that it must establish and maintain an information repository.

5.3.c. The information repository shall contain all documents, reports, data, and information deemed necessary by the Secretary to fulfill the purposes for which the repository is established. The Secretary shall have the discretion to limit the contents of the repository.

5.3.d. The information repository shall be located and maintained at a site chosen by the facility. If the Secretary finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access or other relevant considerations, then the Secretary shall specify a more appropriate site.

5.3.e. The Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Secretary shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing or e-mail list.

5.3.f. The facility owner or operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary may close the repository at his or her discretion, based on the factors in subdivision 5.3.b.

5.4. Application for a permit.

5.4.a. Any person who requires a permit shall complete, sign, and submit to the Secretary an appropriate application. Applications are not required for hazardous waste permits by rule issued by U.S. EPA pursuant to 40 C.F.R. § 270.60. The Secretary shall not begin processing a permit application until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 C.F.R. § 270.11.

5.4.b. The Secretary shall review every application for completeness. Each application submitted by a new Hazardous Waste Management facility shall be reviewed for completeness by the Secretary within 30 days of its receipt. Each application submitted by an existing Hazardous Waste Management facility (both Part A and Part B of the application) shall be reviewed for completeness within 60 days of receipt. Upon completing the review, the Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary shall list the information necessary to make the application complete. When the application is for an existing Hazardous Waste Management facility, the Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Secretary may request additional information from the applicant, but only when necessary to clarify, modify or supplement previously submitted materials. The request for additional information will not render an application incomplete.

5.4.c. If the applicant fails or refuses to correct deficiencies in the application, the Secretary may deny the permit and may take appropriate enforcement actions under the applicable statutory provisions of W.Va. Code §§ 22-18-1, et seq. and 22-5-1, et seq.

5.4.d. If the Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and schedule a date for the site visit.

5.4.e. The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided for in subdivision 5.4.b.

5.4.f. For each application, the Secretary shall, no later than the date the Secretary receives a complete application, prepare and mail or e-mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

5.4.f 1. Prepare a draft permit;

5.4.f.2. Give public notice;

5.4.f.3. Complete the public comment period, including any public hearing; and

5.4.f.4. Issue a final permit.

5.5. Modification, revocation and reissuance or termination of permits.

5.5.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Secretary's initiative. However, permits ~~may~~ shall only be modified, revoked and reissued, or terminated for the reasons specified in 40 C.F.R. §§ 270.41 or 270.43. All requests shall be in writing and contain facts or reasons supporting the request.

5.5.b. If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment or hearing. Denials by the Secretary may be appealed to the Air Quality Board in accordance with W. Va. Code § 22B-1-1, et seq. and 22B-2-1, et seq.

5.5.b.1. If the Secretary ~~tentatively~~ initially decides to modify or revoke and reissue a permit under 40 C.F.R. §§ 270.41 or 270.42(c), he or she shall prepare a draft permit under subsection 5.6 below incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Secretary shall require the submission of a new application.

5.5.b.2. In a permit modification, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

5.5.b.3. "Classes 1 and 2 modifications" as defined in 40 C.F.R. §§ 270.42(a) and (b) are not subject to the requirements of this subsection.

5.5.c. If the Secretary ~~tentatively~~ decides to terminate a permit under 40 C.F.R. § 270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit that follows the same procedures as any draft permit prepared under subsection 5.6~~. of this rule~~ below.

5.6. Draft permits.

5.6.a. Once an application is complete, the Secretary shall ~~tentatively~~ decide whether to prepare a draft permit or to deny the application.

5.6.b. If the Secretary ~~tentatively~~ decides to deny the permit application, he or she shall issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as a draft permit. If the Secretary's final decision is that the ~~tentative~~ initial decision to deny the permit application was incorrect, he or she shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

5.6.c. If the Secretary ~~tentatively~~ decides to issue a permit, he or she shall prepare a draft permit that contains the following information:

5.6.c.1. All conditions under 40 C.F.R. §§ 270.30 and 270.32;

5.6.c.2. All compliance schedules under 40 C.F.R. § 270.33;

5.6.c.3. All monitoring requirements under 40 C.F.R. § 270.31; and

5.6.c.4. Standards for treatment, storage, disposal, and other permit conditions under 40 C.F.R. § 270.30.

5.6.d. All draft permits prepared by the Secretary shall be accompanied by a fact sheet if required under subdivision 5.7.a and shall be based on the administrative record, publicly noticed and made available for public comment.

5.6.e. In addition to the requirements of subsection 5.6, public notice of the preparation of a draft permit shall be given by the methods contained in the applicable Federal Regulation.

5.7. Fact Sheet.

5.7.a. The Secretary shall prepare a fact sheet for each draft permit that he or she finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in

preparing the draft permit. The Secretary shall send the fact sheet to the applicant and~~, on request, to any other person~~ to anyone who requests it.

5.7.b. The fact sheet shall include when applicable:

5.7.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

5.7.b.2. The type and quantity of waste, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted or discharged;

5.7.b.3. A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

5.7.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5.7.b.5. A description of the process for reaching a final decision on a draft permit, including;

5.7.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

5.7.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

5.7.b.5.C. Any other procedures by which the public may participate in the final decision; and

5.7.b.6. Name and telephone number of a person to contact for additional information.

5.8. Public notice of permit actions and public comment period.

5.8.a. Scope. -- The Secretary shall give public notice if the following actions have occurred:

5.8.a.1. A draft permit has been prepared; and

5.8.a.2. A hearing has been scheduled.

5.8.b. No public notice is required when the Secretary denies, pursuant to subsection 5.5, a request for permit modification, revocation and reissuance, or termination. The Secretary shall provide written notice of that denial to the requester and to the permittee.

5.8.c. Timing. -- Public notice of the preparation of a draft permit, including a Notice of Intent to Deny a Permit Application, required under subdivision 5.8.a shall allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

5.8.d. Methods. -- The Secretary shall provide public notice of activities described in subdivision 5.8.a by the following methods:

5.8.d.1. By mailing or e-mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

5.8.d.1.A. The applicant;

5.8.d.1.B. ~~Any other agency that the Secretary knows has issue or is~~ The West Virginia Division of Water and Waste Management and the Division of Air Quality, if those agencies are required to issue a RCRA permit, an underground injection control (UIC) permit, a prevention of significant deterioration (PSD) permit or other permit under the Clean Air Act and W.Va. Code § 22-5-1 et seq., a National Pollutant Discharge Elimination System (NPDES) permit, or a sludge management permit for the same facility or activity;

5.8.d.1.C. Federal and state agencies with jurisdiction over fish, shell fish, and wildlife resources and over coastal zones management plans, the advisory council on historic preservation, and the State Historic Preservation Office, as applicable;

5.8.d.1.D. Persons on a mailing or e-mail list developed by:

5.8.d.1.D.1. Including those who request in writing to be on the list;

5.8.d.1.D.2. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

5.8.d.1.D.3. Notifying the public of the opportunity to be put on the mailing or e-mail list through periodic publication in the public press and in regional and state funded newsletters, environmental bulletins or state law journals. The Secretary may update the mailing or e-mail lists from time to time by requesting written indications of continued interest from those listed. The Secretary may delete from the lists the name of any person who fails to respond to the request;

5.8.d.1.E. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

5.8.d.1.F. To each state agency having any authority under state law with respect to the construction or operation of the facility.

5.8.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

5.8.d.3. In a manner constituting legal notice to the public under state laws; and

5.8.d.4. Any other method reasonably calculated to give actual notice of the action in question to the person potentially affected by it, including press releases or any other forum or medium to elicit public participation.

5.8.e. Public notices. -- All public notices issued shall contain the following minimum information:

5.8.e.1. Name and address of the office processing the permit action for which notice is being given;

5.8.e.2. Name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit;

5.8.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

5.8.e.4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit and fact sheet and the application;

5.8.e.5. A brief description of the comment procedures required by subsections 5.9 and 5.10 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision;

5.8.e.6. The location of the administrative record, the times that the record shall be open for public inspection; and

5.8.e.7. Any additional information considered necessary or proper by the applicant and the Secretary.

5.8.f. Public notices for hearings. -- In addition to the general public notice described in subdivision 5.8.e, the public notice of a hearing shall contain the following information:

5.8.f.1. Reference to the date of previous public notices relating to the permit;

5.8.f.1.A. Date, time, and place of the hearing; and

5.8.f.1.B. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

5.8.g. In addition to the general public notice described in subdivision 5.8.e, the Secretary shall mail or e-mail to all persons identified in subparagraphs 5.8.d.1.A, 5.8.d.1.B, and 5.8.d.1.C a copy of the fact sheet, the permit application, and the draft permit, as applicable.

5.9. Public comments and requests for public hearing. -- During the public comment period provided under subsection 5.8, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the hearing. The Secretary shall consider all comments in making the final decision and shall respond to the comments as provided in subsection 5.13.

5.10. Public hearings.

5.10.a. The Secretary shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

5.10.b. The Secretary may also hold a public hearing, at his or her discretion, whenever, for instance, a hearing might clarify one or more issues involved in the permit decision.

5.10.c. The Secretary shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under subdivision 5.8.c. Whenever possible the Secretary shall schedule a hearing at a location convenient to the nearest population center to the proposed facility.

5.10.d. The Secretary shall provide public notice of the hearing as specified in subsection 5.8.

5.10.e. Whenever a public hearing will be held, the Secretary shall designate a presiding officer for the hearings who shall be responsible for its scheduling and orderly conduct.

5.10.f. Any person may submit oral or written statements and data concerning the draft permit.

The Secretary may set reasonable limits on the time allowed for oral statements and may require the submission of statements in writing. The public comment period under subsection 5.8 shall automatically be extended to the close of any public hearing. The ~~hearing officer~~ Secretary may also extend the comment period by so stating at the hearing.

5.10.g. A tape recording or written transcript of the hearing shall be made available to the public.

5.11. Reopening of the public comment period.

5.11.a. If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Secretary may take one or more of the following actions:

5.11.a.1. Prepare a new draft permit, appropriately modified, under subsection 5.6;

5.11.a.2. Prepare a revised fact sheet under subsection 5.7 and reopen the comment period; and

5.11.a.3. Reopen or extend the comment period under subsection 5.11 to give interested persons an opportunity to comment on the information or arguments submitted.

5.11.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subsection 5.8 shall define the scope of the reopening.

5.11.c. The Secretary shall issue public notice of any of the above actions in accordance with subsection 5.8.

5.12. Issuance and effective date of permit.

5.12.a. After the close of the public comment period on a draft permit, the Secretary shall issue a final permit decision. The Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for appealing a decision on the permit. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

5.12.b. A final permit decision shall become effective thirty (30) days after the service of Notice of Decision unless:

5.12.b.1. A later effective date is specified in the decision;

5.12.b.2. An interested party requests review or an evidentiary hearing; or

5.12.b.3. No comments requested change in the draft permit, in which case the permit shall become effective immediately upon issuance.

5.13. Response to comments.

5.13.a. At the time that any final permit decision is issued, the Secretary shall issue a response to comments. This response shall:

5.13.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

5.13.a.2. Briefly describe and respond to all relevant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

5.13.b. The response to comments shall be available to the public.

5.14. Administrative record.

5.14.a. The provisions of a draft permit prepared under subsection 5.6 shall be based on the administrative record consisting of:

5.14.a.1. The application and any supporting data furnished by the applicant;

5.14.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

5.14.a.3. The fact sheet if required;

5.14.a.4. All documents cited in the fact sheet; and

5.14.a.5. Other documents contained in the supporting file for the draft permit.

5.14.b. The Secretary shall base final permit decisions on the administrative record consisting of:

5.14.b.1. Administrative record for the draft permit;

5.14.b.2. All comments received during the public comment period provided under subsection 5.5, including any extension or reopening under subsection 5.11;

5.14.b.3. The tape or transcript of any hearing(s) held under subsection 5.10;

5.14.b.4. Any written material submitted at the hearing;

5.14.b.5. The response to comments required by subsection 5.13, which identified and support any change made in the draft permit and any new material placed in the record under subsection 5.13;

5.14.b.6. Other documents contained in the supporting file for the permit;

5.14.b.7. An addendum to the fact sheet if needed; and

5.14.b.8. The final permit.

5.14.c. The administrative record shall be complete on the date the final permit is issued.

5.14.d. Material readily available at the Department or published material that is generally available and that is included in the administrative record under subdivisions 5.14.a and 5.14.b need not be physically included with the rest of the record, as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

5.15. Public access to information.

5.15.a. Any record, report or information and any permit, permit application, and related documentation within the Secretary's possession shall be available to the public for inspection and copying; provided, that, upon a satisfactory showing to the Secretary that the records, reports, permit documentation or information, or any part thereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Secretary shall consider, treat, and protect the records as confidential

pursuant to W.Va. Code §§ 22-18-1, et seq. 22-5-1, et seq., and 29B-1-4.

5.15.b. It shall be the responsibility of the person claiming any information as confidential under the provision of subdivision 5.15.a to comply with the requirements of 45CSR31 and W. Va. Code § 29B-1-1, et seq.

5.16. The provisions of 40 C.F.R. § 270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code §§ 22-18-1, et seq. 22-5-1, et seq., and 29B-1-1, et seq.

**§45-25-6. Exclusions and exemptions.**

6.1. Wastes and materials excluded in 33CSR20 are excluded from the requirements of this rule.

6.2. Except for recyclable materials exempt pursuant to 33CSR20, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of section 4 of this rule.

6.3. Any pathological waste incinerator not subject to this rule under subsection 4.15 shall be subject to 45CSR6 or 45CSR18, as applicable.

**§45-25-7. Application fee.**

7.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage or disposal facility shall submit as part of the permit application a money order or cashier's check payable to the Division of Air Quality for deposit into the Air Pollution Control Fund. The fee shall be determined by the schedule set forth below:

| **Activity** | **Fee** |
|---|---|
| Hazardous Waste Management Facilities | $5,000 |
| Class 2, 3 Modifications or Renewals of Permits and 40 C.F.R. § 270.41 for Hazardous Waste Management Facilities | $1,000 |
| Class 1 Modifications | $500 |

7.2. These application fees shall be in addition to any fee required by the Hazardous Waste Management System rule, 33CSR20.

**§45-25-8. Inconsistency between rules.**

8.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary, and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

**TABLE 45-25**

| Item no. | CFR no. | Part no. | Subpart no. | Title |
|---|---|---|---|---|
| 1 | 40 CFR | 264, 265 | O | Incinerator |
| 2 | 40 CFR | 270.19<br><br>270.42 | B<br><br>D | Specific requirements for incinerators<br><br>Permit modification at the request of the permittee |
| | | | Appendix | Appendix I |
| 3 | 40 CFR | 270.62 | F | Hazardous waste incinerator permits |
| 4 | 40 CFR | 270.72 | G | Changes during interim status |
| 5 | 40 CFR | 264 | X | Miscellaneous units |
| 6 | 40 CFR | 270.23 | B | Specific requirements for miscellaneous units |
| 7 | 40 CFR | 264, 265 | AA | Air emission standards for process vents |
| 8 | 40 CFR | 270.24 | B | Specific requirements for process vents |
| 9 | 40 CFR | 264, 265 | BB | Air emission standards for equipment leaks |
| 10 | 40 CFR | 270.25 | B | Specific requirements for equipment leaks |
| 11 | 40 CFR | 264, 265<br>264.179, 265.178<br>264.200, 265.202<br>264.232, 265.231<br>265 | CC<br>I<br>J<br>K<br>Appendix | Air emission standards for tanks, surface impoundments, and containers<br><br>Appendix VI |
| 12 | 40 CFR | 270.14(b) | B | General information requirements |
| 13 | 40 CFR | 270.27 | B | Specific requirements for air emissions control for tanks, surface impoundments and containers |
| 14 | 40 CFR | 265 | P | Thermal treatment |
| 15 | 40 CFR | 266 | H<br><br>Appendices | Hazardous waste burned in boilers and industrial furnaces<br><br>Appendix I to XIII |
| 16 | 40 CFR | 270.22 | B | Specific requirements for boilers and industrial furnaces burning hazardous wastes |
| 17 | 40 CFR | 270.66 | F | Permits for boiler and industrial furnaces burning hazardous waste |
| 18 | 40 CFR | 279.23 | C | On-site burning in space heater |
| 19 | 40 CFR | 279 | G | Standards for used oil burners who burn off-specification used oil for emergency recovery |
| 20 | 40 CFR | 261.6<br><br>261.4 | A<br><br>A | Requirements for recyclable materials<br><br>Exclusions |
| 21 | 40 CFR | 261.7 | A | Residues of hazardous waste to empty containers |

| | | | | |
|---|---|---|---|---|
| ~~22~~ | ~~40 CFR~~ | ~~261.38~~ | ~~E~~ | ~~Comparable/Syngas fuel exclusions/exemptions~~ |
| ~~23~~ | ~~40 CFR~~ | ~~262.34~~ | ~~C~~ | ~~Accumulation time~~ |
| ~~24~~ | ~~40 CFR~~ | ~~260.11~~ | ~~B~~ | ~~References~~ |
| ~~25~~ | ~~40 CFR~~ | ~~264.15~~ | ~~B~~ | ~~General inspection requirement~~ |
| ~~26~~ | ~~40 CFR~~ | ~~264.73~~ | ~~E~~ | ~~Operating records~~ |
| ~~27~~ | ~~40 CFR~~ | ~~270.235~~ | ~~I~~ | ~~Options for incinerators and cement and lightweight aggregate kilns to minimize emissions from startup, shutdown, and malfunction events~~ |
| ~~28~~ | ~~40 CFR~~ | ~~264.17~~ | ~~B~~ | ~~General requirements for ignitable, reactive, or incompatible wastes~~ |

**40 CFR Part 260 - Hazardous Waste Management System: General**

| Subpart | Subpart Title | Requirement(s) | Requirement Title |
|---|---|---|---|
| B | Definitions | 260.11 | Incorporation by reference |

**40 CFR Part 261 - Identification and Listing of Hazardous Waste**

| Subpart | Subpart Title | Requirement(s) | Requirement Title |
|---|---|---|---|
| A | General | 261.4 | Exclusions. |
| A | General | 261.6 | Requirements for recyclable materials |
| A | General | 261.7 | Residues of hazardous waste in empty containers |

**40 CFR Part 262 - Standards Applicable to Generators of Hazardous Waste**

| Subpart | Subpart Title | Requirement(s) | Requirement Title |
|---|---|---|---|
| C | Standards applicable to generators of hazardous waste | 262.17 | Conditions for exemption for a large quantity generator that accumulates hazardous waste |

**40 CFR Part 264 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

| Subpart | Subpart Title | Requirement(s) | Requirement Title |
|---|---|---|---|
| B | General Facility Standards | 264.15 | General inspection requirements |
| | | 264.16 | Personnel training |
| | | 264.17 | General requirements for ignitable, reactive, or incompatible wastes |
| E | Manifest System, Recordkeeping, and Reporting | 264.73 | Operating record |
| I | Use and Management of Containers | 264.179 | Air emission standards |
| J | Tank Systems | 264.200 | Air emission standards |
| K | Surface Impoundments | 264.232 | Air emission standards |
| O | Incinerators | All | All |
| X | Miscellaneous Units | All | All |
| AA | Air emission standards for process vents | All | All |
| BB | Air emission standards for equipment leaks | All | All |

| | | | |
|---|---|---|---|
| CC | Air emission standards for tanks, surface impoundments, and containers | All | All |

**40 CFR Part 265 - Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

| Subpart | Subpart Title | Requirement(s) | Requirement Title |
|---|---|---|---|
| B | General Facility Standards | 265.15 | General inspection requirements |
| | | 265.16 | Personnel training |
| | | 265.17 | General requirements for ignitable, reactive, or incompatible wastes |
| E | Manifest System, Recordkeeping, and Reporting | 264.73 | Operating record |
| I | Use and Management of Containers | 265.178 | Air emission standards |
| J | Tank Systems | 265.202 | Air emission standards |
| K | Surface Impoundments | 265.231 | Air emission standards |
| O | Incinerators | All | All |
| P | Thermal Treatment | All | All |
| AA | Air emission standards for process vents | All | All |
| BB | Air emission standards for equipment leaks | All | All |
| CC | Air emission standards for tanks, surface impoundments, and containers | All | All |
| Appendix | Appendices to part 265 | Appendix VI | Appendix VI to part 265 - compounds with Henry's Law constant less than 0.1 y/x |

**40 CFR Part 266 - Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities**

| Subpart | Subpart Title | Requirement(s) | Requirement Title |
|---|---|---|---|
| H | Hazardous waste burned in boilers and industrial furnaces | All | All |
| Appendix | Appendices to Part 266 | Appendix I - XIII | All |

**40 CFR Part 270 - The Hazardous Waste Permit Program and Standardized Permit**

| Subpart | Subpart Title | Requirement(s) | Requirement Title |
|---|---|---|---|
| B | Permit application | 270.11 | Signatories to permit applications and reports |
| | | 270.14(b) | Contents of part B: general information requirements |
| | | 270.19 | Specific part B information requirements for incinerators |
| | | 270.22 | Specific part B information requirements for boilers and industrial furnaces burning hazardous waste |
| | | 270.23 | Specific part B information requirements for incinerators |

| | | | |
|---|---|---|---|
| | | 270.24 | Specific part B information requirements for process vents |
| | | 270.25 | Specific part B information requirements for equipment leaks |
| | | 270.27 | Specific part B information requirements for air emission controls for tanks, surface impoundments and containers |
| C | Permit Conditions | 270.30 | Conditions applicable to all permits |
| | | 270.31 | Requirements for recording and reporting of monitoring results |
| | | 270.32 | Establishing permit conditions |
| | | 270.33 | Schedules of compliance |
| D | Changes to permit | 270.41 | Modification or revocation and reissuance of permits |
| | | 270.42 | Permit modification at the request of the permittee |
| | | 270.43 | Termination of permits |
| | | Appendix | Appendix I to §270.42 - classification of permit modification |
| F | Special forms of permits | 270.62 | Hazardous waste incinerator permits |
| | | 270.66 | Permits for boilers and industrial furnaces burning hazardous waste |
| G | Interim status | 270.72 | Changes during interim status |
| I | Integration with Maximum Achievable Control Technology (MACT) standards | 270.235 | Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events |

**40 CFR Part 279 - Standards for the Management of Used Oil**

| Subpart | Subpart Title | Requirement(s) | Requirement Title |
|---|---|---|---|
| C | Standards for used oil generators | 279.23 | On-site burning in space heaters |
| G | Standards for used oil burners who burn off-specification used oil for energy recovery | All | All |

secondary materials, Waste treatment and disposal.

Dated: January 26, 2018.

**E. Scott Pruitt,**

*Administrator.*

For the reasons stated in the preamble, EPA is amending title 40, chapter I, of the Code of Federal Regulations as follows:

## PART 241—SOLID WASTES USED AS FUELS OR INGREDIENTS IN COMBUSTION UNITS

■ 1. The authority citation for part 241 continues to read as follows:

**Authority:** 42 U.S.C. 6903, 6912, 7429.

■ 2. Section 241.2 is amended by adding in alphabetical order the definitions ''Copper naphthenate treated railroad ties'', ''Copper naphthenate-borate treated railroad ties'', and ''Creosote-borate treated railroad ties'' to read as follows:

### § 241.2 Definitions.

* * * * *

*Copper naphthenate treated railroad ties* means railroad ties treated with copper naphthenate made from naphthenic acid and copper salt.

*Copper naphthenate-borate treated railroad ties* means railroad ties treated with copper naphthenate and borate, including borate made from disodium octaborate tetrahydrate.

* * * * *

*Creosote-borate treated railroad ties* means railroad ties treated with a wood preservative containing creosols and phenols and made from coal tar oil and borate, including borate made from disodium octaborate tetrahydrate.

* * * * *

■ 3. Section 241.4 is amended by adding paragraphs (a)(8) through (10) to read as follows:

### § 241.4 Non-Waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel.

(a) * * *

(8) Creosote-borate treated railroad ties, and mixtures of creosote, borate and/or copper naphthenate treated railroad ties that are processed and then combusted in the following types of units. Processing must include, at a minimum, metal removal and shredding or grinding.

(i) Units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations; and

(ii) Units at major source pulp and paper mills or power producers subject to 40 CFR part 63, subpart DDDDD, designed to burn biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations, but are modified (*e.g.,* oil delivery mechanisms are removed) in order to use natural gas instead of fuel oil, The creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties may continue to be combusted as product fuel under this subparagraph only if the following conditions are met, which are intended to ensure that such railroad ties are not being discarded:

(A) Creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties must be burned in existing (*i.e.,* commenced construction prior to April 14, 2014) stoker, bubbling bed, fluidized bed, or hybrid suspension grate boilers; and

(B) Creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties can comprise no more than 40 percent of the fuel that is used on an annual heat input basis.

(iii) Units meeting requirements in paragraph (a)(8)(i) or (ii) of this section that are also designed to burn coal.

(9) Copper naphthenate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil, or biomass and coal. Processing must include at a minimum, metal removal, and shredding or grinding.

(10) Copper naphthenate-borate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil, or biomass and coal. Processing must include at a minimum, metal removal, and shredding or grinding.

* * * * *

[FR Doc. 2018–02337 Filed 2–6–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

### Identification and Listing of Hazardous Waste

*CFR Correction*

■ In Title 40 of the Code of Federal Regulations, Parts 260 to 265, revised as of July 1, 2017, on page 64, in § 261.6, paragraph (a)(2)(iv) is reinstated to read as follows:

### § 261.6 Requirements for recyclable materials.

(a)(1) * * *

(2) * * *

(iv) Spent lead-acid batteries that are being reclaimed (40 CFR part 266, subpart G).

* * * * *

[FR Doc. 2018–02518 Filed 2–6–18; 8:45 am]

**BILLING CODE 1301–00–D**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

### Identification and Listing of Hazardous Waste

*CFR Correction*

■ In Title 40 of the Code of Federal Regulations, Parts 260 to 265, revised as of July 1, 2017, on page 67, in part 261, the heading of subpart C is reinstated to read: ''Characteristics of Hazardous Waste''.

[FR Doc. 2018–02513 Filed 2–6–18; 8:45 am]

**BILLING CODE 1301–00–D**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 770

**[EPA–HQ–OPPT–2017–0245; FRL–9972–68]**

**RIN 2070–AK36**

### Voluntary Consensus Standards Update; Formaldehyde Emission Standards for Composite Wood Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is publishing this final rule to revise the formaldehyde standards for composite wood products regulations . The revision updates the incorporation by reference of multiple voluntary consensus standards that have been updated, superseded, or withdrawn, and provides a technical correction to allow panel producers to correlate their approved quality control test method to the ASTM E1333–14 test chamber, or, upon showing equivalence, the ASTM D6007–14 test chamber.

**DATES:** This final rule is effective on February 7, 2018. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 7, 2018.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0245, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket),

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 260, 262, 263, 264, 265, and 271

**[EPA–HQ–OLEM–2016–0177; FRL–9965–27–OLEM]**

**RIN 2050–AG80**

# Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is establishing by this regulation the methodology the Agency will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system (e-Manifest system) that EPA is developing under the Hazardous Waste Electronic Manifest Establishment Act. After the e-Manifest system's implementation date, certain users of the hazardous waste manifest will be required to pay a prescribed fee for each electronic and paper manifest they use and submit to the national system so that EPA can recover the costs of developing and operating the national e-Manifest system. This final rule also announces the date when EPA expects the system to be operational and available to users. EPA will begin accepting manifest submissions and collecting the corresponding manifest submission fees on this date.

In addition, this action announces final decisions and regulations relating to several non-fee related matters that were included in the proposed rule. This includes modifying the existing regulations to: allow changes to the transporters designated on a manifest while the shipment is en route; describe how data corrections may be made to existing manifest records in the system; and amend the previous e-Manifest regulation (the One Year Rule) to allow the use, in certain instances, of a mixed paper and electronic manifest to track a hazardous waste shipment.

**DATES:** This final rule is effective on June 30, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2016–0177. All documents in this docket are listed in the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Docket Center Reading Room. Please see *https://www.epa.gov/dockets/epa-docket-center-reading-room* or call (202) 566–1744 for more information on the Docket Center Reading Room.

**FOR FURTHER INFORMATION CONTACT:** Richard LaShier, Office of Resource Conservation and Recovery, (703) 308–8796, *lashier.rich@epa.gov,* or Bryan Groce, Office of Resource Conservation and Recovery, (703) 308–8750, *groce.bryan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

This rule affects those entities required to use the hazardous waste manifest, a regulated universe that includes approximately 80,000 federally regulated entities, and an equal or greater number of entities handling state-only regulated wastes in at least 45 industries and is expected to result in a net cost savings for them amounting to $66 million per year, when discounted at 7% and annualized over 6 years. Further information on the economic effects of this action can be found in section IV of this preamble. These industries are involved in generating, transporting, and receiving several million tons annually of wastes that are hazardous under Subtitle C of the Resource Conservation and Recovery Act (RCRA), or, are regulated by states and also are subject to tracking with the RCRA hazardous waste manifest. EPA estimates that these entities currently use between three and five million hazardous waste manifests (EPA Form 8700–22) and continuation sheets (EPA Form 8700–22A) to track RCRA hazardous and state-only regulated wastes from generation sites to off-site receiving facilities. The affected entities include hazardous waste generators, hazardous waste transporters, and owners or operators of treatment, storage, and disposal facilities (TSDFs), as well as the corresponding entities that handle state-only regulated wastes subject to tracking with the RCRA manifest.

However, the user fee obligations that are the primary focus of this final rule will mostly affect a subset of these regulated entities, particularly, the several hundred commercial RCRA TSDFs and the corresponding receiving facilities for state-only regulated wastes under RCRA manifests. As explained in section III.A. of this preamble, this final rule focuses the payment and collection of e-Manifest related user fees on these several hundred commercial TSDFs and state-only waste receiving facilities because EPA concludes that this is the most effective and efficient means for collecting user fees via the e-Manifest system. The final rule action includes a tentative fee schedule for the initial two years of system operations, based on the most current projections of program costs available to the Agency at the time of development of this final rule action. EPA will update the tentative fee schedule with a final fee schedule for the initial two years of system operations when we obtain more complete program cost data, and we will publish the final fee schedule to the e-Manifest program's website 90 days prior to the system launch. The affected entities and categories include, but are not necessarily limited to:

| NAICS description | NAICS code | Examples of potentially affected entities |
|---|---|---|
| Transportation and Warehousing | 48–49 | Transportation of hazardous waste. |
| Waste Management and Remediation Services | 562 | Facilities that manage hazardous waste. |

This table provides a guide for readers regarding the entities that will be regulated by this action. The table lists the types of entities that EPA is aware to be involved in the activities affected by the RCRA manifest and regulated by this action. Other types of entities not listed in this table also could be regulated by this final rule. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in title 40 of the CFR parts 260, 262, 263, 264, and 265. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. What action is the Agency taking?*

The Agency is publishing its final rule action announcing requirements that establish the methodology and process that EPA will use to determine and revise the e-Manifest user fees that EPA has determined to be necessary to recover the costs of developing and operating the national e-Manifest system. These include the costs of processing data from both electronic and paper manifests that will be submitted to the national e-Manifest system after the system's implementation date. The Agency also is announcing final decisions on several non-fee related proposals that affect the use of the manifest and manifest data quality, including changes to designated transporters during transportation, a process for manifest data corrections, and the circumstances under which EPA will allow a ''hybrid'' or mixed paper/electronic manifest to be used to track a specific shipment.

*C. What is the Agency's authority for taking this action?*

The authority to issue this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901, 6906 *et. seq.,* 6912, 6921–6925, 6937, and 6938, and as further amended by the Hazardous Waste Electronic Manifest Establishment Act, Public Law 112–195, section 6939g.

*D. Effective Date*

This final rule will be effective on June 30, 2018, the date on which EPA plans to launch and begin the operation of the e-Manifest system. This is the date when EPA will implement all e-Manifest Act regulations, including the requirements of this final rule, and the requirements of the One Year Rule that EPA issued on February 7, 2014. This final rule is being published with an accelerated effective date to coincide with the launch of the e-Manifest system on June 30, 2018. On that date, EPA will begin collecting fees to recover the costs of developing and operating the system.

Under 40 CFR 3.2(a)(2), electronic reporting of documents required under title 40 of the Code of Federal Regulations (CFR) may occur after EPA has first published a document in the **Federal Register** announcing that EPA is prepared to receive, in electronic form, documents required or permitted by the identified part or subpart of title 40. By this final rule action, EPA is announcing that it is prepared to receive electronic hazardous waste manifests, as well as certain paper manifest copies that continue in use after the e-Manifest system's implementation date, through the national e-Manifest system. The electronic manifests will be accepted by e-Manifest as the electronic document substitutes for the paper manifest and continuation sheet forms (EPA Forms 8700–22 and 8700–22A) that are described in 40 CFR part 262, subpart B (hazardous waste generators), 40 CFR part 263, subpart B (hazardous waste transporters), and subpart E of 40 CFR parts 264 and 265 (owners and operators of hazardous waste treatment, storage, and disposal facilities). The implementation and compliance date on which EPA plans to begin receiving these electronic manifest and related paper manifest copies is June 30, 2018. This is the date that EPA expects to begin e-Manifest system operations, and begin both the collection of manifests and the collection of user fees for manifest submissions required under this final rule. EPA is also clarifying that the June 30, 2018, implementation date for e-Manifest is limited to the collection of domestic hazardous waste manifests and domestic shipments of state-only regulated waste subject under state law to the RCRA manifest. EPA will not begin the collection of export manifests described in subpart H of 40 CFR part 262 on the June 30, 2018, e-Manifest system implementation date. EPA will announce the implementation and compliance date for the electronic submission of export manifests in a separate notice to be issued in the future, when EPA is ready to collect those documents electronically and assess the appropriate fee for their processing. Until that occurs, export manifests should continue to be completed as paper documents.

## II. Background

EPA published a detailed background discussion providing context for the e-Manifest User Fee rulemaking in the proposed rulemaking action. *See* 81 FR 49072 at 49074–76 (July 26, 2016). EPA incorporates that detailed background discussion into this document for purposes of this final rule, and refers readers to that proposed rulemaking rather than reprinting all of it in this final rule document. For this action, EPA will summarize key points from the earlier background discussion:

- In 2012, Congress enacted the Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act). The e-Manifest Act required EPA to establish a national electronic manifest system, the development of which would be initially funded by annual appropriations, and ultimately funded by user fees, which would both offset the system's development costs, as well as the costs of operating, maintaining, and upgrading the system.
- The e-Manifest Act further required EPA to develop implementing regulations for electronic manifesting within one year of enactment, and to establish a nine-member System Advisory Board to make recommendations to EPA on the performance of the system.
- Section 2(c) of the e-Manifest Act conferred broad discretion to EPA to impose on users of the system ''such reasonable service fees as the Administrator determines to be necessary'' to pay all system related costs, including the costs of processing data from any paper manifests that continue to be used after the system implementation date, as the e-Manifest Act allows users the option to continue to use paper manifests. This is the principal source of statutory authority for this action and its user fee methodology.
- Section 2(d) of the e-Manifest Act authorized the establishment of a special System Fund in the U.S. Treasury for the deposit of e-Manifest user fees. Funds deposited in the System Fund may be spent by EPA for system related costs to the extent provided in annual appropriations acts, but such funds can only be spent on e-Manifest related costs.
- EPA issued its first implementing regulation on electronic manifesting on February 7, 2014 (79 FR 7518–7563). This regulation, referred to as the ''One Year Rule'' because of the e-Manifest Act's mandate to publish the regulation within one year of enactment, established the legal and policy framework for the use of electronic manifests, and prescribed the conditions under which electronic manifests are the full legal equivalent of paper manifest forms for all RCRA purposes. The One Year Rule also codified key scope and consistency provisions included in the e-Manifest Act. The One Year Rule did not address e-Manifest user fees, instead deferring regulatory action on user fees until this separate e-Manifest User Fee rulemaking.
- EPA relied extensively on two Federal guidance documents on user fee design to develop its e-Manifest User Fee methodology: (1) OMB Circular A–25, a memorandum to Executive Departments and agencies addressing ''user charges,'' and (2) user fee design guidance found in the United States Government Accountability Office

(GAO) Report No. GAO–08–386SP, *Federal User Fees, A Design Guide,* (May 2008).

• The OMB Circular A–25 guidance was relied upon substantially for the following principles used in formulating the final rule user fee methodology: (1) The imposition of user fees on those recipients of the special benefits from federal activities, but not recipients of incidental benefits; (2) the requirement that user fees should accomplish full cost recovery; (3) the explanation of the various types of direct and indirect costs that can be recovered by user fees; (4) the general policy that user fees be instituted through the promulgation of regulations; and (5) the policy that user fees be reviewed biennially, to provide assurance that fees are adjusted to reflect changes in program costs.

• The GAO Federal User Fees Design guide also was heavily relied upon in developing the rationale for this final rule user fee methodology, particularly with respect to: (1) Collecting fees so as to strike an appropriate balance between ensuring compliance with fees and minimizing administrative costs; (2) the manner of reviewing and updating user fees so they remain aligned with actual program costs and activities, and are adjusted for changes in program costs; and (3) balancing several key outcomes involved in fee design, including: the economic efficiency of the program's user fees; the equity of the fee system in ensuring that beneficiaries pay their fair share while not disregarding their ability to pay; the adequacy of resulting revenues to pay all known program costs and to keep pace with inflation and other changes to program cost; and the administrative burden of the fees, including the balancing of the fee compliance costs with the costs of their collection and enforcement.

## III. Detailed Discussion of the Final Rule

### *A. Which users of manifests and manifest data will be charged user fees?*

#### 1. Background

In addressing this issue in the proposed rulemaking, EPA acknowledged that there were two distinct classes of users who might become involved with the e-Manifest system. First, there are the regulated community members, *e.g.,* the hazardous waste generators, transporters, and receiving facilities (*e.g.,* RCRA TSDFs) who are required to use the manifest in connection with tracking a hazardous waste shipment in which they are involved and are named as one of the handlers on the manifest. Second, there are the data consumers, *e.g.,* members of the public or state and local governments that might wish to access e-Manifest in order to obtain information about wastes and shipments of interest to them in their capacity as a data consumer, but not as a member of the regulated community. Since the beginning of the planning for e-Manifest, EPA has indicated that it considered public access and transparency important functions of an e-Manifest system. EPA has planned to develop a public facing module in e-Manifest to provide such data access, with certain restrictions on that access. However, the interest in public access to data is a secondary interest, and it is clear that the regulatory community users are the primary community of interest served by e-Manifest, and that they obtain the primary services and benefits from the system.

In the notice of proposed rulemaking, EPA proposed that the primary beneficiaries of e-Manifest—the regulatory community users within the definition of ''user'' in the e-Manifest Act—would at a threshold level be the community of users potentially subject to user fee obligations. Thus, for this initial level of fee eligibility, EPA proposed to limit the imposition of user fees to the members of the regulatory community that must use the RCRA manifest, as a matter of regulatory compliance under federal or state law, for tracking the off-site shipments of hazardous waste or state-only regulated waste between generation sites and the facilities where such wastes are received for management. EPA did not propose to impose fees on the community of data consumers, *i.e.,* members of the general public, accessing the system only to obtain data about wastes and waste shipments of interest to them. In the proposed rule, we explained that excluding the public from user fee payments was consistent with OMB Circular A–25 policy to not charge incidental beneficiaries of a service a user fee. We also explained that this proposal was motivated by the desire to avoid the large administrative burden of establishing payment accounts for all those members of the public who might access the system, and of processing payments for such a large and potentially diverse community. EPA believes that the costs of providing data access to the public would be fairly modest relative to the cost of servicing the regulatory community. The funding result under the proposed rule would thus have the costs of providing the public with access to data funded as an incremental increase in the fees charged to the regulated users.

As a second proposal on the scope of fee obligations, EPA proposed to further restrict the payment of e-Manifest fees to the approximately 400 RCRA receiving facilities (TSDFs) that receive waste from off-site, as well as the corresponding receiving facilities of state-only regulated wastes tracked under RCRA manifests under state law. EPA explained in the notice of proposed rulemaking (NPR), that it considered the submission of the final, signed manifest to the e-Manifest system by the receiving facility designated on the manifest to be the primary ''billable event'' in the e-Manifest system that would give rise to a user fee obligation. The effect of this second aspect of the proposal would be to limit fee obligations and payments to the receiving facilities on manifests, and to generally exclude the other regulatory community ''users'' from fee payment obligations. This aspect of the proposed rule was premised on the goal of simplifying the fee system, and avoiding the potentially large administrative burden of establishing payment accounts and collecting fee payments from 100,000 or more generators or other regulated users. It was assumed that the receiving facilities assessed these fees could choose to pass these fees through to the generator customers as a part of their service agreement, thus balancing the equities and burdens of the fee system without EPA's further intervention.

#### 2. Comment Analysis

On the issue of public access and its funding, we received numerous comments from state agencies supporting the exclusion of states and the general public from the requirement to pay fees, and supporting the imposition of e-Manifest fees on the regulated users of the system. However, there were several comments from hazardous waste TSDFs and their trade organizations objecting to the proposed rule's approach to funding public access through an incremental increase in these facilities' fees. These TSDF commenters argued that the e-Manifest Act's definition of ''user'' was intended to limit system access to the regulated community and not afford access to the public. The TSDF commenters suggested that EPA should be responsible for funding public access through another means or another EPA appropriation, perhaps treating public access requests through the Freedom of Information Act or FOIA. As a final matter, several of these TSDF commenters also questioned EPA's assumption that the cost of public access would be modest.

On the issue of the proposed ''billable event,'' all commenters supported the proposal limiting fee obligations to the receiving facilities designated on the manifest, and classifying the submission of the final copy of the manifest signed by the receiving facility as the primary billable event in the system. The states, generators, and receiving facilities that commented on the proposed rule all supported EPA's rationale that the balancing of administrative efficiency and simplifying the fee payment system justified limiting the fee obligations to the manifest's receiving facilities. To make their support of this proposal clearer, several of these commenters suggested that EPA remove from the existing part 262 (generator) and part 263 (transporter) regulations all vestiges of regulatory language from the first e-Manifest rule suggesting EPA might impose user fees on generators and transporters. Several commenters also suggested that EPA should be consistent in drafting the final rule, and avoid using the terms TSDF, receiving facility, and designated facility interchangeably in the regulatory language, as these terms do not have the same scope of coverage.

Finally, in connection with the proposed rule's discussion of the public access issue and the proposed rule's focus on receiving facilities for the rule's fee obligations, EPA received several additional comments raising significant issues for the Agency to consider.

A RCRA receiving facility and the Department of Defense submitted comments raising the concern that unfettered public access to e-Manifest might enable data mining from the system by those with malevolent intent. These comments raised a concern that those conducting data mining for illicit purposes could discern information about particular wastes involving chemicals of concern, or about the sites managing them, or patterns in the movement of wastes that could be weaponized or otherwise vulnerable if diverted. One commenter suggested there should be a homeland security basis for excluding public access to such information, and identified the homeland security list of chemicals of interest in 6 CFR part 27, appendix A, as a resource that might be helpful in excluding hazardous waste and manifest data potentially posing a Homeland Security risk. The Department of Defense also raised a concern that generator site information and the aggregate waste information gleaned from e-Manifest could in some instances constitute classified information.

In addition, EPA received several helpful comments that pointed out some weaknesses or challenges that will arise from the proposed rule approach and its focus on the final manifest submissions by receiving facilities as the billable event that will trigger fee obligations. As one example of such a challenge, several industry and state agency commenters noted that there may be significant numbers of receiving facilities, particularly those facilities receiving state-only regulated wastes, which lack RCRA permits and lack EPA Identification Numbers. Examples cited in the comments were facilities managing industrial wastes, used oil, wastes regulated as special wastes by the states, or conditionally exempt small quantity generator (CESQG) [1] wastes regulated more stringently by states and subject to manifests under state law. If EPA is intending to track the billable manifests from receiving facilities by keying on the EPA Identification Number of the receiving facility, EPA will need to issue unique identification numbers to these facilities or otherwise address how these receiving facilities and their manifests will be tracked uniquely and billed for services in e-Manifest.

Other helpful comments received in response to the proposed billable event were several industry and state agency comments noting that there were two other types of waste shipment transactions with manifests that did not lend themselves to the proposed approach of billing the receiving facility for the manifest. The two transaction types cited as posing particular challenges were: (1) Rejected wastes returned under manifests to generators, as the ''receiving facility'' for such return shipments are generators and not the conventional permitted facilities (*e.g.,* RCRA TSDFs); and (2) hazardous wastes exported from the U.S., as the manifests for exported hazardous wastes are not received by a domestic receiving facility, but are instead received by foreign consignees that are beyond the jurisdiction of the U.S. to compel a final manifest submission and fee payment. These commenters questioned how EPA would address these transactions in the final rule.

3. Final Rule Decisions

a. How will public access to data be funded?

In this final rule, EPA is sustaining the proposed rule's position that public access is an incidental benefit of the system, and that the regulatory community users obtain the primary and major benefits of e-Manifest services. Since members of the public are at best incidental beneficiaries, EPA has decided not to charge members of the public a fee for access to manifest data from the public facing module of e-Manifest. This decision is consistent with the policy announced in OMB Circular A–25, which generally excludes incidental beneficiaries of services from service charges, and instead requires the primary beneficiaries to cover these costs. Therefore, as we proposed in the July 2016 NPR, the regulatory community users—the primary beneficiaries of e-Manifest—will fund the costs of public access through an incremental increase in their user fees. EPA concludes that this policy best effectuates the program's transparency goal with respect to manifest data, and avoids discouraging the public's access by the imposition of a fee on such access. EPA remains convinced that the incremental increase in users' fees to fund public access will be modest. This further focuses cost recovery and collections on the several hundred receiving facilities, thereby avoiding the complexity and administrative burden of attempting fee collections from members of the public.

b. Which regulatory community users will pay fees?

Second, for this final rule, EPA has decided to sustain the proposed rule's approach of focusing the fee payment obligations of the regulatory community users on only the receiving facilities named on manifests. The final rule therefore refines the user fee obligation by excluding generators, transporters, and entities other than receiving facilities designated on manifests from the rule's user fee requirements. The commenters on the proposed rule expressed unanimous support for this proposal, and EPA concludes that it is much more practical and efficient administratively to focus fee collections and payments in the system on the several hundred hazardous waste and state-only regulated waste receiving facilities, and to define the ''billable event'' giving rise to a fee obligation in the system as the submission of the final manifest copy signed by these receiving facilities.

EPA is further clarifying that with respect to the continued use of paper manifests, the preferred means of submission to the system by receiving facilities is a data file (*e.g.,* JAVA Script Object Notation (JSON) file) presenting the data from these paper manifests. Such data file submissions will eliminate much of the manual

[1] Conditionally exempt small quantity generators are now known as Very Small Quantity Generators.

processing of these manifests, including opening and sorting mail, and the very labor intensive process of manually keying data from paper manifests into the data system. Receiving facilities may submit their data files from completed, ink signed paper manifests either individually or as a batch submission. Whether submitted individually or in a batch upload, the receiving facility must also submit an image file of each manifest that is included in the data file upload. At the time of submission of the individual or batch file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge and belief, the data and images submitted are accurate and complete, and that the facility acknowledges that it is obligated to pay the appropriate per manifest fee for all the manifests included in the submission. These data file upload requirements are spelled out in §§ 264.1311(c) and 265.1311(c) in this final rule.

c. How will the rule address homeland security risks?

The Agency acknowledges the several public comments raising the concern that unfettered public access to manifest data might enable those with malevolent intent to obtain data from e-Manifest that might pose a homeland security risk. EPA believes that the homeland security risk posed by public access to e-Manifest is minimal for the majority of manifested hazardous waste shipments, because few hazardous wastes are likely to be found in forms and circumstances that would make them attractive to terrorists, and because public access to data through e-Manifest will in all cases be delayed for a period of 90 days after receipt of hazardous wastes at the receiving facility designated on the manifest. However, commenters indicated that the 90-day delay in public access might not mitigate all such security risks, since even with delayed access to manifest data, a terrorist with system access could perhaps discern shipment patterns for particular chemical wastes of concern and the generators and facilities handling them. Thus, commenters suggested that EPA take a more proactive position to guard against homeland security risks posed by data disclosures from e-Manifest. In particular, as a means to identify RCRA hazardous waste shipments that might pose a security risk, the commenters suggested that EPA utilize the Department of Homeland Security's (DHS's) Chemicals of Interest, a screening tool for chemical security risks that DHS has published in appendix A to its 6 CFR part 27 regulations pertaining to the security of the nation's chemical facilities.

EPA consulted with the DHS to determine if the information that will be publicly accessible from e-Manifest poses a significant chemical security risk, and if so, the action the Agency should take to mitigate that risk. DHS concluded that there was a plausible chemical security risk posed by unrestricted public access to data in e-Manifest, and the agencies collaborated on a strategy to mitigate that risk.

EPA believes that the appendix A Chemicals of Interest list and screening tool can be applied to the hazardous wastes and facilities covered by DHS's chemical security regulations to aid EPA in identifying a solution to the security concerns raised by commenters. Rather than duplicating the efforts of DHS in this area, or perhaps developing a conflicting approach, EPA is relying upon the expertise of DHS, the DHS chemical security regulations, and the DHS Chemicals of Interest (COI) appendix to flag those manifested waste shipments and the data that should be withheld from public disclosure by e-Manifest to avoid the release of information that could plausibly be used to harm the homeland.

First, it is significant that DHS has previously determined that the security risks addressed in its 6 CFR part 27 regulations are only potentially presented by a narrow subset of RCRA solid and hazardous wastes. In promulgating the appendix A COI list in November 2007, DHS determined that most RCRA solid and hazardous wastes would not be found in forms or circumstances that would make them attractive to terrorists, with the result that most RCRA wastes are excluded from the COI screening process for chemical security risks. See 72 FR 65397 at 65398 (November 20, 2007). However, DHS concluded that a subset of RCRA hazardous wastes—the so-called ''P-List'' and ''U-List'' wastes consisting of the discarded commercial chemical products and related wastes identified in 40 CFR 261.33—should be subject to screening as COI for chemical security risks. DHS concluded that only these P-List and U-List wastes are covered by the 6 CFR part 27 screening process for COI, because the discarded commercial chemical products, off-specification species, and other such wastes were likely to be just as attractive to terrorists as the chemical products themselves. Id. Thus, our consideration of homeland security risks potentially posed by public access to manifest data should, in the first instance, be limited to a consideration of those manifests for the P-List and U-List wastes with chemical names that also appear on the list of COI in the appendix A to the DHS's 6 CFR part 27 regulation.

Under the DHS chemical security regulations, the COI appendix is used as an initial screening tool for identifying high risk chemical facilities. The COI appendix identifies for each listed chemical substance a Screening Threshold Quantity (STQ) and minimum concentration that apply to each of several modes of vulnerability (release, theft, sabotage) and the related security issues (toxic, flammable, or explosive releases; theft enabling use of chemical weapons or weapons of mass effect; sabotage, etc.). The purpose of the COI list and the STQs published for the relevant security issues is to screen for those chemicals that if released, stolen, diverted, and/or contaminated, have the potential to create significant human life and/or health consequences.

Moreover, the presence of a COI at a facility at quantities exceeding the STQ is not itself a trigger for whether that facility is a ''high risk'' or ''covered facility'' within the meaning of the part 27 DHS chemical security regulations. Rather, the presence of a COI chemical at or above the STQ is the threshold for determining when a facility must be evaluated further by DHS for the chemical security risks at that facility. Exceeding an STQ triggers the requirement for the facility to submit to DHS a Top-Screen document. Only after DHS has gathered additional information through the Top Screen will DHS make a determination whether the facility handling that COI chemical is a ''high risk'' facility and must comply with the substantive requirements of the part 27 regulations. These requirements include the preparation and submission to DHS of a Security Vulnerability Assessment and a Site Security Plan.

While EPA would ideally have the information available to withhold from public disclosure the manifest associated only with ''high risk'' facilities, the Agency is not in a position to determine whether particular facilities associated with P-List and U-List wastes that are COI are high risk for chemical security issues. However, in order to be protective respecting any plausible chemical security risk at facilities with manifested hazardous wastes, the Agency will apply the COI list screening tool broadly to prevent access to information on chemical wastes by those who might have an intent to harm the homeland.

Therefore, in this final rule, EPA is clarifying that the e-Manifest system will withhold from public access

specific data from those manifests related to chemical facilities that handle P-List and U-List wastes that are also included on the appendix A COI list. For manifests that include such chemical wastes, the e-Manifest system will withhold from disclosure to the public-facing module of e-Manifest the following data items: The chemical waste name and specific P- or U-List waste code, the quantity of such wastes included in the shipment, and the date of the shipment. The shipping description for these chemical wastes will instead bear the generic information ''P-List or U-List waste'' in the public facing e-Manifest system. After consultation with DHS, the two agencies have concluded that these measures will be effective to prevent a terrorist from obtaining information on which facilities might possess or manage hazardous wastes that are COI at quantities of concern, as well as prevent such a person from ascertaining information about shipment dates and patterns of shipments involving these chemical wastes of interest.

While the withholding of this limited data from a limited subset of manifests may appear at odds with the Agency's transparency goals for e-Manifest, EPA believes that the mitigation strategy described here represents a reasonable accommodation with homeland security interests, and is a prudent response to the concerns raised by commenters and DHS officials.

d. How will the rule address state regulated facilities lacking EPA Identification Numbers?

EPA acknowledges the comments identifying the problem posed by tracking and collecting payments from state regulated receiving facilities that currently lack EPA identification numbers. The e-Manifest system will be programmed to track manifest activity and bill facilities for their activities with reference to the identification number of the receiving facility listed on each manifest. Therefore, prior to or at the time of system implementation, EPA will need to identify a means by which such facilities can obtain unique identifiers that they can list on their manifests in the EPA identification number field.

As part of the e-Manifest system development, EPA is including a so-called ''non-handler IDs'' initiative aimed at ensuring that each site has its own unique ID to use with its electronic manifests. Further, this initiative is aimed at ensuring that each receiving facility entered in e-Manifest will have a unique identity for tracking and billing purposes. Sites that are listed in Item 8 of manifests as designated or receiving facilities must obtain a handler ID from their state or EPA and be listed in the RCRAInfo data system. These efforts will require considerable outreach and cooperation between EPA, the states regulating these facilities, and the receiving facilities to maximize the inclusion of these sites in the system and ensure the proper billing of their shipments.

e. How will the rule address out-of-state shipments of non-RCRA wastes?

The e-Manifest Act extends the scope of the e-Manifest program to wastes subject to manifest tracking under federal RCRA or under state law. Some state programs regulate more wastes than EPA regulates federally under its Subtitle C regulations, and these additional non-RCRA wastes are often referred to as state-only regulated wastes or as ''broader in scope'' wastes to indicate the more extensive coverage of the state programs. These state-only regulated, non-RCRA wastes can present manifest implementation and tracking challenges when shipments involving these wastes cross state lines. While any non-RCRA waste subject to a manifest under state law in the destination state should be accompanied by a manifest in the destination state and thus would be required by this final rule to be submitted by the receiving facility to the e-Manifest system, the compliance situation is not as straightforward for other out-of-state shipment scenarios. In particular, the manifest requirements may be less clear for waste shipments that originate in a state with more extensive or ''broader in scope'' coverage and that are then shipped out-of-state to a destination facility in a state where the waste is not regulated as hazardous and does not require a manifest under the law of the destination state. Prior to e-Manifest, EPA was not significantly involved in the collection of manifests, and the question of supplying manifest copies to states was governed exclusively by state law. EPA is aware from discussions with state regulators that it was at times problematic for the origination states to collect manifest copies from out-of-state receiving facilities, and that it was often difficult to ensure compliance with copy return requirements from facilities beyond the territorial jurisdiction of the origination state.

Under the e-Manifest Act, however, any such jurisdictional barrier has been eliminated by the Congress. In section 2(h) of the Act, Congress prescribed a self-implementing provision that speaks directly to the obligation of receiving facilities to close out and return manifests to the e-Manifest system, if the waste being shipped for management is subject to a manifest in either the origination state or the destination state. This provision of the Act provides that if either state's law requires that the waste is tracked through a hazardous waste manifest, then the designated facility, regardless of location, shall complete the facility portion of the manifest, sign and date (*i.e.* complete the facility certification), and submit the manifest to the system.

Thus, under the Act, for shipments that cross state lines, a designated or receiving facility that receives waste shipments accompanied by a manifest, and that manifest is required for the tracking the waste shipment by either the law of the origination or destination state, then the receiving facility must attend to that manifest, must close it out by completing the facility portion and signing and dating the facility certification on the manifest, and must submit the signed, final copy of that manifest to the e-Manifest system for processing. These requirements apply to receiving facilities under federal law even if the law of the destination state would not require a manifest for the wastes involved, and would not require the facility to take any action with respect to the manifest required by the origination state. States that desire the return copies of these manifests can therefore rely upon this federal provision that ensures consistency in the tracking of these shipments to their completion, and they will not be as dependent on attempts to extend their state laws in an extraterritorial fashion to out-of-state entities. Receiving facilities can know that their supplying one final copy to the e-Manifest system will satisfy any and all requirements for return copies to tracking states, wherever they may be situated.

While the provisions of section 2(h) of the e-Manifest Act are self-implementing, EPA is including an explanation of this statutory provision in this final rule so that regulated entities will receive ample notice of its requirements. EPA is including this summary of section 2(h) under this preamble topic, because the effect of this statutory provision is to classify the out-of-state waste shipments subject to manifest tracking in either the origination state or destination state as a mandatory type of manifest submission to e-Manifest, and thus another type of ''billable event'' within the meaning of this final rule. In other words, receiving facilities subject to this statutory provision affecting interstate waste shipments must submit the final manifest copies to e-Manifest, and pay

the fee required by this final rule, based upon the type of submission.

The Agency is codifying the exact terms of section 2(h) of the Act at 40 CFR 260.4. EPA has chosen to codify the statutory provision in the general applicability subpart of part 260, because we expect that many of the state-regulated facilities that will be affected by the copy submission requirement of section 2(h) are not RCRA-permitted TSDFs, and thus it would not be appropriate to include the codified text of section 2(h) of the Act in the part 264 or part 265 regulations that prescribe the unit location and management standards for RCRA TSDFs. Part 260 is reserved for regulatory provisions of general applicability, so EPA has chosen to codify the manifest copy return requirement affecting interstate waste shipments at new § 260.4.

f. How will the rule address hazardous waste exports and return shipments of rejected hazardous wastes?

The commenters who identified these two atypical shipment types raised valid points that the proposed rule approach of billing the receiving facilities upon submission of the final signed manifest did not lend itself well to the processing of hazardous waste export manifests and manifests for rejected hazardous wastes that are being shipped as returns to the generators of those wastes.

With respect to hazardous waste export shipments, EPA is not including the tracking of export manifests described in subpart H of 40 CFR part 262 in the initial phase of e-Manifest system implementation. As EPA is not accepting the submission of export manifests to the system at this time, the Agency also is not requiring the payment of a fee in connection with export manifests. EPA's system planning and development efforts to date have been focused on the domestic manifest, as the domestic shipments are the dominant use case for the hazardous waste manifest.[2] Moreover, EPA has not yet determined who in the export shipment chain of custody (*i.e.,* primary exporter vs. transporter moving waste from U.S. or other entity) is best suited for making the submission of the export manifest to the system and paying the requisite processing fee; nor have we provided notice-and-comment opportunities for the exporters or other handlers involved with these shipments. Therefore, these determinations on export manifest submissions and the payment of e-Manifest fees for export manifests must await a future rulemaking connected with the planning for the next phase of e-Manifest implementation. EPA plans to consult the Advisory Board on future e-Manifest system enhancements and expansions, and the future inclusion of export manifests is a topic that the Advisory Board can help us address in our regular meetings with the Board. Until then, current arrangements for handling export manifests and tracking information on exports in other Agency tracking systems will continue.

With respect to rejected hazardous waste shipments, EPA has addressed commenters' concerns in this final rule. With rejections, there are generally two possible outcomes: (1) The rejected wastes are re-shipped under a manifest that forwards the rejected wastes from the rejecting facility to an alternate receiving facility (typically, another RCRA TSDF) for management, or (2) the rejected wastes are re-shipped under a manifest from the rejecting facility as a return shipment back to the original generator of the waste.

The first outcome discussed previously—the forwarding of rejected wastes to an alternate facility—is not unlike the conventional manifested shipment of a waste to a permitted facility for management. The key difference is that the rejected waste shipment originates with the rejecting facility rather than the generator. Otherwise, forwarded rejections are tracked through off-site transportation to another receiving facility (typically another permitted TSDF), which completes the tracking of the shipment by signing the manifest to certify to the receipt of the wastes at the designated facility. Since forwarding rejected wastes to an alternate facility is tracked on the manifest like conventional waste shipments to a receiving facility, EPA can treat them like conventional shipments insofar as the submission of the final copy to the system and the payment of the fee. Therefore, for rejected wastes that are forwarded to an alternate facility for management, the alternate facility that signs the manifest to certify the receipt of wastes must submit that final, signed copy to the system and pay the applicable per manifest fee for that submission.

The unique circumstances surrounding the tracking of return shipments requires a different treatment in this final rule. For return shipments to generators, the rejecting facility is typically listed as the generator on the return manifest, while the original generator of the waste receiving its waste as a return is shown as the designated or receiving facility. EPA's billable event approach of charging the receiving facility of conventional shipments is premised on efficiency and avoiding the inclusion of hazardous waste generators in the e-Manifest payments system. It would conflict with this policy objective if the return shipments were then to implicate generators in the fee payment system, because they appear to be the receivers of return shipments. Therefore, in the final rule, EPA is announcing a different outcome applicable only to the return shipment scenario. For return shipments to generators, the rejecting facility is responsible for the payment of the fee for the return manifest, and the billable event for this fee obligation is the rejecting facility's submission of the original manifest signed by the facility to indicate the rejection and the submission of a copy of the return shipment manifest that will accompany the return shipment to the generator. Each rejection resulting in a return shipment must therefore include the submission by the rejecting facility of the original manifest signed by the rejecting facility and a copy of the return shipment manifest. Thus, the rejecting facility is paying the fee for the processing of the return manifest when it submits the return manifest, as the return manifest and its processing fee will not be collected by the system from the generator.[3] By handling return shipments in this manner, the fee payments required in the system can be confined to the intended class of conventional, permitted receiving facilities. While it may seem irregular to charge the rejecting facility the e-Manifest fee for return shipments of rejected wastes, a chargeback by the facility to its generator customer is an option to balance the equities of the resulting fees. EPA concludes that this decision allocates the fees for rejected wastes most fairly, as the rejecting facility is charged the fee only in the exceptional circumstances of return shipments to a generator, while the alternate receiving facility will pay the fees for the more conventional scenario of wastes being re-shipped and forwarded to another receiving facility for management. Therefore, §§ 264.1311(a)(3) and 265.1311(a)(3) of the final rule will include among the manifest transactions that are subject to

[2] EPA estimates that there are 3 to 5 million domestic manifests produced each year for tracking waste shipments within the U.S., whereas the export trade produces only about 23,000 manifests annually.

[3] EPA notes that in those cases of a facility partially rejecting wastes on the original manifest, with a return of rejected wastes to a generator, the rejecting facility will be charged both the processing fee for the original manifests for processing data on the wastes received, as well as the fee for the return manifest to the generator.

fees the submission by receiving facilities of manifests indicating a rejected waste and a return shipment to the generator of that waste.

g. What other changes are being made in response to comments?

EPA accepts the comments asking for the removal of all vestiges in the existing regulations that suggest EPA could impose e-Manifest fees on generators under part 262 regulations or on transporters under part 263 regulations. These provisions were added during the promulgation of the One Year Rule, which codified quite generally the authority conferred under the e-Manifest Act to impose reasonable fees on all classes of manifest ''users,'' a term which included hazardous waste generators, transporters, and owners or operators of facilities receiving wastes under manifests for management. Thus, EPA included in the One Year Rule provisions in parts 260, 262, 263, 264/265, and 271 so that the codified authority to impose user fees could reach all the possible users of the manifest. In the proposed User Fee Rule, 81 FR 49071, July 26, 2016, EPA stated that if the proposed rule's approach to charging only receiving facilities user fees were to be adopted in the final rule, EPA intended to eliminate from parts 262 and 263 those provisions that would appear to extend user fee authority to generators and transporters. (81 FR 49072 at 49078). Based on the supportive comments in the docket, and the Agency's continued belief that restricting fee collections to receiving facilities is sound policy, EPA is finalizing this policy and thus removing all references in parts 262 and 263 to user fee obligations for generators and transporters of hazardous waste. The result is the removal from the regulations of existing §§ 262.24(g) and 263.20(a)(8) addressing the imposition of user fees on generators and transporters, respectively.

EPA also is accepting the comment noting that EPA had used the terms TSDF, designated facility, and receiving facility interchangeably in the proposed rulemaking, even though those terms do not have the same scope of coverage. The term TSDF connotes a facility having a RCRA treatment, storage, or disposal permit (or interim status), a class of facilities that is narrower than the scope intended by the e-Manifest Act. The commenter is correct in pointing out that the e-Manifest Act intends broader coverage than RCRA TSDFs, since it is clear that many receiving facilities of state-only regulated wastes lack RCRA permits, and yet are facilities that could receive manifested wastes under state law and thus be included in the coverage of the e-Manifest Act and the e-Manifest system. The commenter also is correct that EPA should rely on a term that expresses the intended scope of the e-Manifest Act, and use that term consistently in the final rule. In response, EPA is clarifying in this final rule that ''receiving facility'' is the term with the proper breadth that will capture all facilities regulated by the final User Fee Rule. The final rule will therefore focus on receiving facilities, and not TSDF or designated facility, as both of the latter terms are defined by current federal regulations more narrowly to include only the RCRA permitted facilities. The term receiving facility is sufficiently broad to include every type of federally regulated or state regulated facility that could receive a hazardous or state-only regulated waste covered by the e-Manifest Act.

Consistent with the broad scope of coverage intended by the e-Manifest Act, the Agency is adding new authority in 40 CFR 260.5 to cover the receiving facilities of state-only regulated wastes that are not RCRA TSDFs. Under the final rule's § 260.5, facilities receiving state-only regulated wastes must comply with the requirements of § 264.71 on use of the manifest, the requirements of § 264.72 on manifest discrepancies, and the requirements of subpart FF of part 264 addressing the fee determination methodology, fee payment methods, fee dispute procedures, and other fee requirements. EPA is subjecting the state-only regulated waste receiving facilities to these requirements under § 260.5 so as to clarify the applicability of e-Manifest Act requirements to these state regulated facilities that are not RCRA TSDFs subject to part 264 or part 265.

EPA is also revising the manifest printing specification by adding a § 262.21(f)(8) that will require all printed manifests and continuation sheets to bear a prominent notice to these facilities in the bottom margin of the designated facility copy. This notice will refer the facilities to the manifest instructions that explain their requirements to complete and sign all manifests so received, to submit these manifests to the e-Manifest system, and to pay to EPA the appropriate fee for the processing of these manifests.

*B. What other transactions will be subject to user fees?*

1. Background

In the discussion earlier on the billable event in e-Manifest, EPA clarified that the primary transaction in e-Manifest that will give rise to a user fee obligation is the submission by the receiving facility of the final copy of the manifest signed by the receiving facility to certify to the receipt of the wastes or to any discrepancies related to the shipment.[4] However, in the proposed rule, EPA proposed several additional types of manifest-related transactions that might warrant a fee, and solicited comment on others that might warrant a fee because of the complexity of some transactions (*e.g.,* rejections, split loads, consolidations), or to deter activities that might incur large labor costs, such as a paper manifest premium or a charge for help desk encounters. EPA explained in the proposed rule that the several complex transactions did not warrant any premium fees, because these transactions—rejected waste shipments, consolidated shipments, or split shipments—tend to require additional manifests to be completed and submitted, so the fees related to the additional manifests would be collected as a matter of course without any premium fees. For help desk encounters, EPA concluded that a per encounter fee would discourage users from seeking assistance, and that it was more appropriate to aggregate help desk costs and recover these as operations and maintenance costs of the system to be shared by all manifests.

In footnote 16 at 81 FR 49088 July 26, 2016, proposed rulemaking, EPA stated that it intended to impose a per page transactional fee for manifest continuation sheets. EPA believed the per page continuation sheet fee was justified, as these continuation sheets were separate forms styled similarly to manifest forms, and with many of the same data elements. Particularly when submitted as paper forms for processing, these continuation sheets could require the same sorts of manual processing steps and quality assurance/quality control measures as paper forms. Therefore, EPA stated in the proposed rule footnote that each page of a continuation sheet would generate the same fee as an individual manifest form.

Also, in the preamble section of the proposed rule addressing possible fee premiums, EPA proposed a distinct transactional fee for sorting and returning certain types of extraneous documents that handlers might submit to the paper processing center with their manifests, and for correction submissions sent to the system by receiving facilities to enter corrections

[4] As noted in section III.A.3.e in this preamble, another billable transaction for receiving facilities is the submission of a manifest showing in Item 18a a return shipment to a generator, where a fee is charged for the return manifest.

in the data-base of existing manifest records. See 81 FR 49072 at 49088, July 26, 2016. EPA proposed the extraneous document fee, because EPA had learned from several state agency partners that such extraneous documents were frequently encountered by states with tracking programs, and their sorting and return, if required, would incur considerable manual processing steps and resulting labor costs. It was believed that a premium fee charged for extraneous documents might deter these submissions and recover their related costs to the system.

EPA proposed the corrections submission fee, because the proposed corrections process included in the proposed rulemaking action would require a certified submission by TSDFs to effectuate a change to previously entered manifest records. The proposed rule included a fairly structured submission requirement that would have required the receiving facility submitter to identify the data elements being corrected, to list both the data item as previously entered and as corrected, and then to certify that the data as corrected are complete and accurate. Such submissions would result in system-related costs being incurred, and it was believed that a corrections fee might induce facilities to improve the data quality of their initial submissions so as to avoid the costs of later correction submissions.

2. Comment Analysis

EPA received many comments in response to the proposal regarding which transactions might warrant additional fees. Numerous industry and state commenters agreed that continuation sheets should not be charged a separate or per page fee. These commenters contend that most continuation sheets simply add additional waste streams or an additional transporter to the original manifest. Since continuation sheets carry the same tracking number as the original manifest to which they are appended, the commenters believed that only one fee should be charged for the original manifest and any continuation sheets attached to it.

EPA received many comments from industry and state commenters contesting the proposed fee for sorting and returning stray or extraneous documents. Nearly all of these comments suggested that EPA should not be spending time and resources sorting extraneous documents and attempting to return them to senders, but should simply discard them. Commenters suggested that discarding the stray documents with no additional effort expended on them would not necessitate a separate fee. Several such commenters did question what the term ''extraneous'' meant in connection with non-manifest documents submitted to the system. For example, commenters asked if polychlorinated biphenyl (PCB) continuation sheets and land disposal restriction (LDR) certifications would be treated as extraneous, even though other EPA regulations may require them to be attached to manifest forms.

Commenters generally agreed with EPA's assessment that help desk encounters should not be charged separate per encounter fees. These commenters agreed with EPA's statement in the proposed rulemaking that the help desk costs should be aggregated and shared by all manifests as operations and maintenance costs. Similarly, commenters agreed with EPA's assessment that a premium fee for paper manifest use was not warranted at this time, as the differential fee approach in the proposed rule would already assess higher fees for paper manifest submissions, because of their higher processing and labor costs. Commenters said that the differential fee proposal already created the appropriate incentives against the continued use of paper manifests without an additional premium fee.

Many industry commenters and several state agency commenters submitted comments objecting to the proposed data correction fee, although a few commenters stated they would support a corrections fee focused on paper manifest submissions only. The commenters objecting to the proposed corrections fee, particularly RCRA TSDFs and their trade associations, argued that a separate fee levied on correction submissions would deter corrections being made, and would result in disincentives for data quality in the system. These commenters suggested that the system should encourage, not discourage, data corrections from the user community.

3. Final Rule Decisions

EPA accepts the numerous comments objecting to a separate transactional fee for manifest continuation sheets. EPA is persuaded that most continuation sheets add minimal additional data to a manifest, typically several additional waste streams or an additional transporter, and that processing these additional data items will not incur significant costs to the system. Also, as these continuation sheets will be tracked by the same manifest tracking number displayed on the original manifest, it will not be practical to track and invoice users separately for continuation sheets. Any marginal costs that result in the aggregate from the processing of continuation sheets will be added to the system's operating and maintenance costs. Thus, the policy of charging a per sheet fee for continuation sheets, as suggested in the proposed rulemaking, 81 FR 49072 at 49088, footnote 16, July 26, 2016, will not be adopted in the final rule.

EPA also accepts the numerous comments criticizing the proposal to charge a separate transactional fee for sorting and returning extraneous documents submitted to the system's processing center with paper forms. Commenters all expressed alarm that EPA would spend time and resources sorting and returning extraneous documents, and EPA accepts the commenters' reasoning that the proper outcome should be to simply discard, and not return, any such stray or extraneous items that are not in fact manifest related. Thus, under the final rule, there will be no fee assessed for processing extraneous documents, and any nominal costs from sorting and discarding these documents will be added to the system's operating and maintenance costs. Thus, in this final rule, EPA is not finalizing proposed § 264.1311(b)(1) or § 265.1311(b)(1), which would have assessed fees for the processing of extraneous documents submitted with paper manifests to EPA's paper processing center.

In relation to this issue, EPA will treat all documents that are not manifest related, *i.e.,* a hazardous waste manifest form or a manifest continuation sheet, as extraneous and discard them under this rule's policy. PCB continuation sheets will be considered manifest related, as they are required to be attached to PCB manifests under federal law and contain specific details related to tracking specific PCB waste items that are being shipped off-site. However, EPA is not planning to process LDR certifications at the e-Manifest processing center, and any plans to process LDR-related documents in e-Manifest will await a later phase of system implementation. Such LDR certifications are currently intended to be delivered to the RCRA receiving facility the first time LDR-restricted wastes are shipped to a particular facility for management. Therefore, these LDR certifications should remain at these facilities and be kept among these facilities' records, and not submitted with manifests to the e-Manifest system. Until such time as EPA decides to process LDR-related documents in e-Manifest, EPA will discard any LDR certifications that are received by the system under this rule's

policy of discarding extraneous documents.

EPA also is accepting the comments objecting to the proposed rule's fee for data correction submissions. EPA is persuaded that a fee for such corrections might have the unintended effect of discouraging corrections and data quality. Moreover, as the great majority of correction submissions will be made electronically, their processing should entail nominal system costs, which EPA can include among the system's operation and maintenance costs to be shared by all manifests. Therefore, the final rule action does not finalize proposed §§ 264.1311(b)(2) and 265.1311(b)(2), which would have assessed fees for manifest data correction submissions by facilities. Other changes to the proposed data corrections process are discussed in section III.F of this preamble.

Finally, the Agency acknowledges the general support in the comments for EPA's proposed rule rationale for not charging any additional transaction based fee for help desk encounters nor charging an additional premium fee for the use of paper manifests. EPA concluded in the proposed rule that the cost of help desk support should be aggregated and funded as an operating and maintenance costs shared by all manifests. EPA further explained that the proposed differential fee approach (see section III.C of this preamble) already included appropriate fee disincentives to discourage paper manifest use, without a premium fee being necessary or appropriate at this time. As commenters agreed with both of these proposals, and EPA believes both are backed by sound policy, EPA is affirming in this final rule that no transactional fee will be charged for help desk encounters. In addition, no premium fee (beyond the higher differential fee under the rule's fee formula) will be charged for the continued use of paper manifests.

*C. What formula and methodology will be used to determine user fees?*

1. Background

In the July 26, 2016, notice of proposed rulemaking, EPA proposed what it described as a ''differential fee formula.'' The proposed formula differentiated among the several types of electronic and paper-based manifests that would be submitted to the system for processing. The most significant feature distinguishing the processing of these different manifest types under the proposed fee formula was the marginal labor cost of processing the data from these manifests into the system. EPA developed an economic model to project the marginal labor costs for processing the several manifest types allowed to be submitted to the system. Paper manifests mailed to the system for sorting and manual data key entry would entail the greatest marginal labor costs to process. Paper manifests submitted as image files (*e.g.,* Adobe Portable Document (PDF) files) would have marginally lower costs than mailed forms, but would still require manual data key entry steps. Paper manifests submitted as data files (*e.g.,* JSON file with an image file attachment) would require even less manual effort to process. The lowest cost manifests to process would be the fully electronic manifests that originate in the system and are transmitted electronically with no manual intervention at all. The result of the proposed differential fee formula is thus a continuum of manifest fees, with fully electronic manifests involving the lowest costs and fees, with somewhat higher fees for paper manifests submitted as JSON or data files, with moderately higher costs for the paper manifests submitted as image files, and with the highest fees imposed on paper manifests mailed to the system.

The key purpose of the fee formula is to determine the per-manifest fee to be charged manifest users. In simplest terms, the formula allocates all the system-related costs over all the manifests in use to arrive at a per manifest fee. In the July 26, 2016, proposal, EPA explained the nature of the several system-related cost categories that would be included in fee determinations with the proposed formula. See 81 FR 49072 at 49079. The major cost categories identified in the proposal were System Setup Costs, Operations and Maintenance Costs, and Indirect costs.

The proposed rulemaking discussion of the differential fee formula broke down the system-related costs into two key sub-categories, System Procurement Costs and EPA Program Costs. These sub-categories are helpful to distinguish the information technology (IT) system acquisition and contracting costs from the other EPA Program Costs that the Agency would incur in planning, developing, operating, and managing the e-Manifest program, including the program's IT system and regulatory components. The EPA Program costs extend as well to the costs of conducting outreach, as well as establishing and operating the e-Manifest Advisory Board.

In the fee formula methodology proposed by the Agency, the System Setup Costs are simply the System Procurement Costs and EPA Program Costs incurred by EPA *before* the e-Manifest system's operational date, whereas the Operations and Maintenance Costs consist of the System Procurement Costs and EPA Program Costs incurred *after* the operational date of the system. Because the e-Manifest Act requires that EPA reduce the user fees upon the recovery of all the system development costs, the proposed rule methodology would accomplish this by simply dropping the System Development Costs from the formula after five years, as EPA proposed an amortization period of five years for the recovery of the system development costs. 81 FR 49079, July 6, 2016. However, it is possible that the cost recovery period could extend beyond the five years, should, for example EPA find that actual O&M costs exceed estimates. EPA will closely track the actual progress in the recovery of system start-up costs, and will notify users accordingly when the reduced fees will take effect.

In developing the proposed rulemaking, EPA considered three distinct fee models or options, which were discussed in detail in the proposed rule preamble. See 81 FR 49081–49083, July 26, 2016. All three options focused on the marginal labor cost of processing each manifest as the primary cost item contributing to the calculated fee, and to this marginal cost was added the result of dividing the System Setup and Operations and Maintenance by the numbers of manifests, with allowance also for amortizing the System Setup Costs over five years. The three fee models or options varied by how extensively the models tracked costs and manifest numbers by manifest type, and by how rigorously the models attempted to allocate the substantial paper manifest processing costs to only the paper manifests, rather than sharing these costs equally with the electronic manifests. Thus, the Agency considered a very simple ''Average Cost Fee Option'' that shared all costs equally among all manifests, paper or electronic, to arrive at an average marginal labor cost and the same average fee for all manifest types. A second or intermediate option was discussed as the Marginal Cost Differentiated Fee Option, which focused on the marginal labor cost of processing each manifest type (fully electronic, paper by mail, paper by image file, or paper by JSON file) as the key contributing cost item, but which allocated all other system setup and non-labor operating costs equally across all manifests. The third and most detailed option was the Highly

Differentiated Fee Option, which also focused on the marginal labor cost of processing each manifest by type, but was more particular in tracking operation and maintenance costs and manifest numbers by their type, and in allocating the non-labor costs of operating the paper manifest processing center to only the paper manifests rather than having all manifest types share in these costs.

In the July 26, 2016, proposed rulemaking, EPA proposed a combination of the second, Marginal Cost Differentiated Fee option and the third option, the Highly Differentiated Fee option. See 81 FR at 49083. Under the proposed fee model, EPA would initially implement the second, Marginal Cost Differentiated Fee Option, but would shift to the third or Highly Differentiated Fee Option if the Agency were to find that electronic manifest usage had not reached the programmatic goal of 75% after four years. EPA rationalized the proposal on the basis that it represented a useful compromise between promoting electronic manifest use, while also recognizing that there likely would be a transition from paper manifest use, to JSON data uploads from facility's paper manifests, and finally to fully electronic manifests and submissions. The intermediate step in the transition—receiving facility uploads of JSON data files generated from their paper manifests—would produce benefits and cost savings for industry and the Agency's national data system. Thus, EPA believed that the combination of the two fee models, with the pivot to the more aggressive fee model if necessary after a four-year period, would facilitate this transition and not have the potentially undesirable effect of penalizing paper manifest usage initially. EPA had previously espoused the 75% usage rate goal in our economic analyses for e-Manifest to project program savings and benefits, and we believe that the 75% adoption rate within four years for electronic manifests is a useful benchmark for measuring the success of the program and for incentivizing the transition to electronic manifests through this User Fee rule.

2. Comment Analysis

There was general agreement among both industry and state commenters in support of the proposed rule's differential fee formula and its approach keyed to the marginal labor cost of processing the various manifest types into the national data system. The majority of these commenters indicated that the proposed formula was well explained, and that it provided a generally sound justification for the variability of fees among the different manifest types, that is, fully electronic manifests, and paper manifest submissions delivered by mail, by image file upload, and by JSON data file upload. These commenters also were satisfied that the proposed formula and the explanation in the proposal of the formula's cost categories and their sources were adequate to explain how the fees would be determined. Only one industry commenter expressed a dissenting view, and suggested that EPA had not substantiated the cost factors and resulting fees. This commenter expressed alarm at the level of fees published in the preamble's table showing the illustrative fees under the proposed formula, while another commenter criticized the table of illustrative fees for the range of possible fees it presented, and suggested that EPA should have been able to pin down the costs and resulting fees more closely by now.

In addition, there was general support in the industry and state comments for the proposed rule including the fee pivot feature, so that fees for paper manifests would become more aggressive if electronic manifest usage goals were not met. However, commenters representing several large RCRA TSDFs, and their trade association, objected to the final rule codifying the 75% electronic usage goal in four years as the trigger for the pivot to the more aggressive fee formula. In the view of these commenters, the 75% in four years electronic usage goal was arbitrary and should not be locked into a regulation. Rather, these commenters would prefer that EPA refer the matter of when and under what conditions to raise fees to the e-Manifest Advisory Board for its recommendation.

Few comments were received on the proposed five-year amortization period for the recovery of system development costs and their payback to the Treasury. One state agency commenter expressed support for the five-year amortization period as reasonable, but emphasized that amortized costs that accumulate in the System Fund must not be treated as a surplus, as the e-Manifest Act places limits on surplus accumulations in the System Fund. Another state commenter suggested the amortization period should be set at six years, for consistency with the Fee Rule's general reliance on a two-year cycle for publishing and revising fees.

3. Final Rule Decisions

For this final rule, EPA is sustaining its proposed approach to the differential fee formula. The final rule provides that EPA will initially implement the Marginal Cost Differentiated Fee model, and then shift to the Highly Differentiated Fee model, if electronic manifest usage has not reached a 75% adoption rate after four years of system implementation. However, EPA will evaluate the circumstances of the electronic manifest adoption rate as we reach the four-year anniversary date for the e-Manifest system. At that time, EPA will publish a document indicating whether the 75% adoption rate has been realized and any facts or circumstances that might explain why the goal was met or not met. At the time EPA publishes this action, the Agency will either state that the fee pivot will go into effect on a date determined by EPA under the conditions of the final rule's fee pivot provisions, or, EPA will determine then to refer the matter of the adoption rate and fee impacts to the Advisory Board and seek the Board's recommendations on the issue. In this manner, EPA can still implement the more aggressive fee formula pivot under the terms of this final rule, rather than having to wait on the Advisory Board's advice and possibly another rulemaking. EPA believes that the more aggressive or Highly Differentiated Fee formula is an appropriate means of ensuring that paper manifests ultimately bear their full costs, and this is an important principle of user fee design. EPA only proposed the intermediate fee model to facilitate a transition to electronic manifests, and the Agency concludes that four years is a reasonable period of time to promote such a transition. Rather than an arbitrary pivot condition, the inclusion of the 75% adoption rate condition with the four-year transition period actually moderates the transition period condition. EPA could have required the pivot to the more aggressive formula with certainty after four years, without regard to the electronic usage rate. As moderated by the usage rate condition, if the 75% adoption rate is realized, the transition to the more aggressive fees after four years is in effect canceled and the intermediate model's fees would remain in effect. In addition, EPA notes that the fee increases resulting under the more aggressive fee formula are not prohibitive, *e.g.,* about $2 more for a mailed paper submission and only a few cents difference per manifest for a JSON data upload from a paper form. EPA is not persuaded by comments suggesting that the proposed rule's fee pivot is unreasonable or arbitrary under the proposed conditions. Indeed, were the conditions not codified in the final rule, the decision to increase the paper

manifest fees even moderately would involve the substantial delay of referring the issue to the Advisory Board, waiting on their report, and then having to initiate new notice and comment rulemaking to implement the change. The decision to raise fees under particular conditions is a decision that only the Agency, not an Advisory Board, can make. Therefore, EPA is issuing the final rule to include a transition to the Highly Differentiated Fee model after four years, if electronic manifest usage has not reached 75% by that time. However, we will decide at that time through a separate action whether the fee model pivot will go into effect by the terms of the final rule, or if we find there are extenuating circumstances such that it would be helpful first to seek the advice of the Board. In either case, EPA will announce its decision to either allow the fee pivot to go into effect, or to consult on the matter with the Advisory Board.

EPA also is finalizing the rule with the proposed five-year amortization period for the recovery of system development costs. EPA received one comment supporting the proposed period as reasonable, and only one other comment suggesting the amortization period be extended to six years to align better with the proposal's two-year fee revision cycles. For the final rule, EPA is retaining the proposed five-year amortization period, and concludes that five years reasonably balances the Government's desire to promptly recover the system's development monies, while moderating the effect of the development costs insofar as keeping the resulting user fees at reasonable levels. By concluding the amortization period after the fifth year, the fee revision schedule that EPA publishes for the two-year cycle covering the fifth and sixth years will more palpably show the users the effect of the recovery of start-up costs in reducing the scheduled fees for the sixth year relative to the fifth year.

*D. What indirect costs are considered by EPA in user fee determinations?*

In the 81 FR 49072, July 26, 2016, proposed rulemaking, EPA explained that the e-Manifest system related costs fall into three main categories: (1) System Setup costs, (2) Operations and Maintenance costs, and (3) Indirect costs. The nature and source of System Setup costs and the Operations and Maintenance costs are explained above in the discussion of the Fee Formula and how these costs are factored into the determination of fees. However, indirect costs also are factored into the Fee Formula calculation of user fees, and EPA believes this third major category of system-related costs merits more explanation.

Indirect costs are the intramural and extramural costs that are incurred by EPA in operating the system, but that are not captured in the EPA Program cost and marginal labor cost sub-categories that EPA tracks as direct costs in determining overall costs and resulting fees. The indirect costs are part of full cost recovery, because of their necessary supporting or enabling nature in executing the program. (81 FR 49072 at 49080, July 26, 2016). Indirect costs typically include such items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. In e-Manifest, these indirect costs also include the cost of participation by administrative EPA offices outside of the Office of Resource Conservation and Recovery (ORCR), the lead office at EPA for implementing the e-Manifest program, and the participation of upper management level personnel from the EPA offices that provide support to all aspects of the e-Manifest program. *Id.*

Indirect costs tend to be disparate and more difficult to track closely than other cost categories, because they are typically incurred as part of the normal flow of work involving many offices across the Agency, and cannot be attributed directly to the particular activities they support. Also, the level of participation by different offices, and the level of indirect costs incurred by them, changes over the course of the program's implementation. Thus, as we explained in the proposed rule, indirect costs require a different method of tracking and accounting than the other categories of e-Manifest costs. *Id.*

EPA accounts for indirect costs in its user fee determinations by developing an indirect cost rate, and factoring that rate times the base fees determined from the direct cost categories in the fee formula. Typically, agency-wide indirect cost rates are determined for EPA user fee programs by EPA's Office of the Controller, using an indirect cost methodology that this office has developed to meet the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Standards and Concepts. EPA's Office of the Controller annually publishes an indirect cost rate for each of the Regional Offices and for each of the Assistant Administrator-level offices within EPA Headquarters. Thus, there is an Interagency Agreement (IA) indirect cost rate issued each fiscal year for the Office of Land and Emergency Management (OLEM). The Fiscal Year 2015 IA indirect cost rate for OLEM, which we discussed in the proposed rulemaking preamble and used for purposes of the proposed rule's table of illustrative e-Manifest fees at 81 FR 49085 of the proposed rule, was 19.74%. *Id.* at 81 FR 49080, footnote 11.

In the 81 FR 49072, July 26, 2016, proposed rulemaking, EPA stated that it intended to develop a customized indirect cost rate that we believed would capture the indirect costs of the e-Manifest program at a greater level of specificity than the IA indirect cost rate for OLEM. EPA received no public comments on the issue of indirect costs. Nor did the Agency receive any comments on its statements in the proposal regarding its intent to develop a new custom indirect cost rate for e-Manifest.

EPA is announcing in this final rule the custom indirect cost rate for e-Manifest, which was based on EPA's existing indirect cost methodology, and taking into account with more particularity other appropriate indirect costs attributable to the ORCR program office that were not captured by the previously used IA rate alone.

Using the new custom indirect cost rate methodology for e-Manifest, the indirect cost rate for e-Manifest in fiscal year 2018 is 33.22%.[5] This indirect cost rate for e-Manifest will be calculated and reissued each fiscal year. Thus, when the Fee Formula is run to determine e-Manifest user fees, the applicable indirect cost rate will be factored times the base fees calculated from the direct cost categories in the fee formula to arrive at the total user fees.

*E. What process and factors will be used to revise e-Manifest fees?*

1. Background

In the 81 FR 49072, July 26, 2016, proposed rulemaking, EPA proposed both a process and several fee adjusters that the Agency was considering to address the so-called ''fee trajectory'' concern. Fee trajectory provides a means to ensure that the program's user fees remain aligned with any changes to program costs. Changes to program costs could arise, for example, from increased labor costs for EPA's internal staffing or for its contractors, from increases in the

[5] The custom indirect cost rate includes those indirect costs incurred by EPA in operating and managing the e-Manifest program. This custom rate also includes EPA Headquarters general and administrative expenses, including OLEM's Immediate Office and the ORCR's administrative office, which are not captured as part of the EPA Program costs that EPA tracks as direct costs in determining the program's overall costs and resulting fees. All costs are captured in the Agency's financial system.

costs of licensing software or other system components, as well as from inflation. In addition, since the calculation of e-Manifest fees is highly dependent on accurate information about program costs and the numbers of manifests in use, the e-Manifest user fees need to be reevaluated regularly to ensure that the fees are based on the most recent cost and manifest usage data.

To address fee trajectory, EPA proposed a fee revision process under which the fee formula would be re-run with the latest program cost and manifest usage numbers at two-year intervals. EPA based this proposal on the perceived advantages of providing more stability to users under a two-year fee schedule, as well as the advantage to EPA of avoiding the administrative burden of constantly updating and publishing fee revisions annually. Moreover, we believed that a two-year fee refresh cycle was consistent with OMB's Circular A–25 user fee guidance, which requires agencies of the executive branch to conduct biennial reviews of its user fees, including any adjustments to the fees charged. See 81 FR 49072 at 49086, July 26, 2016.

In addition, since EPA would retain the formula and merely refresh the fee schedules to reflect the most recent program cost and manifest numbers, the refresh and publication of the revised fee schedules under the proposal would be conducted informally. That is, EPA would not conduct notice-and-comment rulemaking with each fee schedule revision cycle, but would instead publish the revised fee schedule to users through the e-Manifest program's website, and publish the fee schedules in this manner 90 days prior to the effective date of the new fee schedule.

To enable a more durable fee methodology and avoid the need for frequent regulatory amendments, EPA included several fee adjusters in the proposed rule. The point of these adjusters was to keep the calculated fees current with any anticipated program cost changes, and avoid having to revise the formula and methodology by new regulations. If the fee formula with the proposed adjusters could keep the e-Manifest fees aligned with program cost changes, then EPA could retain the fee formula over an extended period of time, simply by refreshing the fees at two-year intervals with the latest budget and manifest numbers, and applying the regulation's adjusters. This is what EPA intended by a durable fee methodology.

EPA proposed several such adjusters. First, we proposed an inflation adjustment factor predicated on the Consumer Price Index, for all items not seasonally adjusted, or CPI–U. EPA believed the CPI–U was a sufficiently representative inflationary index, and we proposed to use that index to adjust e-Manifest fees between the first year and second year of each two-year fee revision cycle.

Second, EPA proposed a revenue recapture adjuster to deal with revenue losses that might result to the program from imprecise estimates of manifest numbers used to determine fees in the fee formula. The fees calculated under the fee formula, and therefore the revenue to be collected from e-Manifest user fees, are highly sensitive to the numbers of manifests actually in use each year. Over time, as EPA obtains data from the system showing precisely how many manifests are submitted to the national system, the program should be less vulnerable to losses from imprecise estimates. But particularly in the initial years of implementation, when our fee formula will work off of estimates of manifest usage developed from economic analyses rather than actual experience, imprecise estimates of manifest numbers are an area of revenue vulnerability. Therefore, EPA included the revenue recapture adjuster so that we could compare our estimated manifest usage numbers for each fee cycle with the numbers actually submitted, and then recapture the revenues lost from inaccuracies in the subsequent fee cycle. In this manner, the fee methodology would become self-correcting for any such revenue losses.

Third, EPA proposed a third adjuster that we referred to as the uncollectable fee adjuster. Like the above revenue recapture adjuster, this proposed adjuster also sought to recover revenue losses from the previous two-year cycle. This adjuster, however, was focused on revenue losses that arose from fees that proved to be uncollectable after being billed to facilities. Thus, the effect of this proposed adjuster was to track how much revenue the program lost from unpaid and uncollectable fees billed to facilities, and then recover those revenues in the next fee cycle by increasing user fees sufficiently to recoup those losses. All the proposed adjusters were aimed at accomplishing full cost recovery, and providing a means for the fee system to be durable and self-correcting, where possible.

2. Comment Analysis

The majority of industry and state agency commenters supported the proposal to refresh fee schedules at two-year intervals, with informal publication of the revised fees to the program's website 90 days in advance of their effective date. Several commenters objected to certain aspects of the proposed informal fee revision process. An industry trade association objected to the 90-day lead time for new fee schedules as too short, and suggested a 180-day lead time was more appropriate, especially if there were large (>10%) fee increases. Two industry commenters objected to EPA making any fee changes without conducting a rulemaking, while a state agency commenter asserted that new fee schedules should be developed annually.

Other commenters requested clarification of points raised in the proposal. One comment asked the Agency to clarify if it was the intent of the proposed rule that fees would be identical for both years of a fee cycle, or, would they change between years. Another commenter requested clarification about the effective date of fee revisions, and whether a fee would be charged based on the date of initiation of a manifest, or on the date of receipt at the receiving facility.

For the proposed fee adjusters, there was general agreement among both industry and state agency commenters in support of the inflation adjuster based on the CPI–U as the measure of the inflationary impact. However, a minority of commenters stated that an inflation adjuster did not seem necessary, if user fees were to be refreshed as frequently as every two years. There also was support expressed by several commenters for the proposed adjuster to recover losses from imprecise manifest usage estimates. There were strong and general objections expressed by both industry and state agency commenters to the proposed uncollectable manifest fee adjuster. Nearly all these commenters expressed the view that it was unfair to charge responsible users who were paying their fees on time additional amounts to compensate for non-paying users. However, one generator did submit a comment in support of the uncollectable fee adjuster.

3. Final Rule Decisions

For the final rule, EPA is affirming the proposed fee revision process to be conducted at two-year cycles by refreshing the fee formula with the most recent e-Manifest program cost numbers and manifest usage numbers. We also affirm that the process will be conducted informally rather than through notice-and-comment rulemaking, as long as the Agency is using the same fee setting methodology promulgated in this rule. Thus, the final rule will provide that the new fee schedules developed every two years

from re-running the fee formula will be published to users via the e-Manifest program's website, at least 90 days prior to their effective date. While the Agency appreciates that an annual fee revision process would be even more responsive to program cost and manifest number changes than the final rule's two-year cycle, the Agency is persuaded that any such advantage is overwhelmed by the additional administrative burden to EPA in conducting a nearly constant, annual fee refresh process. Also, we believe there are advantages to users in having access to a stable fee schedule of two years' duration, rather than having to anticipate and react to a more frequent fee revision process.

In finalizing the rule with this informal fee revision process, EPA rejects the comments suggesting that all fee revisions require a new rulemaking. While we acknowledge that OMB Circular A–25 requires agencies to promulgate user fees by regulation, EPA concludes that this requirement is met by developing this Fee Rule announcing our durable fee methodology through the regulatory process. By developing our durable fee methodology through rulemaking, EPA is providing the user community with notice and opportunity to comment on the information and process EPA will rely on in setting e-Manifest user fees, including those factors that will be used to adjust fees to align them with changes in program costs. EPA is aware that other fee programs follow similar processes in determining and revising their fees. EPA believes the durable fee methodology and informal fee refresh process announced in this rule meets all applicable legal requirements and OMB Circular A–25 policy. Otherwise, the result would be a prohibitively burdensome administrative process were EPA to constantly develop regulations for every fee revision. In addition, while EPA understands the desire to have more lead time to understand and budget for user fee revisions, EPA concludes that a 90-day lead time should be workable, as it will enable EPA to base the new fees on the latest cost and manifest usage trends, while still affording users reasonable time to plan for the revised fees. Also, by refreshing the fees at two year intervals, it would seem unlikely that fee changes will be so significant between cycles that facilities will need six months or more to prepare for their implementation.

Based on the public comments and the necessity of full cost recovery and stable revenues, EPA is finalizing the rule to include the inflation adjuster based on the CPI–U, and the revenue recovery adjuster for revenue losses from imprecise manifest usage estimates. The inflation adjuster will operate to adjust fees between the first and second year of a fee cycle, so it is likely that fees will not be identical for both years of a cycle, but differ somewhat to reflect the inflation adjustment. The revenue recovery adjuster for imprecise manifest numbers will operate between fee cycles, to adjust fees in the new cycle to account for revenue losses during the previous cycle. Since the billable event for e-Manifest fees is the submission of the final manifest by the receiving facility, the fee charged will be determined based on the date of submission by the receiving facility, and not the date of initiation by a generator.

Finally, EPA is not including the proposed uncollectable manifest fee adjuster in §§ 264.1313(c) and 265.1313(c) of the final rule. While such an adjuster might help to stabilize program revenues in the event of significant non-payment incidents, EPA is persuaded by comments objecting to the fairness of charging responsible users for the revenue losses occasioned by delinquent payers. In addition, EPA believes that non-payment episodes will be infrequent, and should be resolved or moderated through the dispute process provided in the rule, or through the deterrent effect of the rule's sanctions for non-payment.

*F. What process will be used for manifest data corrections?*

1. Background

In the 81 FR 49072, July 26, 2016, proposed rulemaking, EPA proposed a process by which receiving facilities only could submit a certified corrections submission electronically in order to make corrections in the data system to existing manifest records. (81 FR 49072 at 49098). The facilities could make these corrections by accessing the web-based e-Manifest application directly, or, by uploading a correction submission (*e.g.,* a JSON file) affecting one or a batch of manifest records. Every correction submission by a facility would require a Cross-Media Electronic Reporting Rule (CROMERR)-compliant signature certifying that the data as corrected are true, accurate and complete. *Id.* The proposed rule's correction submission would clearly identify the Manifest Tracking Number of the affected manifest(s), the items on the manifest being altered, and set out both the data previously entered and the data as corrected. *Id.*

The proposed data correction provisions also included a fairly detailed process by which corrections would be initiated and reviewed by interested persons, *i.e.,* other handlers included on the affected manifest, and state regulators. Critical to this proposed process was the requirement that all data corrections were to be completed within 90 days of receipt of the manifested wastes, so that the corrections process would be completed by the date that manifest data could be disclosed by the system to the public under existing regulations. The proposed rule discussed one process under which the data correction was initiated by the receiving facility and another process under which another interested person (other waste handler or state) initiated a correction by providing the facility with notice of a data error. In either case, the proposed rule provided comment windows for interested persons to respond to the facility's data correction, and the correction process had to be completed by the facility no later than 90 days post-receipt for the waste shipment. *Id.* at 49099. Finally, EPA proposed that a fee would be collected for all data correction submissions from receiving facilities. *Id.*

2. Comment Analysis

EPA received a variety of comments both supporting and objecting to the proposed data corrections process. A trade association of large receiving facilities and several members of the industry supported the major features of the proposed corrections process, including the proposal that only receiving facilities could submit data changes to the system, and the proposed requirement to submit all corrections electronically. These industry members also supported the batch certification process whereby one electronic signature would suffice to certify to a batch of data record changes.

Among members of the waste industry, there were several comments that dissented to the proposal that only receiving facilities could enter data changes in the system. The dissenting commenters questioned why generators, transporters, or state agency representatives could not also make these changes, and one objected to the idea that the proposed rule seemed to portray receiving facilities as owners of manifest data, when generators should be playing this role. Other industry commenters and a state agency observed that not all facilities would be able to submit their corrections electronically, and that the rule should provide appropriate exceptions.

EPA received many comments from industry and state agencies objecting to

the proposed 90-day window for making data corrections. These commenters provided examples of several situations where errors and the need for corrections would not become apparent until after the 90-day window had passed, such as errors discovered after containers placed in storage were opened, during an audit, or while preparing an annual or biennial report. All these commenters urged EPA to reconsider this 90-day window, and allow data corrections to occur at any time they are needed.

Many industry commenters also objected to the proposed fee for data correction submissions. Theses commenters asserted that a fee charged for corrections would operate as a disincentive to correcting data errors, and denigrate data quality in the system.

The remaining comments on this topic were concerned with the clarity of the proposed corrections process, and they suggested several ideas for clarifying and improving the process. Within these comments were suggestions that the final rule:

- Clarify the interested parties who can participate in the corrections process,
- Clarify how receiving facilities will notify off-line generators of errors, discrepancies, or proposed corrections, and how off-line generators will notify facilities of data errors,
- Clarify how generators will be alerted to proposed corrections and how they will be able to validate or dispute such corrections,
- Clarify which states will receive notices of proposed corrections,
- Clarify the data validation rules and standards that will be followed for paper manifests, and the expectations for QA/QC and resource implications for states, and
- Clarify how the original and corrected versions of the manifest will be retained in the system.

In addition, at the initial e-Manifest Advisory Board meeting conducted on January 10–12, 2017, Advisory Board members discussed the proposed rule's corrections process and offered suggestions to EPA representatives. Several Board members suggested there should not be detailed regulatory provisions or a prescriptive process for data corrections. Instead, the Advisory Board members suggested a minimal role for a regulation, and an open process by which any waste handler named on a manifest could at any time make a data correction. All interested parties should be made aware of another's proposed data change, and the last change made in the system would stand until corrected.

3. Final Rule Decisions

For the final rule, EPA is accepting the many comments that objected to the 90-day post-receipt window for making corrections, as well as the numerous comments objecting to the collection of a fee for correction submissions. EPA is persuaded by the comments that both of these proposals could have the deleterious effect of discouraging data quality.[6] Further, EPA agrees that all interested persons (*e.g.,* waste handlers named on manifests) should have the ability to submit a data correction, whenever a data error in an existing record becomes apparent.

EPA also is accepting the suggestion of e-Manifest Advisory Board members that the e-Manifest data corrections process should be an open process governed by minimal regulatory provisions, and without regulatory limits on who, when, or how many changes are made to manifest data records. Therefore, the final rule provisions on data corrections are much simpler than the proposed approach, and specify only that any interested person (*e.g.,* waste handler named on the manifest) may make a data correction submission at any time. Data correction submissions must be made electronically, with electronic notice to other interested persons shown on the manifest. The correction submission may relate to an individual record or to an identified batch of records, and must be accompanied by a CROMERR-compliant certification that to the person's knowledge and belief, the data as corrected will cause the affected data records to be true, accurate, and complete.

EPA emphasizes that under the final rule, the initiation of data corrections is not limited to receiving facilities, so the proposed rule approach under which only receiving facilities could submit corrections (at their own initiative or in response to a notice of error from an interested party) is not being finalized in the regulation. Instead, the final rule will simply state that any interested person (*e.g.,* waste handler shown on a manifest) may submit a data correction submission at any time, by submitting a single record or batch correction electronically to the system; by making the required CROMERR-compliant certification to that person's knowledge and belief, the data records as corrected are true, accurate, and complete; and by giving electronic notice to the other interested persons shown on the manifest. Consistent with the proposed rule, the correction submission must indicate the record being corrected by its Manifest Tracking Number, must identify the Item Number of the manifest data fields affected by the correction, and for each data field corrected, must show the previously entered data and the data as corrected. The final rule corrections process is therefore an open and cumulative process under which any interested person may submit a correction affecting the data from the original manifest record, or affecting the data from previous corrections submitted by others. There is no limit to the number of corrections that may be entered, and the last submitted correction is presumed valid and accurate unless corrected by a subsequent data correction.

Those persons making data corrections must provide electronic notice of the changes to other interested persons shown on the manifest. The notice to interested persons must be provided by email or by another system-generated electronic notice.

With respect to data corrections from off-line generators, and notices of corrections to these off-line generators, all generators must provide an email address where they may be contacted, so that they may participate in the data corrections process and receive correction related notices. While a generator may receive notices of data corrections by email, a generator must have system access credentials and must enter electronically any data corrections relating to electronic or paper manifests in the system, and must provide the required certification of any data corrections so entered.

Finally, EPA is clarifying that it is not the intent of the data corrections process to produce amended or revised manifests, but rather to produce changes only to the data records from manifests that reside in the national data system. The role of the manifest is to serve as a tracking document during the transportation of off-site shipments of hazardous waste and state only regulated wastes. The function of the manifest is complete at the time the receiving facility signs the manifest to indicate the receipt of the waste (or a discrepancy), and the signed copy showing the data at the time of receipt is distributed to the other interested persons. The data from completed,

[6] EPA notes that the proposed 90-day window on submitting data corrections was premised in part on the desire to produce final, corrected manifest data in the system prior to the data becoming publicly available by virtue of the One Year Rule's policy that manifest data shall be made publicly available 90 days after receipt of a shipment at the receiving facility. The result of the decision, in this final rule, to remove the proposed 90-day corrections window is that in some instances, the data disclosed to the public after 90 days may not be final data and may be subject to subsequent corrections.

original manifests become the first representation of the manifest data records in the data system, but these data records are subject to revision through the final rule's corrections process, as well as through the discrepancy reporting process. The resulting data corrections will be made only to the data records in the national data repository, but will not result in the original, completed manifests being revised and redistributed. The system will retain the final manifest copy signed by the receiving facility as the copy of record of the completed manifest, and all subsequent corrections will be entered in the data system records, with an auditable trail of the corrections made and who made them retained in the system.

*G. How does the final rule address fee sanctions?*

1. Background

EPA proposed several tiers of fee sanctions in the User Fee proposed rule that would be included in the e-Manifest fee program to induce manifest users to pay their fee obligations promptly. EPA explained in the proposal that these sanctions are necessary because the e-Manifest fee program would become vulnerable to revenue instability if significant numbers of invoiced payments were not paid promptly. Such instability would quickly put at risk the Agency's ability to operate the e-Manifest system on a self-sustaining basis and to meet its financial obligations in running the national system. For the purpose of ensuring timely payment of e-Manifest user fees, EPA proposed sanctions that would increase in their severity based on the degree and duration of the delinquency. See 81 FR 49072 at 49094, July 26, 2016.

Specifically, EPA proposed a first tier sanction based on a financial penalty under 31 U.S.C. 3717(a)(1), a provision of the federal claims collection statutes that imposes an interest charge at the Current Value of Funds Rate or CVFR on those persons who are delinquent in paying claims owed to the federal government. EPA considers a fee payment to be delinquent and subject to this interest charge if payment is not received by the due date specified on an invoice, which for e-Manifest fees, would be 30 days from the date of the invoice. Thus, for e-Manifest users, payments received later than 30 days from the date of the invoice would be subject to this initial interest charge measured at the currently prescribed CVFR rate.

If the first tier interest charge at the CVFR rate were not effective in causing a delinquent fee payer to make the outstanding payment, then the proposed rule's fee sanctions would assess a second tier 6% financial penalty charge for e-Manifest user fee debts that are more than 90 days past due, that is, user fee debts that are not paid by the date 120 days from the date of the invoice. Like the initial interest charge at the CVFR rate, this additional 6% financial penalty also is based on the federal claims collection statutes. 31 U.S.C. 3717(e).

As a third tier of proposed fee payment sanctions, EPA proposed that receiving facilities would become eligible for inclusion in a list of delinquent fee payors when the period of their delinquency extended to 120 days or greater. Finally, the proposal also explained that if any manifests remained incomplete because of owed fees, then the receiving facility could be in violation for failure to fully complete a manifest per proposed § 264.1315(d) and/or § 265.1315(d), and EPA could enforce this violation under RCRA section 3008.

In addition to these several proposed sanctions, EPA requested comment on additional sanctions (*i.e.,* denial of manifest services and the withdrawal or suspension of authority to operate (*i.e.,* RCRA ID numbers or permits). See 81 FR at 49094, July 26, 2016. EPA's intention was to develop a credible mix of available sanctions that could be scaled to the degree of the offense caused by the delinquency or non-payment, with the expectation that this framework would minimize or avoid delinquent payments.

2. Comment Analysis

Industry and state comments on the proposed rule generally supported the financial sanctions, as well as the civil enforcement sanction for ''egregious'' cases, but several industry stakeholders expressed concern with the proposed definition of ''incomplete'' manifests. These commenters stated that the proposed definition could be construed to negatively impact generators, who are more generally responsible for completing RCRA manifests. Other commenters showed little support for the publicity sanction or denial of services as a sanction. These commenters indicated that a publicity sanction would not likely be effective in influencing payment behavior and would be unprecedented in existing EPA fee programs. Other comments opposing the denial of services sanction indicated such a sanction would be too severe, as it would tend to penalize generators too much in their efforts to obtain waste services, and would likely cause a backlog of manifests in the EPA data system. Another commenter suggested that denial of services to facilities and their customers could cause constrictions in waste management and perhaps cause frustrated generators to mismanage their wastes.

3. Final Rule Decisions

After careful consideration, EPA is accepting the numerous comments that generally supported the tiered sanction approach and that provided particular support for the proposed financial sanctions under the federal claims collection statutes and the availability of RCRA civil enforcement orders to enforce non-payment of fees. Thus, EPA is finalizing these proposed sanctions at 40 CFR 264.1315 and 265.1315 with slight modification in the rule. Specifically, the final rule adopts the proposed sanctions detailed in paragraphs (a) and (b) at §§ 264.1315 and 265.1315 for financial interest and penalty charges without change. EPA, however, is persuaded by the adverse comments to the proposed publicity or delinquent payors list sanction and therefore is not adopting this proposed sanction in the final rule.

EPA also accepts the commenters' opposition to the ''incomplete manifest'' terminology in proposed paragraph (d) of §§ 264.1315 and 265.1315. EPA intended to define a regulatory violation applicable only to the receiving facilities that have not ''completed'' their manifest transactions by submitting their manifests to the system and paying fees for the manifest services they have obtained from the system. The proposed violation was not intended to cause confusion relating to what is meant by the requirement for generators to initiate and complete manifests to track their off-site waste shipments. EPA, therefore, has amended the proposed ''incomplete manifest'' terminology in the rule to keep manifest completion distinct from the financial context intended in the proposed rule. To avoid any confusion with the concept of manifest completion, EPA is denoting a manifest for which fees remain unpaid by the receiving facility as an ''unperfected'' manifest. The final rule amends the proposed paragraph (d) at §§ 264.1315 and 265.1315 by assigning it as new paragraph (c) and clarifying that a manifest is not fully perfected until it is both submitted to the system and all fees for those manifests have been paid by the receiving facility submitting it. Thus, the RCRA civil enforcement sanction

included in this final rule would apply only to the receiving facilities that are involved with unperfected manifests by not submitting them to the system or by not paying the applicable fee for their processing. This civil enforcement sanction would have no applicability to the activities of generators in their use of the manifest. The designation of a manifest as ''unperfected'' for purposes of payment by a receiving facility in no way impacts the validity of a manifest supplied by a generator for tracking its waste during its transportation off-site to a facility.

Finally, EPA also accepts the numerous commenters that objected to the additional sanctions (*i.e.,* denial of manifest services and the withdrawal or suspension of authority to operate) discussed in the proposal. Therefore, EPA is not promulgating these sanctions as part of this rule. EPA concludes that the several financial and civil enforcement sanctions adopted in the final rule create a credible mix of available sanctions that increase in their severity based on the degree and duration of the delinquency.

*H. How does the final rule address user fee disputes?*

1. Background

In the User Fee proposed rule, EPA acknowledged that over the course of invoicing users for their fee obligations, errors may occasionally be made and thus may give rise to disputes concerning the amount of a user fee payment that is due in response to an invoice. EPA explained in the proposed rule that the Agency is not proposing a formal dispute resolution process governed by explicit and detailed regulatory provisions and processes. Rather, EPA intends to address e-Manifest fee disputes through a more informal process that EPA concludes will be sufficient and less burdensome than a formal process, while scaled more appropriately to the nature of such disputes. EPA requested comment on an informal fee dispute process under which users who believe their invoice is in error (statement incorrect on numbers or types of manifests billed, or a mathematical or other error) could first seek resolution via the system's billing representatives by making a claim identifying the nature and amount of the error. If not satisfied by the handling of their claim at this initial level, the claimant could appeal to the Office Director (OD) of EPA's Office of Resource Conservation and Recovery (ORCR), whose decision on the claim would be final and not subject to further Agency review. See 81 FR 49093, July 26, 2016.

2. Comment Analysis

Industry commenters generally supported the proposed informal process, but one industry commenter had reservations about the fairness of the proposed appeals process. This commenter suggested that the ORCR OD would not be as unbiased as an independent third party and suggested that the OD's decision be subject to the Alternative Dispute Resolution program administered by the EPA's Office of General Counsel. See 65 FR 81858, December 27, 2000. Another commenter underscored the need for EPA to establish accessible customer support for timely resolutions. One state commenter, however, opposed the proposed informal process, and suggested that EPA should instead adopt a formal dispute resolution process that affords due process and creates perhaps a stronger record for fee dispute decisions.

3. Final Rule Decisions

After analyzing the comments to the proposed informal process, EPA is promulgating the proposed informal process in the final rule. EPA acknowledges the industry commenter's apprehension about the fairness of the appeal process under the informal process, but the Agency does not accept the industry comment favoring an appeal of the OD's decision to an independent third party decision maker under an Alternative Dispute Resolution (ADR) process. EPA opposes this suggestion for a couple of reasons. Although the ADR process offers conciliation, facilitation, arbitration, mediation, fact-finding, mini-trials, and other services to claimants, EPA's December 2000 **Federal Register** publication announcing the ADR processes at EPA (65 FR 81858) suggests that ADR was intended for matters far more substantial and potentially controversial (*e.g.,* adjudications, rulemaking, policy development, administrative and civil enforcement actions, permit issuance, contract award protests, workplace grievances, and litigious matters where a more substantial fact-finding and record development are necessary) than for the fairly simple fee disputes we anticipate in e-Manifest. Second, EPA understands that the use of the Agency's ADR process would be very time consuming and involve much greater costs than an informal process. The Agency believes the informal process scales well to the relative simplicity expected of fee disputes, and will result in more timely and less burdensome resolution of e-Manifest program fee disputes. EPA intends to respond to billing disputes within ten days of receipt of a claim under the informal dispute process. Finally, the Agency also concludes that the ORCR Office Director is sufficiently unbiased on such fee dispute matters to afford fairness to these informal proceedings.

EPA also rejects the state agency comment recommending that EPA establish a formal dispute process. EPA concludes that the adjudicatory processes typically associated with formal dispute resolution are not well matched with the simplistic nature of the e-Manifest fee disputes. In addition, evidentiary proceedings typically are the most time consuming and resource intensive processes that could be selected.

As stated in the proposed rule and adopted under this action, EPA will post on the e-Manifest website a phone number and an email address where users may contact the system's billing representatives with any questions they may have about the accuracy of a monthly user fee invoice. Whether a fee dispute claim is asserted over the phone, or by email, EPA expects the facility to provide sufficient information to support its claim that an invoice is in error. At a minimum, EPA expects that fee dispute claimants will provide the following information to the system's billing representatives:

- The claimant's name, the facility where the claimant is employed, the EPA Identification Number of the affected facility, the date and/or other information to identify the particular invoice that is the subject of the dispute, and a phone number or email address where the claimant can be contacted;
- Sufficient supporting information or calculations to identify the nature and amount of the fee dispute, including:
  - —Whether the error results from the types of manifests submitted being inaccurately described in the invoice,
  - —Whether the error results from the number of manifests submitted being inaccurately described in the invoice,
  - —Whether the error results from a mathematical error made in calculating the amount of the invoice, or
  - —Other information described by the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

EPA's system billing representatives will endeavor to respond to all such billing disputes within ten days of

receipt of a claim. In their response, the system's billing representative will indicate whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility. If the claimant is not satisfied with the response of the EPA system's billing representative, the claimant may appeal its claim within ten days to the Office Director for the Office of Resource Conservation and Recovery.

EPA further emphasizes that the assertion of a fee dispute claim through this informal process does not excuse the requirement to make timely electronic payments of the invoiced fee amounts. Fee adjustments will be handled as refunds or credits of amounts paid, and the existence of a claim does not justify withholding payment of invoiced fees.

Finally, EPA is clarifying that once a claim has been addressed by the Agency under this informal dispute resolution and appeal process, the resolution that is reached after appeal to the Office Director concludes the matter and is non-reviewable by any other Agency official or in any other Agency proceeding.

*I. Conforming Changes to the Paper Manifest Printing Specifications*

In March 2005, EPA announced the Manifest Registry system that described procedural mechanisms and offered federal printing specifications at § 262.21(f) to ensure that printers approved by EPA used unique tracking numbers on each manifest, and to reduce the possibility of printing many variations of manifest forms. As part of the printing specifications, EPA also required approved printers to indicate on the bottom, right margin of the form the distribution scheme so that the form would be distributed as follows:

Page 1 (top copy): ''Designated facility to consignment state'' (if required);
Page 2: ''Designated facility to generator state'' (if required);
Page 3: ''Designated facility to generator'';
Page 4: ''Designated facility copy'';
Page 5: ''Transporter copy''; and
Page 6 (bottom copy): ''Generator's initial copy.''

However, the e-Manifest regulations and the plans to begin e-Manifest system operations on June 30, 2018, have necessitated a conforming change to the current manifest copy distribution scheme. Currently, the manifest form printing specification requires that the top copy (Page 1) of the six-copy set of forms be sent by the designated facility to the consignment or destination state, if required by that state. However, on February 7, 2014, EPA announced in its e-Manifest ''One Year Rule'' that when the e-Manifest system becomes operational, designated facilities must send the top copy (Page 1) of the six-copy paper form to the e-Manifest system for purposes of data entry and processing. See 79 FR 7518 at 7548. EPA is codifying in this final rule the regulatory decision EPA announced (but did not codify) in the February 7, 2014 issuance of the One Year Rule.

Since the states with manifest collection and tracking programs have continued to collect manifest copies during the planning and development of e-Manifest, EPA chose to defer the collection of the top copy by e-Manifest until the e-Manifest system was ready for operations. With the announcement in the final rule that e-Manifest system operations will commence on June 30, 2018, it is necessary to implement with this final rule action this change to the copy submission requirement, as well as the conforming change to the printing specifications for manifest printers.

Therefore, the final rule modifies the printing specification requirements at § 262.21(f)(5) and (f)(6)(i) to align with the new manifest submission requirement for receiving facilities announced in the One Year Rule. Thus, by June 30, 2018, approved printers must make available to users a printed five-copy form that indicates that the top copy of the manifest must be submitted by designated or receiving facilities to EPA's e-Manifest system. Manifest users must begin using the new 5-copy manifest form with this revised copy distribution notation on June 30, 2018. Specifically, the copies of the form must be distributed as follows:

Page 1 (top copy): ''Designated facility to EPA's e-Manifest system'';
Page 2: ''Designated facility to generator'';
Page 3: ''Designated facility copy'';
Page 4: ''Transporter copy''; and,
Page 5 (bottom copy): ''Generator's initial copy.''

This change to the manifest form printing specification will bring the manifest forms that will be used on or after June 30, 2018, into alignment with the paper manifest submission requirements that will be in effect on that date. Beginning on June 30, 2018, the top copy of any paper manifests that continue in use must be sent to the e-Manifest system, rather than being sent by the receiving facility directly to the consignment or destination state. In addition, the new five-copy form eliminates the copy, previously denoted as ''Page 2: Designated facility to generator state,'' since the submission of the top copy to the system by the receiving facility will itself enable both destination states and generator states to receive their copies from the system. This is the copy that EPA will use for data entry purposes. As the central hub for manifest collection, EPA will share these data with interested states, but receiving facility copies will not be sent directly to either consignment or generator states on or after June 30, 2018. Therefore, one copy of the current six-copy form set is being eliminated in the final rule, and the new manifest printing specifications will require only a five-copy form to be printed and used beginning on June 30, 2018.[7]

EPA emphasizes that the requirement that receiving facility copies of paper manifests be submitted to the e-Manifest system rather than directly to states is promulgated under the authority of the e-Manifest Act. As such, the requirement for facilities to submit manifest copies to e-Manifest in lieu of direct submission of these copies to the states must be implemented consistently in all states starting on the system launch date of June 30, 2018. As the Agency explained in the One Year Rule, requirements under state law that are less stringent than or inconsistent with requirements issued by EPA under the e-Manifest Act are superseded by the e-Manifest Act requirements when these requirements become effective on the system launch date. See 79 FR 7554, February 7, 2014. This principle is also codified in this final rule in 40 CFR 271.3(b)(4), which explains the superseding effect of e-Manifest Act requirements on less stringent or inconsistent requirements contained in state law and authorized programs. Finally, in § 271.12(i), addressing manifest program requirements that must be included in authorized state programs, EPA is adding a new paragraph (i)(2) that will require state manifest programs to include a specific requirement for owners or operators of hazardous waste management facilities to submit a signed copy of the manifest to EPA's e-Manifest system in lieu of sending a copy directly to origination or destination states.

The final rule also revises the printing specification at § 262.21(f)(7) to comport with the aforementioned changes to the manifest form and continuation sheet. The uniform manifest instructions for completing the generator's copy, the transporter's copy, and the designated facility's copy of the manifest and continuation sheet must now appear on

[7] The changes to copy distribution requirements in the final rule affect the receiving facility copies. The e-Manifest system will not collect generator copies of paper manifests, and states that still wish to collect paper copies directly from generators may continue to do so under state law.

the back of copies five, four, and three, respectively.

*J. Requirement That Facilities Submit Paper Manifest Data Digitally*

1. Background

In the User Fee proposed rule, EPA did not propose but requested comment on an approach under which receiving facilities would be prohibited from submitting paper manifests by mail to EPA. Instead, receiving facilities would be expected to submit manifest-related data to EPA by electronic means only, that is, by uploading image files to EPA, or by uploading a data file (*e.g.,* JSON file) of manifest data accompanied by an image file. Although EPA explicitly stated in the e-Manifest Final rule that the e-Manifest Act and the regulations adopted by the final rule allow manifest users to continue to use paper in the field to track their waste shipments, EPA explained in the User Fee proposed rule that the Agency was considering restricting receiving facilities to digital submission of their paper manifests for a couple of reasons.

First, EPA acknowledged in the proposed rulemaking (81 FR 49074, July 26, 2016) that the proposed differential fee approach should itself discourage facilities from submitting large numbers of manifests by mail but conceded that it would be difficult for the Agency to project with confidence how many paper manifests will be mailed to the Agency in the initial years of e-Manifest operations. Consequently, the processing of mailed forms could involve significant personnel and contractor costs for opening and screening mail, for data key entry, document archiving, and for QA activities related to resolving data quality issues. Second, EPA believes paper processing costs could dominate the O&M costs in the early years of operation, and if mail submissions occur in unexpectedly large numbers, EPA may need to increase fees or consume more of its annual spending authority than anticipated to process mailed manifests. For these reasons, EPA requested specific comments on the merits of an approach that would restrict receiving facilities to submitting their paper manifest data to the Agency by digital methods only, and not by mailing hard copies to the EPA system.

2. Comment Analysis

Industry commenters to the User Fee Proposal generally supported limiting receiving facilities' paper submissions of paper manifest related data to digital format only (*i.e.,* scanned images or data file with scanned image uploads) and not by mailing paper hardcopies to EPA. However, several commenters who supported the digital submission restriction suggested EPA impose a several-year transition period before instituting the paper submission ban. Other commenters supporting the paper submission ban suggested EPA provide an exception to the ban should unforeseen circumstances, such as unanticipated burdens, data security issues, access issues for responders, and compliance issues when the system is down or data are lost, occur.

Some state commenters presented mixed comments on the merits of a mailed paper submission ban. One state commenter supported the paper copy submission ban, noting that paper infrastructure costs are great, and the ban would help to reduce uncertainty in fee formula's marginal cost calculations. Another state commenter opposed an outright ban and argued that there could be substantial burden and cost for some facilities to change platforms. The commenter suggested that especially for those facilities not owned by nationwide companies, the costs to them of converting to digital only submissions could be prohibitive in the initial years. The commenter suggested EPA implement a phase-out deadline of several years for the mailed paper copy submissions. Finally, one state commenter objected to the ban of postal mail submissions and argued that EPA has overestimated the sophistication of some industry members, especially those receiving facilities that are not RCRA permitted facilities.

3. Final Rule Decision on Facility Submissions of Paper Manifests

After careful consideration of the comments to the User Fee Proposed Rule, EPA has decided not to implement an outright paper submission ban. Instead, EPA will initially allow both digital and mailed manifest submissions from receiving facilities to the system, but will schedule a phase-out of paper mail submissions after three years of system operations. EPA made this determination for a few reasons. First, while EPA acknowledges its decision could result in the Agency receiving more paper forms in the initial years of operation, EPA is persuaded by a few commenters' arguments that an out-right ban on day one of system launch may cause financial hardship to certain facilities that currently do not have the technological capacity to digitally submit paper manifest related data to EPA. Second, EPA concludes that a phase-out approach on a paper submission ban best accommodates the uncertainty over how many and what types of facilities might be burdened by the paper submission ban. EPA has consulted primarily with a trade association (the Environmental Technology Council) that is comprised of larger receiving facilities, so at this time the Agency does not know whether mid-size or smaller receiving facilities would be similarly inclined to submit data files and scanned images of manifests to EPA and avoid mailing paper forms to EPA for processing. EPA, however, believes a phase-out scheduled after three years of system operations provides fairness and flexibility to those facilities that need time to adjust to electronic manifests and acquire and develop digital capability.

Finally, this approach is consistent with the e-Manifest Act's terms allowing the continued use of paper and authorizing EPA to issue requirements to facilitate transition to electronic manifests. Thus, the adoption of phase-out approach scheduled after three years in the final rule best accommodates the Agency's objective of minimizing mailed paper submissions with our legal authority that allows the continued use of paper manifests while requiring EPA to issue regulations to facilitate the transition to electronic manifests.

EPA notes that the aforementioned phase-out of manifest hardcopies applies only to the backend of the manifest workflow (*i.e.,* manifest submissions to the EPA system). Hazardous waste generators who currently initiate their waste shipments using the paper manifest and continuation sheet (EPA Forms 8700–22 and 8700–22A, respectively) and want the flexibility to continue to use those forms once the e-Manifest system becomes available for use, will for now be afforded the flexibility to continue to use the manifest form and continuation sheet once the phase-out period begins.[8] If a receiving facility's customer prefers to use the paper manifest and continuation sheet after the phase-out period, then the receiving facility will be expected to transfer the manifest data from those paper hardcopies to digital format prior to submitting that data to the EPA system.

[8] In section IV of this preamble, however, EPA signals that it is the Agency's goal to curtail as far as possible the use of paper manifests and migrate to a fully electronic manifest within five years of the start of system implementation. EPA will collect information from the system on manifest usage, monitor this information, and consult with the e-Manifest Advisory Board in several years on how best to accomplish this goal.

*K. How does final rule address user fee payment methods?*

1. Background

The User Fee proposal included two distinct options for comment: (1) A monthly invoicing option, and (2) an advance, fixed payment option. EPA proposed the monthly invoicing option as its preferred option. Under this option, the Agency would bill each receiving facility monthly for its actual manifest activity engaged in during the previous month. The receiving facilities would receive an electronic invoice displaying their manifest activity during the prior month, and each facility would be directed to Treasury's *Pay.gov* website to submit their electronic payments. Once directed to *Pay.gov*, the payor could make their payment using one of the electronic payment methods supported by *Pay.gov*. These methods include credit cards, debit cards, and Automated Clearing House (ACH) debits from commercial bank accounts. EPA met with the Environmental Technology Council and its RCRA TSDF members prior to publication of the proposed rule, and learned that this trade association and its members preferred the monthly invoice option to the advance fixed payment option.

In the July 26, 2016, proposed rulemaking, EPA requested public comment on the advance, fixed payment option. With this option, EPA explained that receiving facility users would make a monthly fixed amount payment on the first of each month. The monthly payment amount would be determined using an estimate of expected manifest usage for the year, based on manifest usage during the prior year. The prior year's manifest use numbers would be totaled by manifest type and divided by 12 to arrive at the estimates of monthly manifest usage. The monthly manifest fee would be calculated by applying the fee schedule amounts to the monthly manifest usage estimates. Once so determined, the monthly fee amount to be paid to EPA would remain fixed for the entire year, and this fixed amount would be debited from the receiving facility's commercial bank account by an Automated Clearing House (ACH) debit on the first of each month. The fixed payment feature was included so that this payment option would be consistent with the standards of *Pay.gov* for recurring periodic payments.

EPA explained in the proposed rulemaking that the Agency believes advance payment is advantageous, from an administrative perspective, because such payments would allow for the collection of fees in advance of manifest services, which is administratively efficient on the front-end of the collection process. Such an approach also could provide a more stable revenue stream to cover system costs throughout the year, because of the nearly automatic, scheduled nature of the payments. This feature of the advanced payment option also could generate revenue more promptly for the initial year of system operations. However, the receiving facilities that the Agency consulted expressed some skepticism about this payment option, as an estimated payment would not be as accurate as payments invoiced from actual usage. These facility representatives advised that there can be significant variability from year-to-year in manifest usage, so the estimated payments collected through the advance payment approach may diverge significantly from the payments that would be owed based on actual usage.

To address this issue, EPA explained in the proposed rule that it would send one invoice to receiving facilities at the end of each year to reconcile the amounts paid based on manifest use estimates with the actual amounts owed as calculated from actual manifest usage data. Thus, this option would involve a reduced volume of invoicing compared to monthly invoicing, with resulting lower administrative costs to the Agency. Moreover, the revenue stability risk posed by the two-month lag inherent in monthly invoicing would be ameliorated by this alternative, with its automatic payments each month. Stakeholders stated that there would likely be resistance to automatic, estimated payments, unless EPA identified clear incentives for this option.

More recently, EPA convened the e-Manifest Advisory Board in January 2017 and sought guidance on how to address comments received on the advance, fixed payment approaches detailed in the proposed rule. During the Advisory Board meeting, the EPA stated that the Agency anticipates that the e-Manifest system will be operational in June 2018, assuming that the Agency receives adequate funding in fiscal years 2017 and 2018. At that time, EPA will transition to a fee collection system, and the majority of appropriated funds for e-Manifest in fiscal year 2018 will be used for operating and maintaining a paper processing center and IT help desk. While EPA expects to recover these costs through fees, EPA acknowledged at the Advisory Board meeting that a cash flow issue could arise as the system transitions from the developmental to fully operational stage and underscored that the advance monthly invoicing option could mitigate the potential cash flow problems during the initial years of system launch if the funds appropriated for operations were inadequate.

2. Comment Analysis

Comments received on the proposal and recommendations presented by the E-Manifest System Advisory Board in January 2017 generally supported the monthly invoicing option, while most comments opposed the advance payment approach. Industry and several state commenters generally supported the monthly invoicing and indicated that paying for actual usage on a monthly basis was the more precise option, and was more consistent with common commercial practice. Industry commenters argued further that it would be difficult to develop accurate manifest use projections needed for an advance option and stated pre-paying in advance could result in substantial under or over payments requiring later reconciliation, which could adversely impact system financial stability. One state commenter affirmed this sentiment and questioned how EPA would prevent advance payers from greatly underestimating usage for the year, and then owing huge balances at the end of the year. One industry commenter suggested the monthly invoicing is the most logical approach and will work well with the TSDF's process of invoicing their customers (manifest generators) for the associated manifest fees following acceptance of the waste shipments. Although most commenters supported monthly invoicing, a few stated 30 days is insufficient to pay invoices and suggested 45 or 60 days is a more realistic time frame. Finally, one commenter suggested EPA utilize the advance payment approach as a sanction for those who are chronically late with their fee payments.

While most commenters supported monthly invoicing, a few commenters supported advance, fixed payments. One state commenter supported the advance payment option because it is the least burdensome to the Agency to administer and most stable for the system. This commenter, however, suggested EPA create capacity to invoice a small number of smaller TSDFs or the non-permitted state-regulated facilities. Another commenter suggested that EPA retain advance payments as an option, because it could gain greater participation after TSDFs have a few years of experience with the e-Manifest system.

3. Final Rule Decisions

EPA is persuaded by the comments supporting the monthly invoice

proposal and the recommendation of the e-Manifest Advisory Board to promulgate the proposed payment method whereby e-Manifest user fees will be paid by facilities in response to a monthly invoice that summarizes manifest activity for the prior month. EPA, however, does not accept the suggested preference to allow TSDFs up to 60 days to pay invoices. The monthly invoicing option by its nature introduces a lag of perhaps two months between the time manifest services are used and the time when payments are received. This delay is unavoidable, as the invoice would be sent after a month of usage has occurred, and the TSDF would then be expected to make their payment on the invoice's due date of 30 days post-receipt of the invoice. Extending the proposed time frame from 30 days to 60 days would further increase the lag time from two to three months. EPA is concerned the additional lag time could further undermine EPA's ability to pay promptly its system related expenses, and exacerbate the revenue instability risks posed during the initial year of operations. Therefore, e-Manifest fees must be paid by facilities by 30 days from receipt of an invoice, and payments not paid by this date will be treated as delinquent by the Agency.

Specifically, the rule promulgates the monthly invoice approach per the proposed regulation at 40 CFR 264.1314(c) and 265.1314(c). Receiving facilities will be required to pay all fees owed in response to an electronic invoice or bill within 30 days of the date of the invoice or bill. E-Manifest fees will be paid on-line via credit card or electronic fund transfer. To submit a payment on-line, facilities will visit *www.pay.gov,* and follow the instructions posted to the e-Manifest program's website on how to make e-Manifest electronic fee payments.

Automatic debits to your business account may be blocked by the bank. This security feature is called an ACH Debit Block, ACH Positive Pay, or ACH Fraud Prevention Filters. ACH Debit Block works by having an allowed list of ACH Company IDs. The list enables allowable automatic debits. If the ACH Company ID accompanying a request for an automatic debit is not on the allowed list, the payment is rejected. It is returned with an ACH Return Reason Code of R29—Corporate Customer Advises Not Authorized. You must contact your bank to add the U.S. EPA to your list for allowed debit payments.

*L. Transporter Changes on the Manifest While En Route to the Designated Facility*

1. Background

The User Fee proposed rule proposed to modify the current regulations regarding transporter changes to shipment routing information on the manifest during transportation. The Agency proposed on July 26, 2016, to amend paragraphs (a) and (b) of 40 CFR 263.21 so that changes to shipment routing on the manifest can be made: (1) To address an emergency; or (2) to accommodate transportation convenience or safety, *e.g.,* to allow more efficient transport from a transfer facility or enable the substitution of a transporter that is the sub-contractor of the designated transporter. In addition, the proposal indicated that a change in transporter designation on the manifest could be effectuated by: (1) A consultation with the generator and generator approval of the change; or (2) a contractual provision authorizing the transporter to make such a change on behalf of the generator. See 81 FR 49072 at 49104.

EPA explained in the proposed rule that the aforementioned modifications to the regulation were needed for a several reasons. First, the amendments to the regulation are necessary to align them more closely with the current industry practice of allowing transporter changes to shipment routing on the manifest, as the transporters and brokers often have more expertise than some generators in arranging the logistics and routing of hazardous waste shipments. The proposed rule also recognized that many hazardous waste generators, particularly small quantity generators, are willing to delegate the responsibility of arranging waste shipments to their brokers and transporters. Current manifest regulations limit waste shipment delivery options to only the facilities or transporters designated on the generator's manifest, unless an emergency condition prevents delivery to the designated facility or the next transporter. Thus, under existing regulations, any changes to the routing plan, including changes to transporters designated on the manifest, require generator consultation and approval.

Second, industry stakeholders have argued for years against the Agency's notion that the generator should bear the sole responsibility for designating the routing of its waste on the manifest and must be consulted explicitly on any proposed changes to named transporters during transportation. Industry transporters contend that transporter changes to the initial routing of hazardous waste shipments are often necessary to accommodate transportation convenience or safety (*e.g.,* to allow more efficient transport from a transfer facility or enable the substitution of a transporter that is the sub-contractor of the designated transporter). Further, industry stakeholders have stated that a limited agency authority granted to transporters in the service contracts with their generator customers should allow them to act ''on behalf of'' and change the routing for the generator without specific consultation with the generator on each change (81 FR 49096, July 26, 2016).

Finally, EPA consulted with our authorized states on this issue, and the Agency has concluded that the states generally have not actively pursued enforcement actions against transporters who have made these types of transporter changes to the manifest under the existing regulation. Amending the regulation as proposed would make the language of the transporter regulations consistent with industry practices.

2. Comment Analysis

Comments received to the User Fee proposed rule generally supported the proposed changes to paragraphs (a) and (b) of 40 CFR 263.21, but a few raised questions about the details of implementation. One industry commenter supported the proposed changes, but suggested EPA clarify what statement needs to be entered on the manifest to ''describe the contractual authorization'' given a transporter to act as generator's agent. Another industry commenter in support of the proposal, suggested that EPA allot space, other than Item 14, on the manifest so that the contract information can be recorded.

State commenters generally supported the proposal, but raised questions about the details of implementation. One state commenter suggested that EPA add a definition of ''agency authority'' and require legible changes. Another state commenter inquired how an inspector will know which generators have such contracts, and asked if the generator or transporter will be responsible for keeping the records of such contracts. The commenter also asked whether the contract authorization details would be recorded in Item 14 or in a separate data element on the manifest form.

A few commenters, however, did not support the proposed changes for various reasons. One commenter argued that re-routing is already a common industry practice that does not require rule change for support. Other commenters opposed listing contract

arrangements on the manifest and argued that the receipt of manifest copies displaying the routing changes was adequate. One commenter representing the generator sector opposed the proposal and raised concern that the proposal may affect the generator's liability or responsibility for compliance with the generator requirements of RCRA Subtitle C.

3. Final Rule Decision

After careful consideration of all comments on this issue, EPA is promulgating in the final rule the proposed changes to paragraphs (a) and (b) of 40 CFR 263.21 virtually unchanged. Specifically, EPA is promulgating proposed paragraph (a) and proposed § 263.21(b)(1), (2), and (4) without change. EPA, however, is promulgating the proposed § 263.21(b)(3) in the final rule with slight modification. EPA accepts the commenter's suggestion that the Agency clarify the statement needed to be recorded in Item 14 of the manifest to characterize the contract authority given to a transporter to act as a generator's agent. Therefore, EPA is modifying the proposed § 263.21(b)(3)(ii) so that transporters or brokers who intend to oversee and control the routing of the shipments on behalf of the generator must enter the following statement in Item 14 of the manifest: ''*Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf.*''

In addition, EPA concludes that this standard statement should meet state concerns and enforcement needs. The statement provides explicit direction to generators who have granted agency authority to transporters to maintain a copy of the contract. Second, the statement adequately articulates the limited agency authority granted to the transporter service company by the generator. Thus, the states could pursue enforcement actions against generators for failure to produce the contract upon request as well as enforce actions against transporter service companies for failure to comply with the statement recorded in Item 14.

The Agency acknowledges one commenter's assertion that Item 14 is overused, but does not accept the suggestion for recording the contract details in a separate line item on the manifest. The Agency believes the contract authority language detailed in new § 263.21(b)(3)(ii) is brief and should not inhibit the generator's ability to legibly record other manifest information about the shipment in the restricted space. However, EPA acknowledges that the commenters' suggestion is worthy of further consideration for e-Manifest and may pursue such a separate data field within the electronic system as it continues its development of the e-Manifest system.

The Agency disagrees with the commenter that the aforementioned changes to 40 CFR part 263 do not require a rule change for support. The adoption of these regulatory changes in this final rule is a shift in EPA's longstanding policy that the generator must control the routing of his or her hazardous waste shipment, and that changes to routing must occur with generator consultation and approval, and are appropriate in cases of emergencies. The adoption of the 1980 final manifest regulation and the prior policy were based on prominent pre-RCRA incidents in which transporters and brokers had diverted hazardous waste shipments to unauthorized sites involving ''roadside'' or ''midnight'' dumping. Thus, previous policy underscored the intention of the 1980 regulation that the generator should bear primary responsibility for designating the routing of its waste on the manifest and for ensuring delivery of its waste to proper waste management facilities. The new regulatory policy extends the process for effecting changes beyond consultations to include an agency contract to make these changes on behalf of the generator. The new policy also extends the conditions permitting such changes beyond emergencies to include transporter convenience and safety. EPA concludes that a regulatory change is necessary to avoid any confusion about what transporter changes are permissible, under what circumstances they are permissible, and how these changes should be effected. The rule change should also protect industry members from any enforcement actions that could result from regulators enforcing the stricter policy of generator control suggested by the current regulation. The adoption of the final rule will help to maintain a consistent national policy on the manifest, particularly as the Agency continues its efforts to establish the e-Manifest system. Industry practice, regulatory policy, and state enforcement policies will now be better aligned, and EPA can develop technical requirements for the e-Manifest system that are consistent with this policy.

The adoption of the amendments to 40 CFR 263.21 recognize two distinct classes of transporters involved in changes to shipment routing on the manifest. First, § 263.21(b)(2) applies to those transporters that lack contractual (agency) authority to act on behalf of the generator in making any transporter substitutions or additions. For such transporters, this final rule will continue the existing requirement to consult with the generator and obtain the generator's explicit approval of the proposed changes in the shipment's routing. The final rule authorizes changes in circumstances of an emergency, as well as for purposes of transporter efficiency, convenience, and safety.

Second, § 263.21(b)(3) applies to those transporters that have contractual authority to act as the agent of the generator with respect to adding or substituting other transporters while hazardous waste is in transport. The transporter making such changes must record the aforementioned statement regarding its contractual authorization in Item 14 of each manifest for which such a change is made. In addition, § 263.21(b)(4) clarifies that any such grant of authority by a generator to a transporter to act on the generator's behalf in making changes to transporter designations does not affect the generator's liability or responsibility for compliance with the generator requirements of RCRA Subtitle C. The final rule provides that transporters acting under agency authority on behalf of the generator may add or substitute another transporter in circumstances of an emergency, as well as for purposes of transporter efficiency, convenience, and safety.

Finally, the existing provisions of § 263.21(a)(1), (2), and (4), addressing the conditions and process by which a generator must, under an emergency situation, be consulted on and approve any change to the designated facility, the alternate designated facility, or the place outside the United States designated by the generator for delivery of export shipments, are not altered by the adopted regulatory changes.

The Agency notes that the revisions adopted in this final rule only authorize limited agency authority to the transporter service company to make changes to the designated transporters on the manifest, on behalf of the generator, while the generator's shipment is en route to the designated receiving facility. They do not authorize any broader agency authority to a transporter to act ''on behalf of'' generators with respect to other generator responsibilities. For example, a transporter cannot assume broad agency authority to substitute a different designated facility or alternate facility, or, for exports, the receiving facility outside the U.S. designated by the generator, without consulting the generator. Nor could a transporter

assume the responsibility to maintain a generator's manifest records and submit Exception Reports or resolve discrepancies on behalf of the generator. These are control and oversight functions that must remain with the generator.

In addition, as explained in the proposed rulemaking (81 FR 49096, July 26, 2016), this regulatory change with respect to manifest changes during transport does not grant transporters (acting as agents for generators) the authority to correct the waste description data (*e.g.,* quantities, types, shipping names, waste codes) entered on the manifest. If such changes are necessary, then the transporter must consult with the generator and revise the manifest according to the generator's instructions.

Finally, the amendments do not affect EPA's adoption of the Department of Transportation's Hazardous Materials rules and policies in the March 2005 Manifest Revisions rule pertaining to ''offerors'' and pre-transportation functions for hazardous waste shipments. The offeror authority does not apply to activities that occur during transport. Therefore, a generator's transport contractor can act on behalf of the generator in its capacity as offeror for pre-transport functions, and under this action, the generator's transport contractor could modify the manifest on behalf of the generator during transportation, but only to modify the transporter designations pursuant to authority granted by the generator in its contract for this purpose.

*M. Mixed Paper and Electronic Manifest Transactions*

1. Background

In EPA's One Year Rule, the Agency determined not to allow mixed paper and electronic manifest transactions. This decision was codified in 40 CFR 262.24(c), which addresses restrictions on the use of electronic manifests. See 79 FR 7518 at 7549 (February 7, 2014). The final regulation at § 262.24(c) states that a hazardous waste generator may prepare an electronic manifest for tracking waste shipments ''only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.'' In the User Fee Proposed Rule, EPA raised the specific issue of allowing mixed paper and electronic manifests in the limited circumstances of completing and signing the generator's initial copy of the manifest. EPA explained in the proposed Fee Rule that a policy banning all mixed manifests, without exception, could be too restrictive and might rule out needed implementation flexibility at generator sites where a phase-in of electronic manifesting could be particularly helpful. 81 FR 49072 at 49099.

Therefore, EPA proposed for public comment an approach at § 262.24(c)(1) that would relax the mixed (also referred to as hybrid) manifest ban in limited circumstances. EPA proposed to allow generators to choose to complete and sign a paper manifest in the conventional manner, to obtain the ink signature of the initial transporter at the time the transporter acknowledges its receipt of the hazardous wastes for transportation off-site, and to retain this ink-signed paper copy among its records as the initial generator copy of the manifest. For the generator, the manifest would operate exactly as the current paper system. However, the initial transporter and subsequent handlers would execute the same manifest electronically, presumably on portable devices, and all handlers subsequent to the generator would sign the electronic manifest with their electronic signatures. The final copy signed electronically by the receiving facility would be submitted to the system and retained as the copy of record of the shipment, while the initial generator copy would remain as a paper copy at the generator site.

2. Comment Analysis

Industry comments from the Environmental Technology Council (ETC) and its waste receiving facility members generally supported the proposed hybrid option, noting that there would be significant challenges for both generators and transporters in adopting electronic manifesting. The ETC and members supported the flexibility in the proposed hybrid, and suggested that the proposed mixed manifest approach could be part of the solution to the larger implementation challenge of integrating all waste handlers into e-Manifest. The comments further suggested that the hybrid might help to avoid a situation where EPA might ''flip a switch'' and attempt to implement e-Manifest for all waste handlers all at once.

Emphasizing the need for a broader solution, the ETC and its members responded to the proposal with comments advocating a more comprehensive phased implementation of the electronic manifest system, involving three phases. Under Phase I, the paper manifest process would continue as under current rules, but receiving facilities would convert their paper manifest data to CROMERR certified electronic data files for upload to EPA's national data system. Under Phase II, EPA would place its emphasis on preparing generators for e-Manifest implementation, conducting outreach on generator administrative requirements, and enabling generators with system access to receive their final signed manifest copies electronically through the system. Finally, in Phase III, EPA would adopt full implementation of electronic manifests by generators, transporters, and receiving facilities. The ETC comments suggested that this phased approach could progress in an orderly manner, with about six months between the several phases. Commenters supporting this phased approach further suggested that the collection of full user fees be deferred until Phase III. These commenters suggested that EPA only impose a ''nominal fee'' in Phase II, measured only by the costs of EPA receiving the uploaded data, thereby reducing any ''sticker shock'' that would be faced by users when initially confronted with the new system's user fees.

One industry commenter expressed frustration with the lack of real progress in developing e-Manifest, and suggested that the effort should end with the Phase I approach described earlier, or, wait for the Department of Transportation to proceed with electronic shipping papers for Phase II. Another, commenter remarked that it was not clear how the hybrid manifest option would affect EPA's stated goal in the fee pivot discussion of reaching 75% electronic manifest usage in four years. The commenter asked whether the ''hybrid'' manifests would count toward EPA's 75% electronic use goal that determines if the fees will pivot.

Other industry and state commenters objected to EPA's hybrid or mixed manifest proposal, stating that it possibly would produce severed manifests with conflicting paper and electronic versions that would remain disconnected in the system. Several commenters noted as well that the hybrid proposal was incomplete in not describing fully how waste receipt confirmations, exception reporting, and other downstream processes will be conducted if only the generator has the paper form. These commenters argued that regulations hold the generator responsible for what is on the manifest, but if the receiving facility later changes the electronic version, the generator may not be made aware. These commenters questioned how generators could remain liable for manifest data that ultimately appears on an electronic version that they may not see.

More recently, EPA convened the first e-Manifest Advisory Board meeting in January 2017. At this meeting, EPA presented on the proposed hybrid option and the aforementioned phased implementation approach presented in industry comments. The Advisory Board members generally supported a phased approach that would initially continue the paper manifest process through the transportation and delivery of hazardous waste shipments, and then allow the receiving facilities to upload electronically the certified data from their paper manifests to the system. However, in response to suggestions from generator members of the Board, this discussion concluded with the suggestion that the receiving facility should also upload a scanned image of the final, signed paper manifest to the EPA system with the data file.

3. Final Rule Decisions

After careful consideration of the comments received on the proposed rule, EPA has elected to promulgate in the final rule the mixed manifest proposal announced in the proposed rule. Therefore, this action modifies § 262.24 by adding paragraph (c)(1) as proposed. Under this regulation as amended, generators who wish to initially track their shipments by paper will complete and sign a paper manifest in the conventional manner and obtain the ink signature of the initial transporter at the time the transporter acknowledges its receipt of the hazardous wastes for transportation off-site. Generators will retain this ink-signed paper copy among their records as the initial generator copy of the manifest. The initial transporter and subsequent handlers will complete the remainder of the manifest copies electronically. The final copy signed electronically by the receiving facility will be submitted to the system and retained as the copy of record of the shipment, and distributed to waste handlers and interested states via the system. The initial generator copy will remain as a paper copy (or stored image) at the generator site, and will be available there for inspection.

EPA also sees substantial merit in the receiving facilities' several comments urging EPA to implement e-Manifest under a phased approach. Some confusion has arisen surrounding the hybrid manifest concept, as it has been used to describe both the mixed manifest regulatory change that EPA proposed in the July 26, 2016 proposed rule, as well as to describe the industry's recommended phased system approach. However, while the hybrid and phased approaches are complementary, and both involve some combination of paper and electronic processing, they do differ in important respects.

The mixed manifest approach finalized by EPA in the rule is by its nature an electronic manifest, with a narrow exception allowing the generator only to sign and retain a paper copy.[9] However, this manifest will originate in the e-Manifest system as an electronic manifest, it will be assigned a unique manifest tracking number by the system; all subsequent tracking of the waste shipment and all manifest signatures executed during its transportation and delivery will be conducted electronically through the system. The creation of a paper manifest copy from the system generated manifest is merely an accommodation to the generator, while all other aspects of the transaction and shipment tracking are through an electronic manifest. Thus, manifests prepared and executed in this manner will be regarded and processed as electronic manifests, and will be subject to the fees for electronic manifests. To further clarify the status of these hybrid or mixed manifests as electronic manifests, the final rule also provides that the §§ 264.1310 and 265.1310 definitions of electronic manifest submissions include the mixed or hybrid manifests authorized in the final rule at § 262.24(c)(1).

The industry recommended phased approach, particularly during phases I and II, is not per se an electronic manifest. A closer evaluation of the phased approach discloses that during at least the first and second phases, it is expected that the paper manifest will continue to be used during the actual tracking of the waste shipment through its transportation and until delivery of the waste to the receiving facility. Because the tracking of waste transportation and delivery to the facility is conducted with paper manifests, and all manifest signatures are collected as conventional ink or by hand signatures, these are by their nature paper manifest transactions, rather than electronic manifests. However, there is an electronic transaction conducted in the e-Manifest system by the receiving facility post-receipt, and this consists of the upload of the manifest data derived from the received paper manifests to the e-Manifest system for processing. This latter, electronic transaction is executed as an electronic data file and image file upload to the system, with a CROMERR compliant certification by the facility owner or operator. As this is a transfer of data from paper manifests, not electronic manifests, the manifests processed in this manner would be charged the scheduled fee for paper manifests submitted as a data file with an image file attachment.

EPA agrees that there are advantages to the phased approach to implementation suggested in the industry comments. First, EPA agrees that the suggested Phase I is a useful way to commence e-Manifest operations, as it will enable EPA to establish for the first time a national data-base system containing all manifest data from all sources, and allow the collection of fee revenues (based on paper manifest processing fees) so as to fund the system's development and operating costs in a self-sustaining manner. This system also will be available on Day 1 for fully electronic manifesting by those able to do so.

Second, the Agency also agrees that industry's suggested Phase II, involving significant generator outreach and the electronic transmittal of final manifest copies to participating generators, has considerable merit to it. In fact, the regulations EPA developed in the One Year Rule already support the industry phased approach. In the One Year Rule, the Agency provided that paper manifests could continue to be used in waste tracking, and that receiving facilities could submit the data from such paper manifests to the system as a data file in JSON or similar data exchange language, with the inclusion of the paper manifest image file.[10] Thus, all the regulatory authority needed to support Phases I and II of industry's phased approach was promulgated by EPA previously in the One Year Rule, and the final rule clarifies the fee that will be assessed for these transactions. EPA also emphasizes that to support this effort, it is currently conducting outreach to encourage user/stakeholder engagement and participation to enhance e-Manifest participation once the system becomes available for use. As

[9] The initial transporter would sign this copy by hand as well, enabling the generator to retain its initial copy signed by the transporter to acknowledge receipt of the waste. The initial transporter also would sign this manifest electronically in the system, and all subsequent tracking and signatures would be conducted electronically through e-Manifest.

[10] While the discussion by Advisory Board Members in January 2017 recommended that an image file be included as an additional element in the phased implementation approach, EPA notes that the inclusion of the image file was already required by EPA regulation as a necessary component of a data file upload from paper manifest records. The image file upload, however, is not a part of the mixed electronic/paper manifest process, as the receiving facility submission is an electronic manifest that will be processed without any manual image uploads.

part of this effort, EPA's intention is to offer open forums prior to system launch that promote the opportunity for stakeholders to participate in user testing and to continue Advisory Board meetings during the progression of the e-Manifest system launch.

Nevertheless, there are aspects of the commenters' phased approach that concern EPA. While there is considerable detail on the objectives for suggested Phases I and II, which continue the use of paper manifests, the comments provide little detail on how the regulated community would move from Phases I and II to a fully electronic manifest in Phase III, and how that would be accomplished in six months. Without more detail, the industry's phased approach appears to lack incentives for facilities and other handlers to adopt fully electronic manifesting and finally transition to the desired paperless manifest. Therefore, while we believe the commenters' phased approach presents a useful starting point for setting up and operating an initial fee-worthy e-Manifest system and data-base, we will need to explore carefully with stakeholders what additional steps and phases will be necessary to establish a credible path to a widely adopted electronic manifest.

EPA is finalizing the mixed manifest regulation with this action, because we believe it could be a useful component in the phased strategy suggested by the industry commenters. The mixed manifest or hybrid manifest enables an electronic manifest to be initiated in the system and executed electronically through the transportation and delivery phases of a waste shipment, allowing only the generator to retain a paper copy signed with conventional ink signatures. EPA developed this regulation on account of perceived challenges for generators to participate in a fully electronic workflow, so the mixed manifest could permit more of these waste shipments to originate and conclude electronically, by accommodating the generator with a paper copy for its files only. Admittedly, the hybrid approach will only become useful as part of the phased implementation strategy when there are receiving facilities working in concert with transporters (their own or independent) that are willing to install portable devices on their transport vehicles and take the electronic manifest out into the field to the generators. These are important links that must be put in place for electronic manifesting to achieve widespread adoption, and it will be a focus of our discussions in the near term with the user community and the e-Manifest Advisory Board.

EPA is not persuaded by comments suggesting EPA retain the mixed manifest ban announced in the One Year Rule. EPA acknowledges that the mixed manifest approach promulgated in the final rule may present some of the same difficulties that caused EPA to reject a mixed manifest approach in the One Year Rule. In particular, there is in fact some complexity that arises from allowing a paper copy to remain at the generator site, severed from the electronic version that continues in play with subsequent handlers. The severed nature of the manifest presents issues for generators in monitoring the progress of their shipments, and it results in the generator copy being available for inspection only at the generator's site, and not through the system. This problem is amplified if the electronic version undergoes editing and markup while the shipment continues to the receiving facility. However, given the substantial challenges faced at generator sites in the initial implementation of e-Manifest, EPA continues to believe there could be merit to this hybrid option, as it will enable many of the desired efficiencies and burden reductions of electronic manifesting to occur beyond the generator site. Any drawbacks posed by the presence of mixed manifests should be surpassed by the advantages and efficiencies of executing and transmitting more manifests electronically, particularly as an interim solution prior to the adoption and widespread use of fully electronic manifests by generators.

While the severed manifest issues are not insignificant, there are workarounds available. EPA expects that all generators will be afforded access to the e-Manifest system, whether or not they choose to participate in executing manifests electronically. Generators will soon be able to obtain access credentials and will then be able to view the final copies of manifests that will be distributed by the system. So, any changes made to mixed electronic manifests by subsequent handlers should be apparent to the generator when they view the final manifest copy from the system. Generators viewing their final manifest copies distributed by the system will thus be able to participate in the corrections process, respond to discrepancies, and note any exceptions, as they would if receiving a paper manifest through the mail. EPA does not believe it is placing great demands on generators insofar as expecting them to obtain access credentials and monitor their manifest activity in the system. While this will initially involve generators having to compare their initial paper manifest copies with a later delivered electronic file accessed in the system, any complexity in this result should only persist during the time that the user community is transitioning from paper to electronic manifesting. Electronic based transactions are becoming the norm in all walks of life, and the manifest user community must be prepared for the transition to electronic tracking of hazardous waste shipments with e-Manifest.

With respect to other comments submitted on the phased implementation of e-Manifest, EPA cannot accept the commenters' suggestion to only accept a nominal fee initially through Phase II, and defer full payment of manifest transactional fees until Phase III. As explained in Section III.C of this preamble, the final fee methodology and fee schedule prescribed in this rule must cover all system related costs for all of EPA's activities related to developing and operating e-Manifest, including costs to process paper manifests that continue in use. Our differential fee methodology is based on workload models that project the labor and other costs of processing each type of manifest. The fees also include a component to recover our system development costs, which the fee methodology is amortizing over a five-year period. Any effort at manipulating the fees to defer their full impact until later phases would only mean that the fees would be enhanced later to recover any deferred revenues, which would possibly cause the fees to seem excessive to some users when so adjusted. In addition, this suggestion would likely further aggravate revenue stability issues for EPA during the initial years of operation, when ensuring a stable revenue stream may be most essential.

EPA rejects the industry commenter's suggestion that e-Manifest efforts conclude with the Phase I solution (paper manifests with only a data upload from the receiving facility), or that our implementation efforts on e-Manifest await progress by DOT on its electronic shipping paper initiative. The Congress has mandated in the e-Manifest Act that EPA develop a national tracking system for hazardous waste shipments, and that we coordinate with DOT on this effort. While EPA is very interested in the progress of DOT's electronic shipping paper pilots, that effort is not conceived at this time as a national system approach such as that mandated for e-Manifest, so there are only so many

synergies that can be exploited between these efforts. The Agency will continue to consult with DOT as we develop and implement the e-Manifest system.

Finally, concluding the e-Manifest effort with the industry suggested Phase I system is not an acceptable outcome to the Agency. Phase I as the end point would essentially leave the paper manifest system in place indefinitely. The e-Manifest Act mandate for an electronic manifest system was not motivated solely by the desire to develop a national data-base of waste shipment data. The Act also contemplated that the national e-Manifest system would produce paperwork burden reductions by migrating to a paperless manifest. The significant cost and burden reductions identified with the e-Manifest project will only be realized when paper manifests are minimized and ultimately eliminated.

While the Agency appreciates the suggestion of industry commenters that the execution of their suggested phased approach can be accomplished in a little more than a year's time, we believe that the migration to widespread use of electronic manifests will likely take several years to accomplish. In short, the phased approach presented by commenters is commendable, but EPA would be very concerned if progress on electronic manifesting were to stall at Phase I or Phase II, and paper manifesting with a back-office data upload from facilities was the end product of the effort. Progress toward the fully electronic manifest must be maintained and monitored.

Therefore, EPA is announcing that it intends to monitor the progress toward electronic manifest adoption and report this progress annually to stakeholders and to the e-Manifest Advisory Board. In section III.J. of this preamble, EPA signaled that beginning June 30, 2021, it will not accept mailed paper manifests from facilities for processing in e-Manifest. It is further EPA's intent that the use of paper manifests, and the submission of data from paper manifests, whether by image files or data file uploads, be curtailed by June 30, 2023, that is, after five years of system implementation.

After three years of system implementation, EPA will collect information from the system on the trends reported on paper and electronic manifest usage, and present this information to the e-Manifest Advisory Board. We will examine these data closely to determine if mailed paper manifest submissions have been eliminated; if we are on track to meet the 75% electronic manifest usage goal by year four (which affects this rule's possible fee pivot); and if we are seeing meaningful progress toward the widespread adoption of electronic manifesting. If the Agency should find that meaningful progress is lacking, we will seek the Board's advice on what combination of incentives or restrictions (*e.g.,* a regulatory ban of paper manifest use after 2023), or other measures should be implemented to accomplish the program's goal of realizing all the efficiencies and benefits of an electronic manifest system. We will also examine the trends in relation to the use of the hybrid or mixed manifest approach by generators, and seek the advice of the Advisory Board on whether it is aiding or hindering the adoption of electronic manifesting, and whether it should perhaps be phased out as well.

*N. Removal of Part 262 Appendix From the Code of Federal Regulations*

Since the adoption of the Uniform Manifest in 1984, EPA has published the Uniform Manifest (EPA Form 8700–22), the Manifest Continuation Sheet (EPA Form 8700–22A), and the corresponding instructions for completing each of these forms in a distinct appendix published at the end of 40 CFR part 262. This means that any change to the forms required costly and time-consuming rulemaking. This practice has continued for more than 30 years, despite the fact that the Agency must also comply with the regulations implementing the Paperwork Reduction Act (PRA) at 5 CFR part 1320. Specifically, pursuant to the PRA, the Agency must receive approval from the Office of Management and Budget (OMB) for any substantive or material change it seeks to make to the two forms (OMB control number 2050–0039). As part of these requirements, among other things, the Agency must include as part of its request for OMB clearance, evidence that it informed and provided reasonable notice to the public of changes it seeks to make to the forms as well as an estimate of the burden resulting from the changes, provided the public with an opportunity to comment on the changes, and an explanation of how the Agency addressed those comments. In fact, even if the Agency does not seek to make any changes to the forms, it must seek approval from OMB for continued use of the forms every three years.

While the codification of these forms and their instructions in an appendix to part 262 may have been a useful means of publishing the details of the manifest forms and their use to the regulated community in the 1980's when there was no internet, EPA believes that this codification no longer serves that purpose. This conclusion follows from the impending availability of these forms and their instructions on the Agency's internet domain. Codification of these forms in part 262 is also duplicative with the management of the manifest's information collection requirements under the PRA. The manifest and continuation sheet forms displayed in the current appendix only display one sample copy of the multi-copy manifest and continuation sheet forms. These codified versions are sample displays only and cannot be used in commerce at all, and users who need a manifest must obtain them from the registered printers EPA has approved to distribute valid manifests commercially. With the implementation of e-Manifest, EPA has designated an internet domain—*www.epa.gov/e-Manifest*—where it will publish and make available to users the currently required manifest forms and instructions, serving the same purpose as the codification in the appendix in the CFR. EPA will be able to publish, make available to the public, and maintain the manifest forms and instructions much more efficiently and effectively through this means on the internet domain than by continuing to codify them in an appendix in the CFR. Moreover, the internet domain also provides a convenient location at which EPA can inform the public of any changes it seeks to make to the forms and provide the public with instructions on how they can submit comments. Any issues that the public might have concerning the paperwork compliance burdens posed by the manifest forms and their instructions can continue to be addressed in the Information Collection Request (ICR) process set out in the PRA.

EPA did not propose the removal of the manifest forms and instructions from the part 262 appendix as part of the July 26, 2016 proposed user fee rule. The proposed user fee rule was focused fundamentally on the user fee methodology and policy and several pending non-fee issues related to the use of manifests. As the final rule was being developed, EPA recognized the need to make several minor, conforming changes to the manifest forms and instructions to implement several of the new requirements under the e-Manifest Act. The development of these conforming changes to the forms and instructions accentuated for EPA the need to move away from the archaic practice of continuing to publish the forms and instruction in the CFR rather than publishing them to the public more

effectively on the program's internet domain. In addition, as EPA shifts its attention in the future to integrating the manifest with the reporting of waste receipts for the RCRA biennial report, there will be many advantages to EPA and the public in having the integration of these two collections addressed through the PRA process rather than a separate rulemaking focused only on the manifest forms in the CFR appendix.

The Agency is including this action in this final rule, without notice and comment, pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (APA). Section 553(b)(3)(A) of the APA exempts notice and comment proceedings for ''interpretive rule, general statements of policy, or rules of agency organization, procedure, or practice.'' The decision to publish the manifest forms and instructions though EPA's internet domain, and to address public comments on form changes and their burden through the PRA processes rather than through a separate rulemaking on the part 262 appendix, is primarily a matter of how EPA organizes its forms and their procedures and practices. Moreover, the PRA provides another adequate process by which the public can be informed of manifest form changes and provide comment on them. For emphasis, we note that no other form required for RCRA Subtitle C compliance purposes (*e.g.,* the Site ID Form, the biennial report's waste generation or waste receipt forms) are codified in the CFR. Removing the manifest forms and instructions from the part 262 appendix will enable EPA to organize, manage, and maintain the manifest forms in the same sensible and efficient manner as the other Subtitle C form requirements.

Therefore, EPA is including in this final rule two minor regulatory amendments to effectuate this action. First, EPA is amending § 262.20(a)(1) to remove the current language that specifies that generators must prepare manifests ''according to the instructions included in the appendix to this part.'' The language in quotations above will be removed, and the language that remains will simply require the generators to prepare a manifest, and will continue to cite the EPA Forms 8700–22 and 8700–22A that identify the hazardous waste manifest and continuation sheet, as well as the OMB control number 2050–0039 by which OMB manages the information collection requirements for the manifest forms. Second, EPA is including an amendment to part 262 to remove the current manifest forms-related appendix from part 262.

## IV. The Projected Economic Impacts of the Electronic Manifest

### *A. Introduction*

EPA estimated the costs and benefits of the final rule in a Regulatory Impact Analysis (RIA), which is available in the docket for this action. The RIA estimates costs and costs savings attributable to electronic manifests. Cost savings are presented against estimated baseline costs of the existing RCRA hazardous waste paper manifest system. The RIA also qualitatively describes un-monetized benefits of electronic manifests.

### *B. Count of RCRA Hazardous Waste Manifests*

The RIA estimates paper manifest system baseline costs and electronic manifest costs savings at the per-manifest level. Per-manifest costs and cost savings are then scaled up to arrive at national estimates of paper manifest costs and electronic manifest cost savings. Because costs and cost savings are estimated at the per-manifest level, the count of manifests used drives costs and cost savings estimates in the RIA analysis.

Because all RCRA manifests will be processed centrally by EPA, the RIA estimated the entire scope of manifest usage. While the federal RCRA manifest (EPA forms 8700–22 and 8700–22A) has been the sole manifest accompanying shipments of hazardous waste since the 2005 Uniform Hazardous Waste Manifest form rule, the manifest has two applications. The first is to accompany shipments of hazardous wastes listed in the federal RCRA regulations. The second is to accompany shipments of state-only regulated wastes listed in various state RCRA regulations. A total count of manifests which include both federal and state applications was estimated in the RIA. EPA estimated an average annual count of hazardous waste manifests used by extrapolating from data on the generation of hazardous waste, data on the number of shippers of hazardous waste, and by making assumptions about the likely shipping frequency of hazardous and state-only regulated wastes. EPA corroborated this estimate through consultations with companies that print and sell copies of the hazardous waste manifest. The average annual count of hazardous waste manifests used is estimated to be 3.2 million

### *C. Baseline Cost of the Paper Manifest System*

EPA estimated baseline costs for all aspects of the existing paper manifest system which will be affected by electronic manifests. EPA estimated six categories of costs accruing to: Industrial users of paper manifests, state governments that collect paper manifests, and EPA. The six categories of costs are:

- Paper manifest costs accruing to industry for federal manifests,
- Paper manifest costs accruing to industry for state manifests,
- EPA burden to process paper manifests,
- State government burden to process paper manifests,
- Industry burden to comply with hazardous waste Biennial Report requirements, and
- State government burden to comply with hazardous waste Biennial Report requirements.

In total, discounting at 7% over six years, the annualized baseline costs of the paper manifest system are estimated to be $238 million.

### *D. Costs Savings and Other Benefits of Electronic Manifests*

EPA estimated both monetized cost savings and other, non-monetized, benefits of electronic manifests. Cost savings are the difference between the pre-rule cost of manifesting and the post-rule cost of manifesting. They are estimated to accrue to both industrial and state government users of electronic manifests. Over the six-year period of analysis modeled in the RIA, the annualized post-rule costs of manifesting were estimated to be $172 million when discounting at 7%. Since the pre-rule cost of manifesting is estimated to be $238 million, annualized cost savings from electronic manifests are estimated to be $66 million.

EPA expects that electronic manifests will enhance many stakeholders' ability to track and extract data on waste shipments by storing and distributing these data in a central, accessible location. EPA has identified six stakeholder groups that may benefit from better access to manifest shipping data:

- Members of industry that use the manifest for tracking waste shipments should know the status of their shipments faster than under the current paper based system. They should also benefit from the increased legibility of electronic manifest records compared to current paper manifests.
- Federal and state government RCRA enforcement officials, who use manifest data in the course of their investigations of RCRA compliance should benefit from the centralized storage of manifest data and the greater accessibility of these data under e-Manifest.

• Emergency responders should benefit from increased access to data on the generation, shipment, and storage of hazardous wastes in the event that a spill or other accident involving hazardous waste occurs.

• Research institutions from academia to industry may find novel uses for manifest data.

• Communities near RCRA facilities will have better information on the generation, shipment, treatment, storage, and disposal of hazardous waste near their communities.

EPA has not attempted to quantify the value of this benefit.

SUMMARY OF ESTIMATED COSTS AND COST SAVINGS

[Annualized and discounted at 7% over six years]

| Pre-rule costs ($ million) | Post-rule costs ($ million) | Cost savings ($ million) |
|---|---|---|
| 238 | 172 | 66 |

## V. State Implementation

### *A. Applicability of Rules in Authorized States—General Principles*

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and of the Hazardous Waste Electronic Manifest Establishment Act, a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to administer the program and issue RCRA permits. When new, more stringent federal requirements were promulgated, a state with final RCRA authorization was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, with the adoption of RCRA section 3006(g), which was added by HSWA, new requirements and prohibitions imposed under the HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by section 3006(g) to implement HSWA-based requirements and prohibitions in authorized states until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states are authorized to do so.

The e-Manifest Act contains similar authority to HSWA with respect to federal and state implementation responsibilities in RCRA authorized states. Section 2(g)(3) of the e-Manifest Act, entitled Administration, provides that EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of EPA. Also, section 2(g)(2) of the Act provides that any regulation promulgated by EPA under the e-Manifest Act shall take effect in each state (under federal authority) on the same effective date that EPA specifies in its promulgating regulation. The result is that regulations promulgated by EPA under the e-Manifest Act, like HSWA-based regulations, are implemented and enforced by EPA until the states are authorized to carry them out.

Authorized states generally are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. However, as EPA explained previously when adopting manifest form revisions to fully standardize the RCRA manifest, the hazardous waste manifest is treated differently. Rather, EPA requires strict consistency in the manifest requirements, so that any EPA changes to federal manifest requirements that are authorizable to states must be implemented consistently in the states, regardless whether the change might be considered more stringent or broader in scope than existing requirements. See 70 FR 10776 at 10810 (March 4, 2005). This is so, whether the manifest program change is based on base RCRA or on e-Manifest Act authority.

### *B. Legal Authority for This Rule's Regulatory Changes and Implications*

Only one of the authorizable [11] regulatory changes included in this final rule is based on the so-called base RCRA or 1976 RCRA statutory authority.[12] This regulatory provision is the § 263.21(b) regulation addressing en route changes to transporters. This is not a user fee related provision, but a more general change in the requirements governing the use of the hazardous waste manifest by hazardous waste transporters. Because this provision is promulgated under RCRA base program authority, this regulatory change will not become effective in authorized states until the regulatory change is adopted under state law and EPA authorizes the state program modification. States must adopt this regulatory change in their authorized programs to maintain manifest program consistency. In unauthorized states, this regulation will become effective on the effective date of this final rule, which is June 30, 2018.

Most of the remaining regulatory changes promulgated in this final rule are issued under the authority of the e-Manifest Act. These provisions will be implemented and enforced by EPA in all states consistently on the effective date of this final rule. States must adopt the authorizable e-Manifest Act-based provisions of this final rule in order to enforce them under state law, and to maintain manifest program consistency. However, EPA will continue to implement and enforce these provisions until such time as the state modifies its authorized program to adopt these provisions and receives authorization from EPA for the program modification.

### *C. Authorizable e-Manifest Act Provisions*

The authorizable provisions promulgated under e-Manifest Act authority are set out in the following table listing the regulatory section of 40 CFR that is affected and the subject of the regulation. These particular provisions listed below can be administered and enforced by states after they are authorized for these provisions.

[11] EPA uses the term authorizable to distinguish those provisions of the final rule that can be administered and enforced by a state as a part of its authorized RCRA program from those provisions, such as determining and collecting e-Manifest user fees, that can be administered and enforced only by EPA.

[12] The final rule's changes to the manifest form printing specifications at § 262.21(f)(5) through (7) are also issued under base RCRA authority. However, as the manifest printing specifications are not authorizable, the changes to the printing specification will be effective federally on the final rule's effective date, and are not affected by state program modifications.

| Regulation | Subject |
|---|---|
| § 260.4 | Copy submission requirements for interstate shipments. |
| § 260.5 | Applicability of e-Manifest system and fees to facilities receiving state-only regulated wastes. |
| § 262.24(c)(1) | Use of mixed paper/electronic manifests. |
| § 262.24(h) | Generators and post-receipt data corrections. |
| § 263.20(a)(9) | Transporters and post-receipt data corrections. |
| § 264.71(a)(2)(v), § 265.71(a)(2)(v) | Receiving facilities' required paper manifest submissions to system. |
| § 264.71(j), § 265.71(j) | Imposition of user fees on receiving facilities for their manifest submissions. |
| § 264.71(l), § 265.71(l) | Receiving facilities and post-receipt data corrections. |

*D. Provisions of the Final Rule That Are Not Authorizable*

There are some provisions in this final rule that can be administered and enforced only by EPA, and not by authorized states. The first group of non-authorizable requirements included in this final rule are § 262.21(f)(5), (6), and (7). These provisions together announce the revised printing specification for the five-copy paper manifest and continuation sheet paper forms, the revised copy distribution requirements to be printed on each copy of the form, and the revised specification for printing the appropriate manifest instructions on the back of the form copies. These printing specifications apply to registered manifest printers and are administered solely by EPA. State programs are not required to take any action respecting these regulatory changes to the printing specifications, and they will take effect in all states on the effective date of this final rule.

The second group of non-authorizable requirements in this final rule consists of the fee methodology and related fee implementation provisions set forth in subpart FF of 40 CFR parts 264 and 265. These requirements include definitions relevant to the program's fee calculations (§ 264.1311, § 265.1311), the user fee calculation methodology (§ 264.1312, § 265.1312), the user fee revisions and publication process (§ 264.1313, § 265.1313), how to make user fee payments (§ 264.1314, § 265.1314), sanctions for delinquent payments (§ 264.1315, § 265.1315), and the informal fee dispute process (§ 264.1316, § 265.1316). These user fee provisions in subpart FF are promulgated under the authority of the e-Manifest Act, and will be implemented and enforced by EPA on the effective date of this final rule and perpetually thereafter. The user fee provisions of subpart FF describe the methods and processes that EPA alone will use in setting fees to recover its program costs, and in administering and enforcing the user fee requirements. Therefore, states cannot be authorized to implement or enforce any of the subpart FF provisions.

Although states cannot receive authorization to administer or enforce the federal government's e-Manifest program user fees, authorized state programs must still include the content of or references to the subpart FF requirements. This is necessary to ensure that members of their regulated communities will be on notice of their responsibilities to pay user fees to the EPA e-Manifest system when they utilize the system. Authorized state programs must either adopt or reference appropriately the user fee requirements of this final rule.[13] However, when a state adopts the user fee provisions of this rule, the state must not replace federal or EPA references with state references or terms that would suggest the collection or implementation of these user fees by the state. Alternatively, an authorized state may reference the subpart FF fee provisions appropriately by simply adopting state law counterparts to §§ 264.71(j) and 265.71(j) that include all the detailed citations to the subpart FF provisions as set out in the §§ 264.71(j) and 265.71(j) provisions of this final rule.

*E. Non-Fee Related Provisions of the Final Rule*

In addition to the § 263.21(b) provision discussed above addressing transporter changes en route, two other non-fee related provisions are included in this final rule that the states will be required to adopt as components of their authorized programs. These provisions include: (1) The amendments to §§ 264.71(l) and 265.71(l), addressing post-receipt manifest data corrections in the e-Manifest data system; and (2) the amendment at § 262.24(c)(1), allowing a mixed paper and electronic manifest to be used by certain generators. Each of these non-fee related amendments must be adopted by authorized state programs to maintain consistency with the federal RCRA program. Moreover, because all three of these provisions address the use of the RCRA hazardous waste manifest or the national e-Manifest system to be established under the e-Manifest Act, these provisions must be adopted uniformly and fully consistently with the promulgated federal requirements. Because these provisions are based on e-Manifest Act authority, they will be implemented and enforced by EPA in all states on the effective date of this final rule, and will be implemented by EPA until the states obtain RCRA authorization for these program modifications.

This final rule also includes two conforming changes to 40 CFR 271.12, addressing the requirements for hazardous waste management facilities that must be included in authorized state programs to maintain consistency with the federal program. The first change at § 271.12(k) clarifies that authorized state programs must include requirements for hazardous waste management facilities and facilities receiving state regulated wastes under manifests to pay user fees to EPA to recover all costs related to the development and operation of an electronic hazardous waste manifest system (e-Manifest system). The second such change at § 271.12(i)(2) clarifies that authorized programs must include a requirement that designated or receiving facilities submit a signed copy of each paper manifest (or the data from paper manifests) to the EPA's e-Manifest system, in lieu of sending signed copies directly to either the origination or destination states. The latter modification is necessary to effectuate the intent of Congress that under the e-Manifest Act, the e-Manifest system will operate as a national, one-stop reporting hub for manifests and data. When e-Manifest is operational, EPA expects that the states with such tracking

[13] EPA believes it is important that states adopt or reference EPA's subpart FF user fee provisions in their state programs, so that all receiving facilities in the states are on notice of their obligations to submit their final manifest copies to the system and to pay user fees to EPA for the processing of their manifests. EPA has added § 260.5 to provide federal notice of these e-Manifest Act responsibilities to the facilities that receive state-only regulated wastes that are tracked with a RCRA manifest per state law. However, the adoption by the states of appropriate state program revisions alerting such facilities that receive state-only regulated wastes to these e-Manifest Act requirements should greatly enhance the notice afforded these receiving facilities and their rate of compliance.

programs will obtain their manifest copies and data from e-Manifest, rather than requiring regulated entities to mail their manifests to these states.[14]

Also, several of these states with manifest tracking programs assess their own fees to offset the costs of administering their state manifest tracking programs, or they may assess waste generation or management fees to support state programs, based on manifest data in their state tracking systems. It is likely that many of these state manifest tracking programs and related fees may continue to operate for the foreseeable future. EPA emphasizes that the federal user fees that are the subject of this regulation are solely to offset EPA's costs in developing and operating the e-Manifest system. It is not the purpose of this regulation to suspend, reduce, or otherwise impact the existing state fees that support states' manifest tracking programs or the fees levied by state programs on waste generation or management. EPA is not now in a position to predict what, if any, impact this federal user fee regulation may have on any such state fee collection programs.

## VI. Estimated Fee Schedule for Initial Operation Period

EPA has developed an illustrative estimate of the program's initial user fees based on the best system use, system cost, and program budget projections available at the time of this rule's publication. These estimates are for user fees in the first year of system operation. They are driven by assumptions about the magnitude and distribution of manifest types that the system will receive. These assumptions are explained in detail in Chapter 5 of the RIA that accompanies this rulemaking. These fees also incorporate estimates of costs of setting up and hosting the system, and the costs of running the paper processing center. At the time of this rule's publication EPA does not have a final budget for the program in Fiscal Year 2018, nor does EPA have all the contracts in place for setting up and hosting the system, and for running the paper processing center. For this reason, the following table of fee estimates should be interpreted as rough approximations of the final fees. EPA will publish a final two-year schedule of user fees on the e-Manifest website, at *www.epa.gov/e-Manifest,* when more information about the e-Manifest budget and contracts awards becomes available.

The fee estimates presented in the following table are per-manifest fees for each manifest submission type. They are derived from the proposed rule's Option 2, Marginal Cost Differentiated Fee methodology, which in this final rule, EPA will rely on for setting fee levels for at least the initial four years of program implementation.

YEAR 1 MARGINAL COST MANIFEST FEES BY MANIFEST TYPE

[2017$]

| Manifest submission type | | Year 1 fee |
|---|---|---|
| Paper Manifest Types | Mailed Paper | $20.00 |
| | Image Uploads | 13.00 |
| | Data File Uploads | 7.00 |
| Electronic Manifests (includes hybrid) | Electronic | 4.00 |

## VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it may raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket for this action. The EPA prepared a regulatory impact analysis of the potential costs and benefits associated with this action, which is available in the docket.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

### *C. Paperwork Reduction Act (PRA)*

The information collection activities in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 0801.22. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This implementation of e-Manifest and this Fee Rule will impose new information collection requirements on the regulated community, although we expect that the net effect will be to significantly reduce the paperwork burden relative to the paper manifest system. Although the primary effect of the e-Manifest implementation will be to replace current paper-based information requirements with electronic-based requirements to submit or retain the same shipment information, there could be minor additions or changes to the information collection requirements, such as information that may be provided to establish user accounts and fee payment accounts, information submitted for identity management, as well as waste profile or other information that may be useful for the creation and submission of electronic manifests. Additionally, EPA did not update the information collection burden associated with the regulatory changes to the manifest system announced in the ''One Year Rule.'' While EPA acknowledged that the adoption of e-Manifest will change the manner in which information will be collected and transmitted, the system was not currently available and consequently the ''One Year Rule'' did

[14] One exception we note is that EPA will not collect in e-Manifest generator or transporter copies of any paper manifests that continue in use after e-Manifest is operational. States that wish to continue to obtain these paper generator or transporter copies will need to continue to require their direct submission to the states.

not change the information collected by the hazardous waste manifest, nor the scope of the wastes that are now subject to manifesting. EPA indicated that it would update the information collection burden estimates in this user fee rule, which are as follows:

*Respondents/affected entities:* Private waste handlers.

*Respondent's obligation to respond:* Mandatory (RCRA 3002(a)(5)).

*Estimated number of respondents:* 203,927.

*Frequency of response:* Monthly (for paper copies), On occasion.

*Total estimated burden:* 2,608,292 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $128,661,312, includes $38,784,093 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

*D. Regulatory Flexibility Analysis (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant adverse-economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by this final rule include entities that receive shipments of hazardous waste across various industries, including, but not limited to, NAICS 562211 Hazardous Waste Treatment and Disposal; NAICS 562920 Materials Recovery Facilities; NAICS 331410 Nonferrous Metal (except Aluminum) Smelting and Refining; NAICS 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum); NAICS 523910 Miscellaneous Intermediation; and NAICS 562219 Other Nonhazardous Waste Treatment and Disposal. The RIA considers as potentially small any firm within the affected universe that cannot be positively identified as not small according to SBA's size standards.

The Regulatory Impact Analysis (RIA) conducted for this rulemaking found that the e-Manifest rule would reduce the compliance burden associated with manifesting shipments of hazardous waste. The RIA estimates that in the initial six years after the e-Manifest system is operational, annualized savings from manifest related burden reduction would equal approximately $66 million per year when discounted at 7%. The RIA estimates that these savings would accrue to firms of all sizes, including 70 potentially small firms, that adopt electronic manifests as well as to firms that adopt one of the two paper manifest submission options other than postal mail submissions. The RIA concludes the e-Manifest rule will not have a significant adverse economic impact on a substantial number of small entities.

As a precaution, the RIA also estimates the impacts of the e-Manifest rule under the unlikely hypothetical scenario in which small firms do not adopt e-Manifest but instead continue to submit paper manifests via postal mail. As a consequence, these firms might not realize any savings from the e-Manifest rule but could instead face increasing costs from e-Manifest fees. The small entities examined in this worst case analysis consist of 70 potentially small firms located within the relevant industries. Potential costs for these firms are estimated by multiplying the cost of a paper manifest submission fee by the number of manifests a firm is estimated to submit within a year. The number of manifests a firm is estimated to submit is based on the amount of hazardous waste they receive. For each firm, the cost of fees is then compared to estimated revenues. Even under these unlikely and highly conservative assumptions, the RIA finds that the rule will not have a significant adverse economic impact on a substantial number of small entities, which the RIA considers as revenue impacts of greater than 1% per year for 20% or more of small entities. The RIA, in particular Section 7.2, describes in greater depth how EPA assembled a universe of small entities, how EPA estimated the hypothetical impacts of the e-Manifest rule under these conservative assumptions, and the criteria EPA used in this instance to determine significant adverse economic impacts on a substantial number of small entities. The RIA is available in the docket for this rulemaking.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It will not impose any new requirements on tribal officials nor will it impose substantial direct compliance costs on them. This action will not create a mandate for tribal governments, *i.e.,* there are no authorized tribal programs that will require revision and reauthorization on account of the e-Manifest system and regulatory program requirements. Nor do we believe that the e-Manifest system and this Fee Rule will impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action requires the payment of user fees from certain members of the hazardous waste management industry for their use of an electronic manifest

system, which will not have a significant effect on the supply, distribution or use of energy.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA concludes that this action does not have potential disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not affect what facilities, materials, or activities are subject to RCRA. Thus, this action does not affect the level of protection provided to human health or the environment. When implemented, the e-Manifest system could improve access for minority, low-income or indigenous populations and communities to information on waste movements to, from, or through neighborhoods where these populations live and work. Thus, the system could only have beneficial effects on such populations and communities.

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects**

*40 CFR Part 260*

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

*40 CFR Part 262*

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

*40 CFR Part 263*

Environmental protection, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

*40 CFR Part 264*

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Fees.

*40 CFR Part 265*

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Fees.

*40 CFR Part 271*

Environmental protection, Administrative practice and procedure Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

Dated: December 20, 2017.

**E. Scott Pruitt,**

*Administrator.*

For the reasons set forth in the preamble, EPA amends 40 CFR parts 260, 262, 263, 264 and 265, and 271 as follows:

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, 6939g, and 6974.

■ 2. Add §§ 260.4 and 260.5 to subpart A to read as follows:

### § 260.4 Manifest copy submission requirements for certain interstate waste shipments.

(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

(1) Complete the facility portion of the applicable manifest;

(2) Sign and date the facility certification;

(3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and

(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of part 264 of this chapter.

### § 260.5 Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments.

(a) For purposes of this section, ''state-only regulated waste'' means:

(1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or

(2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:

(1) Comply with the provisions of §§ 264.71 (use of the manifest) and 264.72 (manifest discrepancies) of this chapter; and

(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of part 264 of this chapter.

## PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 3. The authority citation for part 262 is revised to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938 and 6939g.

■ 4. Section 262.20 is amended by revising paragraphs (a)(1) and (2) to read as follows:

### § 262.20 General requirements.

(a)(1) A generator that transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, or disposal facility that offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050–0039) on EPA Form 8700–22, and, if necessary, EPA Form 8700–22A.

(2) The revised manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.34, 262.54, and 262.60, shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, and 262.60, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

* * * * *

■ 5. Section 262.21 is amended by revising paragraphs (f)(5) and (6) and (f)(7) and adding paragraph (f)(8) to read as follows:

### § 262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.

* * * * *

(f) * * *

(5) The manifest and continuation sheet must be printed as five-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all five copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(i) Page 1 (top copy): ''Designated facility to EPA's e-Manifest system'';

(ii) Page 2: ''Designated facility to generator'';

(iii) Page 3: ''Designated facility copy'';

(iv) Page 4: ''Transporter copy''; and

(v) Page 5 (bottom copy): ''Generator's initial copy.''

(7) The instructions for the manifest form (EPA Form 8700–22) and the manifest continuation sheet (EPA Form 8700–22A) shall be printed in accordance with the content that is currently approved under OMB Control Number 2050–0039 and published to the e-Manifest program's website. The instructions must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700–22.

(A) The ''Instructions for Generators'' on Copy 5;

(B) The ''Instructions for International Shipment Block'' and ''Instructions for Transporters'' on Copy 4; and

(C) The ''Instructions for Treatment, Storage, and Disposal Facilities'' on Copy 3.

(ii) Manifest Form 8700–22A.

(A) The ''Instructions for Generators'' on Copy 5;

(B) The ''Instructions for Transporters'' on Copy 4; and

(C) The ''Instructions for Treatment, Storage, and Disposal Facilities'' on Copy 3.

(8) The designated facility copy of each manifest and continuation sheet must include in the bottom margin the following warning in prominent font: ''If you received this manifest, you have responsibilities under the e-Manifest Act. See instructions on reverse side.''

* * * * *

■ 6. Section 262.24 is amended by:

■ a. Revising paragraphs (c) and (e);

■ b. Removing and reserving paragraph (g); and

■ c. Adding paragraph (h).

The revision and addition read as follows:

**§ 262.24 Use of the electronic manifest.**

* * * * *

(c) *Restriction on use of electronic manifests.* A generator may use an electronic manifest for the tracking of waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the use of the electronic manifest, except that:

(1) A generator may sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.

(2) [Reserved]

* * * * *

(e) *Special procedures when electronic manifest is unavailable.* If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700–22 and 8700–22A) in accordance with the manifest instructions, and use these paper forms from this point forward in accordance with the requirements of § 262.23.

* * * * *

(h) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) named on the manifest. Generators may participate electronically in the post-receipt data corrections process by following the process described in § 264.71(l) of this chapter, which applies to corrections made to either paper or electronic manifest records.

**Appendix to Part 262 [Removed]**

■ 7. Remove the appendix to part 262.

## PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 8. The authority citation for part 263 is revised to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938, and 6939g.

■ 9. Section 263.20 is amended by removing and reserving paragraph (a)(8) and adding paragraph (a)(9) to read as follows:

**§ 263.20 The manifest system.**

* * * * *

(a) * * *

(9) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in § 264.71(l) of this chapter, which applies to corrections made to either paper or electronic manifest records.

* * * * *

■ 10. Section 263.21 is revised to read as follows:

**§ 263.21 Compliance with the manifest.**

(a) Except as provided in paragraph (b) of this section, the transporter must deliver the entire quantity of hazardous waste which he or she has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b)(1) *Emergency condition.* If the hazardous waste cannot be delivered in accordance with paragraph (a)(1), (2), or (4) of this section because of an emergency condition other than rejection of the waste by the designated facility or alternate designated facility, then the transporter must contact the generator for further instructions and must revise the manifest according to the generator's instructions.

(2) *Transporters without agency authority.* If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) The hazardous waste is not delivered in accordance with paragraph (a)(3) of this section because of an emergency condition; or

(ii) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

(3) *Transporters with agency authority.* If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(ii) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: ''Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf;'' and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

(4) *Generator liability.* The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under paragraph (b)(3) of this section does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter, or grant any additional authority to the transporter to act on behalf of the generator.

(c) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(1) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with § 263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 40 CFR 264.72(e)(1) through (6) or (f)(1) through (6) or 40 CFR 265.72(e)(1) through (6) or (f)(1) through (6).

(2) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with § 263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6).

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 11. The authority citation for part 264 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6939g.

### Subpart E—Manifest System, Recordkeeping, and Reporting

■ 12. Section 264.71 is amended by revising paragraphs (a)(2) and (j) and adding paragraph (l) to read as follows:

**§ 264.71 Use of manifest system.**

(a) * * *

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his agent must:

(i) Sign and date each copy of the manifest;

(ii) Note any discrepancies (as defined in § 264.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 2) of the manifest to the generator;

(v) Paper manifest submission requirements are:

(A) *Options for compliance on June 30, 2018.* Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

* * * * *

(j) *Imposition of user fee for manifest submissions.* (1) As prescribed in § 264.1311, and determined in § 264.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in § 264.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of § 264.1314, subject to the informal fee dispute resolution process of § 264.1316, and subject to the sanctions for delinquent payments under § 264.1315.

* * * * *

(l) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The item number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

■ 13. Section 264.1086 is amended by revising paragraphs (c)(4)(i) and (d)(4)(i) to read as follows:

**§ 264.1086 Standards: Containers.**

* * * * *

(c) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(d) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

* * * * *

■ 14. Subpart FF, consisting of §§ 264.1300 through 264.1316, is added to part 264 to read as follows:

**Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program**

Sec.



## Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program

### § 264.1300 Applicability.

(a) This subpart prescribes:

(1) The methodology by which EPA will determine the user fees which owners or operators of facilities must pay for activities and manifest related services provided by EPA through the development and operation of the electronic hazardous waste manifest system (e-Manifest system); and

(2) The process by which EPA will revise e-Manifest system fees and provide notice of the fee schedule revisions to owners or operators of facilities.

(b) The fees determined under this subpart apply to owners or operators of facilities whose activities receiving, rejecting, or managing federally- or state-regulated hazardous wastes or other materials bring them within the definition of ''user of the electronic manifest system'' under § 260.10 of this chapter.

### § 264.1310 Definitions applicable to this subpart.

The following definitions apply to this subpart:

*Consumer price index* means the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Bureau of Labor Statistics in the Department of Labor.

*Cross Media Electronic Reporting Rule (CROMERR) costs* are the sub-category of operations and maintenance costs that are expended by EPA in

implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA's electronic reporting regulations as set forth in the CROMERR as codified at 40 CFR part 3.

*Electronic manifest submissions* means manifests that are initiated electronically using the electronic format supported by the e-Manifest system, and that are signed electronically and submitted electronically to the e-Manifest system by facility owners or operators to indicate the receipt or rejection of the wastes identified on the electronic manifest. Electronic manifest submissions include the hybrid or mixed paper/electronic manifests authorized under § 262.24(c)(1).

*EPA program costs* mean the Agency's intramural and non-information technology extramural costs expended in the design, development and operations of the e-Manifest system, as well as in regulatory development activities supporting e-Manifest, in conducting its capital planning, project management, oversight and outreach activities related to e-Manifest, in conducting economic analyses supporting e-Manifest, and in establishing the System Advisory Board to advise EPA on the system. Depending on the date on which EPA program costs are incurred, these costs may be further classified as either system setup costs or operations and maintenance costs.

*Help desk costs* mean the costs incurred by EPA or its contractors to operate the e-Manifest Help Desk, which EPA will establish to provide e-Manifest system users with technical assistance and related support activities.

*Indirect costs* mean costs not captured as marginal costs, system setup costs, or operations and maintenance costs, but that are necessary to capture because of their enabling and supporting nature, and to ensure full cost recovery. Indirect costs include, but are not limited to, such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. Indirect costs also include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the lead program office responsible for implementing the e-Manifest program.

*Manifest submission type* means the type of manifest submitted to the e-Manifest system for processing, and includes electronic manifest submissions and paper manifest submissions.

*Marginal labor costs* mean the human labor costs incurred by staff operating the paper manifest processing center in conducting data key entry, QA, scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e-Manifest system's data repository.

*Operations and maintenance costs* mean all system related costs incurred by EPA or its contractors after the activation of the e-Manifest system. Operations and maintenance costs include the costs of operating the electronic manifest information technology system and data repository, CROMERR costs, help desk costs, EPA program costs incurred after e-Manifest system activation, and the costs of operating the paper manifest processing center, other than the paper processing center's marginal labor costs.

*Paper manifest submissions* mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700–22, or a paper Continuation Sheet, EPA Form 8700–22A. Such submissions may be made by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets in accordance with § 264.1311(b), or by submitting both an image file and data file in accordance with the procedures of § 264.1311(c).

*System setup costs* mean all system related costs, intramural or extramural, incurred by EPA prior to the activation of the e-Manifest system. Components of system setup costs include the procurement costs from procuring the development and testing of the e-Manifest system, and the EPA program costs incurred prior to e-Manifest system activation.

**§ 264.1311 Manifest transactions subject to fees.**

(a) *Per manifest fee.* Fees shall be assessed on a per manifest basis for the following manifest submission transactions:

(1) The submission of each electronic manifest that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions;

(2) The submission of each paper manifest submission to the paper processing center signed by owners or operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by mail, by the upload of an image file, or by the upload of a data file representation of the paper manifest; and

(3) The submission of copies of return shipment manifests by facilities that are rejecting hazardous wastes and returning hazardous wastes under return manifests to the original generator. This fee is assessed for the processing of the return shipment manifest(s), and is assessed at the applicable rate determined by the method of submission. The submission shall also include a copy of the original signed manifest showing the rejection of the wastes.

(b) *Image file uploads from paper manifests.* Receiving facilities may submit image file uploads of completed, ink-signed manifests in lieu of submitting mailed paper forms to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility:

(1) The image file upload must be made in an image file format approved by EPA and supported by the e-Manifest system; and

(2) At the time of submission of an image file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the submitted image files are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

(c) *Data file uploads from paper manifests.* Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting mailed paper forms or image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

(1) The data file upload must be made in a data file format approved by EPA and supported by the e-Manifest system;

(2) The receiving facility must also submit an image file of each manifest that is included in the individual or batch data file upload; and

(3) At the time of submission of the data file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the data and images submitted are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay

the applicable per manifest fee for each manifest included in the submission.

**§ 264.1312 User fee calculation methodology.**

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years \times N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

Where $Fee_i$ represents the per manifest fee for each manifest submission type ''i'' and $N_t$ refers to the total number of manifests completed in a year.

(b)(1) If after four years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years \times N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M_i\ Cost}{N_i}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M_{fully\ electronic} Cost = Electronic\ System\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

$$O\&M_{all\ other} Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

Where $N_i$ refers to the total number of one of the four manifest submission types ''*i*'' completed in a year and *O&M*$_i$ *Cost* refers to the differential O&M Cost for each manifest submission type ''*i.*''

(2) At the completion of four years of system operations, EPA shall publish a notice:

(i) Stating the date upon which the fee formula set forth in paragraph (b)(1) of this section shall become effective; or

(ii) Stating that the fee formula in paragraph (b)(1) of this section shall not go into effect under this section, and that the circumstances of electronic manifest adoption and the appropriate fee response shall be referred to the System Advisory Board for the Board's advice.

**§ 264.1313 User fee revisions.**

(a) *Revision schedule.* (1) EPA will revise the fee schedules for e-Manifest submissions and related activities at two-year intervals, by utilizing the applicable fee calculation formula prescribed in § 264.1312 and the most recent program cost and manifest usage numbers.

(2) The fee schedules will be published to users through the e-Manifest program website by July 1 of each odd numbered calendar year, and will cover the two fiscal years beginning on October 1 of that year and ending on September 30 of the next odd numbered calendar year.

(b) *Inflation adjuster.* The second year of each two-year fee schedule shall be adjusted for inflation by using the following adjustment formula:

$$Fee i_{Year2} = Fee i_{Year1} \times (CPI_{Year2-2} / CPI_{Year2-1})$$

Where:

$Fee i_{Year2}$ is the Fee for each type of manifest submission ''*i*'' in Year 2 of the fee cycle;

$Fee i_{Year1}$ is the Fee for each type of manifest submission ''*i*'' in Year 1 of the fee cycle; and

$CPI_{Year2-2}/CPI_{Year2-1}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

(c) *Revenue recovery adjusters.* The fee schedules published at two-year intervals under this section shall include an adjustment to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage. This adjustment shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of § 264.1312:

$$Revenue\ Recapture_i = (N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est} \times Fee_{i(Ave)}$$

Where:

Revenue Recapture$_i$ is the amount of fee revenue recaptured for each type of manifest submission ''*i;*''

$(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous 2-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule; and

$Fee_{i(Ave)}$ is the average fee charged per manifest type over the previous two-year cycle.

**§ 264.1314 How to make user fee payments.**

(a) All fees required by this subpart shall be paid by the owners or operators of the receiving facility in response to an electronic invoice or bill identifying manifest-related services provided to the user during the previous month and identifying the fees owed for the enumerated services.

(b) All fees required by this subpart shall be paid to EPA by the facility electronically in U.S. dollars, using one of the electronic payment methods supported by the Department of the Treasury's *Pay.gov* online electronic payment service, or any applicable additional online electronic payment service offered by the Department of Treasury.

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within 30 days of the date of the invoice or bill.

**§ 264.1315 Sanctions for delinquent payments.**

(a) *Interest.* In accordance with 31 U.S.C. 3717(a)(1), delinquent e-Manifest user fee accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) for the 12-month period ending September 30th of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the fee amount owed.

(2) Due dates for invoiced or electronically billed fee amounts shall be 30 days from the date of the electronic invoice or bill.

(b) *Financial penalty.* In accordance with 31 U.S.C. 3717(e), e-Manifest user fee accounts that are more than 90 days past due (*i.e.,* not paid by date 120 days from date of invoice) shall be charged an additional penalty of 6% per year assessed on any part of the debt that is past due for more than 90 days, plus any applicable handling charges.

(c) *Compliance with manifest perfection requirement.* A manifest is fully perfected when:

(1) The manifest has been submitted by the owner or operator of a receiving facility to the e-Manifest system, as either an electronic submission or a paper manifest submission; and

(2) All user fees arising from the submission of the manifest have been fully paid.

**§ 264.1316 Informal fee dispute resolution.**

(a) Users of e-Manifest services that believe their invoice or charges to be in error must present their claims for fee dispute resolution informally using the process described in this section.

(b) Users asserting a billing dispute claim must first contact the system's billing representatives by phone or email at the phone number or email address provided for this purpose on the e-Manifest program's website or other customer services directory.

(1) The fee dispute claimant must provide the system's billing representatives with information identifying the claimant and the invoice(s) that are affected by the dispute, including:

(i) The claimant's name, and the facility at which the claimant is employed;

(ii) The EPA Identification Number of the affected facility;

(iii) The date, invoice number, or other information to identify the particular invoice(s) that is the subject of the dispute; and

(iv) A phone number or email address where the claimant can be contacted.

(2) The fee dispute claimant must provide the system's billing representatives with sufficient supporting information to identify the nature and amount of the fee dispute, including:

(i) If the alleged error results from the types of manifests submitted being inaccurately described in the invoice, the correct description of the manifest types that should have been billed;

(ii) If the alleged error results from the number of manifests submitted being inaccurately described in the invoice, the correct description of the number of manifests that should have been billed;

(iii) If the alleged error results from a mathematical error made in calculating the amount of the invoice, the correct fee calculations showing the corrected fee amounts; and

(iv) Any other information from the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

(3) EPA's system billing representatives must respond to billing dispute claims made under this section within ten days of receipt of a claim. In response to a claim, the system's billing representative will:

(i) State whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility; and

(ii) If a claim is rejected, then the response shall provide a brief statement of the reasons for the rejection of the claim and advise the claimant of their right to appeal the claim to the Office Director for the Office of Resource Conservation and Recovery.

(c) Fee dispute claimants that are not satisfied by the response to their claim from the system's billing representatives may appeal their claim and initial decision to the Office Director for the Office of Resource Conservation and Recovery.

(1) Any appeal from the initial decision of the system's billing representatives must be taken within 10 days of the initial decision of the system's billing representatives under paragraph (b) of this section.

(2) The claimant shall provide the Office Director with the claim materials submitted to the system's billing representatives, the response provided by the system's billing representatives to the claim, and a brief written statement by the claimant explaining the nature and amount of the billing error, explaining why the claimant believes the decision by the system's billing representatives is in error, and why the claimant is entitled to the relief requested on its appeal.

(3) The Office Director shall review the record presented to him or her on an appeal under this paragraph (c), and shall determine whether the claimant is entitled to relief from the invoice alleged to be in error, and if so, shall state the amount of the recalculated invoice and the amount of the invoice to be adjusted.

(4) The decision of the Office Director on any appeal brought under this section is final and non-reviewable.

## PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 15. The authority citation for part 265 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

### Subpart E—Manifest System, Recordkeeping, and Reporting

■ 16. Section 265.71 is amended by revising paragraphs (a)(2) and (j) and adding paragraph (l) to read as follows:

**§ 265.71 Use of manifest system.**

(a) * * *

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 265.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 2) of the manifest to the generator;

(v) Paper manifest submission requirements are:

(A) *Options for compliance on June 30, 2018.* Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and (vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

* * * * *

(j) *Imposition of user fee for electronic manifest use.* (1) As prescribed in § 265.1311, and determined in § 265.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in § 265.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of § 265.1314, subject to the informal fee dispute resolution process of § 265.1316, and subject to the sanctions for delinquent payments under § 265.1315.

* * * * *

(l) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

■ 17. Section 265.1087 is amended by revising paragraphs (c)(4)(i) and (d)(4)(i) to read as follows:

**§ 265.1087 Standards: Containers.**

(c) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(d) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the

container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at § 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

* * * * *

■ 18. Subpart FF, consisting of §§ 265.1310 through 265.1316, is added to part 265 to read as follows:

**Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program**

Sec.



## Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program

### § 265.1300 Applicability.

(a) This subpart prescribes:

(1) The methodology by which EPA will determine the user fees which owners or operators of facilities must pay for activities and manifest related services provided by EPA through the development and operation of the electronic hazardous waste manifest system (e-Manifest system); and

(2) The process by which EPA will revise e-Manifest system fees and provide notice of the fee schedule revisions to owners or operators of facilities.

(b) The fees determined under this subpart apply to owners or operators of facilities whose activities receiving, rejecting, or managing federally- or state-regulated wastes or other materials bring them within the definition of ''user of the electronic manifest system'' under § 260.10 of this chapter.

### § 265.1310 Definitions applicable to this subpart.

The following definitions apply to this subpart:

*Consumer price index* means the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Bureau of Labor Statistics in the Department of Labor.

*CROMERR costs* are the sub-category of operations and maintenance costs that are expended by EPA in implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA's electronic reporting regulations as set forth in the Cross Media Electronic Reporting Rule (CROMERR) as codified at 40 CFR part 3.

*Electronic manifest submissions* means manifests that are initiated electronically using the electronic format supported by the e-Manifest system, and that are signed electronically and submitted electronically to the e-Manifest system by facility owners or operators to indicate the receipt or rejection of the wastes identified on the electronic manifest. Electronic manifest submissions include the hybrid or mixed paper/electronic manifests authorized under § 262.24(c)(1) of this chapter.

*EPA program costs* mean the Agency's intramural and non-information technology extramural costs expended in the design, development and operations of the e-Manifest system, as well as in regulatory development activities supporting e-Manifest, in conducting its capital planning, project management, oversight and outreach activities related to e-Manifest, in conducting economic analyses supporting e-Manifest, and in establishing the System Advisory Board to advise EPA on the system. Depending on the date on which EPA program costs are incurred, these costs may be further classified as either system setup costs or operations and maintenance costs.

*Help desk costs* mean the costs incurred by EPA or its contractors to operate the e-Manifest Help Desk, which EPA will establish to provide e-Manifest system users with technical assistance and related support activities.

*Indirect costs* mean costs not captured as marginal costs, system setup costs, or operations and maintenance costs, but that are necessary to capture because of their enabling and supporting nature, and to ensure full cost recovery. Indirect costs include, but are not limited to, such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. Indirect costs also include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the lead program office responsible for implementing the e-Manifest program.

*Manifest submission type* means the type of manifest submitted to the e-Manifest system for processing, and includes electronic manifest submissions and paper manifest submissions.

*Marginal labor costs* mean the human labor costs incurred by staff operating the paper manifest processing center in conducting data key entry, QA, scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e-Manifest system's data repository.

*Operations and maintenance costs* mean all system related costs incurred by EPA or its contractors after the activation of the e-Manifest system. Operations and maintenance costs include the costs of operating the electronic manifest information technology system and data repository, CROMERR costs, help desk costs, EPA program costs incurred after e-Manifest system activation, and the costs of operating the paper manifest processing center, other than the paper processing center's marginal labor costs.

*Paper manifest submissions* mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700–22, or a paper Continuation Sheet, EPA Form 8700–22A. Such submissions may be made by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets in accordance with § 265.1311(b), or by submitting both an image file and data file in accordance with the procedures of § 265.1311(c).

*System setup costs* mean all system related costs, intramural or extramural, incurred by EPA prior to the activation of the e-Manifest system. Components of system setup costs include the procurement costs from procuring the development and testing of the e-Manifest system, and the EPA program costs incurred prior to e-Manifest system activation.

### § 265.1311 Manifest transactions subject to fees.

(a) *Per manifest fee.* Fees shall be assessed on a per manifest basis for the following manifest submission transactions:

(1) The submission of each electronic manifest that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions;

(2) The submission of each paper manifest submission to the paper processing center signed by owners or

operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by mail, by the upload of an image file, or by the upload of a data file representation of the paper manifest; and

(3) The submission of copies of return shipment manifests by facilities that are rejecting hazardous wastes and returning hazardous wastes under return manifests to the original generator. This fee is assessed for the processing of the return shipment manifest(s), and is assessed at the applicable rate determined by the method of submission. The submission shall also include a copy of the original signed manifest showing the rejection of the wastes.

(b) *Image file uploads from paper manifests.* Receiving facilities may submit image file uploads of completed, ink-signed manifests in lieu of submitting mailed paper forms to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility.

(1) The image file upload must be made in an image file format approved by EPA and supported by the e-Manifest system; and

(2) At the time of submission of an image file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the submitted image files are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

(c) *Data file uploads from paper manifests.* Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting mailed paper forms or image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

(1) The data file upload must be made in a data file format approved by EPA and supported by the e-Manifest system;

(2) The receiving facility must also submit an image file of each manifest that is included in the individual or batch data file upload; and

(3) At the time of submission of the data file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the data and images submitted are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

**§ 265.1312 User fee calculation methodology.**

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years \times N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

Where $Fee_i$ represents the per manifest fee for each manifest submission type ''i'' and $N_t$ refers to the total number of manifests completed in a year.

(b)(1) If after four years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years \times N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M_i\ Cost}{N_i}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M_{fully\ electronic} Cost = Electronic\ System\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

$$O\&M_{all\ other} Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

Where $N_i$ refers to the total number of one of the four manifest submission types ''*i*'' completed in a year and *O&M*$_i$ *Cost* refers to the differential O&M Cost for each manifest submission type ''*i.*''

(2) At the completion of four years of system operations, EPA shall publish a notice:

(i) Stating the date upon which the fee formula set forth in paragraph (b)(1) of this section shall become effective; or

(ii) Stating that the fee formula in paragraph (b)(1) of this section shall not go into effect under this section, and that the circumstances of electronic manifest adoption and the appropriate fee response shall be referred to the System Advisory Board for the Board's advice.

**§ 265.1313 User fee revisions.**

(a) *Revision schedule.* (1) EPA will revise the fee schedules for e-Manifest submissions and related activities at two-year intervals, by utilizing the applicable fee calculation formula prescribed in § 265.1312 and the most recent program cost and manifest usage numbers.

(2) The fee schedules will be published to users through the e-Manifest program website by July 1 of each odd numbered calendar year, and will cover the next two fiscal years beginning on October 1 of that year and ending on September 30 of the next odd numbered year.

(b) *Inflation adjuster.* The second year of each two-year fee schedule shall be adjusted for inflation by using the following adjustment formula:

$$Fee_{i_{Year\ 2}} = Fee_{i_{Year1}} \times (CPI_{Year2-2}/CPI_{Year2-1})$$

Where:

$Fee_{i_{Year2}}$ is the Fee for each type of manifest submission ''*i*'' in Year 2 of the fee cycle;

$Fee_{i_{Year1}}$ is the Fee for each type of manifest submission ''*i*'' in Year 1 of the fee cycle; and

$CPI_{Year2-2}/CPI_{Year2-1}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

(c) *Revenue recovery adjusters.* The fee schedules published at two-year intervals under this section shall include an adjustment to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage. This adjustment shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of § 265.1312:

$$Revenue\ Recapture_i = [(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}] \times Fee_{i(Ave)}$$

Where:

$Revenue\ Recapture_i$ is the amount of fee revenue recaptured for each type of manifest submission ''*i*;''

$(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous 2-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule; and

$Fee_{i(Ave)}$ is the average fee charged per manifest type over the previous two-year cycle.

**§ 265.1314 How to make user fee payments.**

(a) All fees required by this subpart shall be paid by the owners or operators of the receiving facility in response to an electronic invoice or bill identifying manifest-related services provided to the user during the previous month and identifying the fees owed for the enumerated services.

(b) All fees required by this subpart shall be paid to EPA by the facility electronically in U.S. dollars, using one of the electronic payment methods supported by the Department of the Treasury's *Pay.gov* online electronic payment service, or any applicable additional online electronic payment service offered by the Department of Treasury.

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within 30 days of the date of the invoice or bill.

**§ 265.1315 Sanctions for delinquent payments.**

(a) *Interest.* In accordance with 31 U.S.C. 3717(a)(1), delinquent e-Manifest user fee accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) for the 12-month period ending September 30th of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the fee amount owed.

(2) Due dates for invoiced or electronically billed fee amounts shall be 30 days from the date of the electronic invoice or bill.

(b) *Financial penalty.* In accordance with 31 U.S.C. 3717(e), e-Manifest user fee accounts that are more than 90 days past due (*i.e.,* not paid by date 120 days from date of invoice) shall be charged an additional penalty of 6% per year assessed on any part of the debt that is past due for more than 90 days, plus any applicable processing and handling charges.

(c) *Compliance with manifest perfection requirement.* A manifest is fully perfected when:

(1) The manifest has been submitted by the owner or operator of a receiving facility to the e-Manifest system, as either an electronic submission or a paper manifest submission; and

(2) All user fees arising from the submission of the manifest have been fully paid.

**§ 265.1316 Informal fee dispute resolution.**

(a) Users of e-Manifest services that believe their invoice or charges to be in error must present their claims for fee dispute resolution informally using the process described in this section.

(b) Users asserting a billing dispute claim must first contact the system's billing representatives by phone or email at the phone number or email address provided for this purpose on the e-Manifest program's website or other customer services directory.

(1) The fee dispute claimant must provide the system's billing representatives with information identifying the claimant and the invoice(s) that are affected by the dispute, including:

(i) The claimant's name, and the facility at which the claimant is employed;

(ii) The EPA Identification Number of the affected facility;

(iii) The date, invoice number, or other information to identify the particular invoice(s) that is the subject of the dispute; and

(iv) A phone number or email address where the claimant can be contacted.

(2) The fee dispute claimant must provide the system's billing representatives with sufficient supporting information to identify the nature and amount of the fee dispute, including:

(i) If the alleged error results from the types of manifests submitted being inaccurately described in the invoice, the correct description of the manifest types that should have been billed;

(ii) If the alleged error results from the number of manifests submitted being inaccurately described in the invoice, the correct description of the number of manifests that should have been billed;

(iii) If the alleged error results from a mathematical error made in calculating the amount of the invoice, the correct fee calculations showing the corrected fee amounts; and

(iv) Any other information from the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

(3) EPA's system billing representatives must respond to billing

dispute claims made under this section within ten days of receipt of a claim. In response to a claim, the system's billing representative will:

(i) State whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility; and

(ii) If a claim is rejected, then the response shall provide a brief statement of the reasons for the rejection of the claim and advise the claimant of their right to appeal the claim to the Office Director for the Office of Resource Conservation and Recovery.

(c) Fee dispute claimants that are not satisfied by the response to their claim from the system's billing representatives may appeal their claim and initial decision to the Office Director for the Office of Resource Conservation and Recovery.

(1) Any appeal from the initial decision of the system's billing representatives must be taken within 10 days of the initial decision of the system's billing representatives under paragraph (b) of this section.

(2) The claimant shall provide the Office Director with the claim materials submitted to the system's billing representatives, the response provided by the system's billing representatives to the claim, and a brief written statement by the claimant explaining the nature and amount of the billing error, explaining why the claimant believes the decision by the system's billing representatives is in error, and why the claimant is entitled to the relief requested on its appeal.

(3) The Office Director shall review the record presented to him or her on an appeal under this paragraph (c), and shall determine whether the claimant is entitled to relief from the invoice alleged to be in error, and if so, shall state the amount of the recalculated invoice and the amount of the invoice to be adjusted.

(4) The decision of the Office Director on any appeal brought under this section is final and non-reviewable.

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 19. The authority section for part 271 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

■ 20. Section 271.3 is amended by revising paragraph (b)(4) to read as follows:

### § 271.3 Availability of final authorization.

* * * * *

(b) * * *

(4) Any requirement imposed under the authority of the Hazardous Waste Electronic Manifest Establishment Act:

(i) Shall take effect in each State having a finally authorized State program on the same date as such requirement takes effect in other States;

(ii) Shall supersede any less stringent or inconsistent provision of a State program; and

(iii) Shall be carried out by the Administrator in an authorized state except where, pursuant to section 3006(b) of RCRA, the State has received final authorization to carry out the requirement in lieu of the Administrator.

* * * * *

■ 21. Section 271.10 is amended by revising paragraph (h) introductory text to read as follows:

### § 271.10 Requirements for generators of hazardous wastes.

* * * * *

(h) The state must follow the federal manifest format for the paper manifest forms (EPA Forms 8700–22 and 8700–22A) and their instructions and must follow the federal electronic manifest format and instructions as obtained from the Electronic Manifest System described in § 260.10 of this chapter.

* * * * *

■ 22. Section 271.12 is amended by revising paragraph (i) and adding paragraph (k) to read as follows:

### § 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) Compliance with the manifest system including the requirement that facility owners or operators return a signed copy of the manifest:

(1) To the generator to certify delivery of the hazardous waste shipment or to identify discrepancies;

(2) To the EPA's e-Manifest system, in lieu of submitting a signed facility copy directly to either the origination state or the destination state; and

(3) After listing the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from Item 9b, to EPA using the allowable methods listed in 40 CFR 262.84(b)(1) until the facility can submit such a copy to the e-Manifest system per 40 CFR 264.71(a)(2)(v) and 265.71(a)(2)(v).

* * * * *

(k) Requirements for owners or operators of facilities to pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system, in the amounts specified by the user fee methodology included in subpart FF of 40 CFR parts 264 and 265, for all paper and electronic manifests submitted to the e-Manifest system.

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BILLING CODE 6560–50–P

ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS requirements of CAA sections 110(a)(2)(A), (B), (C) (enforcement program only), (D)(i)(II) prong 4 (visibility), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M).

* * * * *

(b) * * *

(1) * * * Submittal from New Jersey dated October 17, 2014, as supplemented on March 15, 2017, to address the CAA infrastructure requirements of section 110(a)(2) for the 2008 Lead, 2008 8-hour ozone, 2010 $NO_2$, 2010 $SO_2$, 2012 $PM_{2.5}$, 2006 $PM_{10}$, and 2011 CO NAAQS is approved for (A), (B), (C) (enforcement program only), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M).

* * * * *

[FR Doc. 2018–10801 Filed 5–29–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 260 and 261

**[EPA–HQ–OLEM–2018–0185; FRL–9977–56–OLEM]**

### Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is revising regulations associated with the definition of solid waste under the Resource Conservation and Recovery Act. These revisions implement vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on July 7, 2017, as modified on March 6, 2018.

**DATES:** This final rule is effective on May 30, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2018–0185. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center. See *https://www.epa.gov/dockets/epa-docket-center-reading-room* for more information on the Public Reading Room.

**FOR FURTHER INFORMATION CONTACT:** Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Tracy Atagi, at (703) 308–8672, (*atagi.tracy@epa.gov*).

**SUPPLEMENTARY INFORMATION:**

### Preamble Outline



### I. General Information

*A. Does this action apply to me?*

This final rule applies to facilities that generate or recycle hazardous secondary materials (HSM). According to the revisions to the definition of solid waste promulgated in 2015, entities potentially affected by the original rule include over 5,000 industrial facilities in 634 industries (at the 6-digit North American Industry Classification System (NAICS) code level).[1] Most of these 634 industries have relatively few entities that are potentially affected. The top-5 economic sectors (at the 2-digit NAICS code level) with the largest number of potentially affected entities are as follows: (1) 41% in NAICS code 33—the manufacturing sector, which consists of metals, metal products, machinery, computer & electronics, electrical equipment, transportation equipment, furniture, and miscellaneous manufacturing subsectors, (2) 23% in NAICS code 32—the manufacturing sector, which consists of wood products, paper, printing, petroleum & coal products, chemicals plastics & rubber products, and nonmetallic mineral products manufacturing subsectors, (3) 3.0% in NAICS code 92—the public administration sector, (4) 2.9% in NAICS code 61—the educational services sector, and (5) 2.8% in NAICS code 54—the professional, scientific and technical services sector.

[1] 80 FR 1694/2, January 13, 2015.

*B. Why is EPA issuing a final rule?*

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for revising these provisions without prior proposal and opportunity for comment, because these revisions simply undertake the ministerial task of implementing court orders vacating these rules and reinstating the prior versions. As a matter of law, the orders issued by the United States Court of Appeals for the District of Columbia Circuit on July 7, 2017 and amended on March 6, 2018, (1) vacated the 2015 verified recycler exclusion for hazardous waste that is recycled off-site (except for certain provisions); (2) reinstated the transfer-based exclusion from the 2008 rule to replace the now-vacated 2015 verified recycler exclusion; (3) upheld the containment and emergency preparedness provisions of the 2015 rule; (4) vacated Factor 4 of the 2015 definition of legitimate recycling in its entirety; and (5) reinstated the 2008 version of Factor 4 to replace the now-vacated 2015 version of Factor 4.[2] It is, therefore, unnecessary to provide notice and an opportunity for comment on this action, which merely carries out the court's orders.

In addition, EPA finds that it has good cause to make the revisions immediately effective under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), and section 3010(b) of RCRA, 42 U.S.C. 6930(b). Section 553(d) provides that final rules shall not become effective until 30 days after publication in the **Federal Register**, ''except . . . as otherwise provided by the agency for good cause,'' among other exceptions. The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time

[2] *API* v. *EPA,* 862 F.3d 50 (DC Cir. 2017), *reh'g granted,* No. 09–1038, 2018 U.S. App. LEXIS 5613 (DC Cir. Mar. 6, 2018).

to prepare for the effective date of its ruling.'' *Gavrilovic,* 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this action merely implements court orders that vacate certain regulatory provisions and reinstate the prior versions. The court issued the mandate for its decision on March 14, 2018, at which point the orders became effective. Delaying the effectiveness of this rulemaking would lengthen the period between the change in the law (*i.e.,* the court's mandate) and the corresponding update to the regulations. Minimizing that time period should reduce the possibility of confusion for the regulated community, state and local governments, and the public. Moreover, the Agency believes that delaying the effectiveness of this rule would not offer any benefits. As a result, EPA is making this rule immediately effective.

## II. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3006, 3010, and 3017 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) This statute is commonly referred to as ''RCRA.''

## III. Which regulations is EPA removing and replacing?

### *A. Removal of the 2015 Verified Recycler Exclusion and Reinstatement of the 2008 Transfer-Based Exclusion, With Modifications*

In the 2015 DSW rule, EPA replaced the 2008 DSW rule transfer-based exclusion found at 40 CFR 261.4(a)(24)–(25) with the verified recycler exclusion, found at 40 CFR 261.4(a)(24).[3] (The goal of both exclusions was to exempt from regulation off-site recycling of hazardous waste when certain conditions are met). In promulgating the 2015 verified recycler exclusion EPA made four key changes to the language of the 2008 transfer-based exclusion: (1) Removed a prohibition that had made certain spent petroleum catalysts (hazardous waste codes K171 and K172) ineligible for the new recycling exclusions (*i.e.,* these materials became eligible under the 2015 exclusion); (2) added a specific ''contained'' standard for the management of the materials prior to being recycled; (3) added emergency preparedness and response requirements; and (4) replaced a requirement for generators to make a ''reasonable effort'' to audit the recycling facility prior to sending their material to be recycled with a requirement that the recycling facility obtain a variance from the regulations prior to accepting the recyclable materials.

In its decisions vacating the 2015 verified recycler exclusion and ordering the reinstatement of the 2008 transfer-based exclusion, the court found that the first three provisions noted above were severable from the rest of the verified recycler exclusion and would not be affected by the vacatur. Instead, these provisions are retained in the reinstated transfer-based exclusion found in the revised version of 40 CFR 261.4(a)(24) being finalized with this action. In addition, the export requirements for the transfer-based exclusion found at 40 CFR 261.4(a)(25) are also reinstated.[4] Finally, the following conforming changes are made in response to the vacatur of the verified recycler exclusion and reinstatement of the transfer-based exclusion (1) references to the verified recycler variance process are removed from 40 CFR 260.30 and 40 CFR 260.31, (2) the reference to the financial assurance notification requirement reinstated under the transfer-based exclusion is added back into 40 CFR 260.42(a)(5), and (3) the language in 40 CFR 261.4(a)(25) is updated to reflect the fact that subsequent to the 2015 withdrawal of the transfer-based exclusion, the applicable export definitions were moved to 40 CFR 262.81, and the paper submittal of RCRA export notices and export annual reports was replaced with electronic submittal via EPA's Waste Import Export Tracking System (WIETS). (81 FR 85696, November 28, 2016; 82 FR 41015, August 29, 2017).

### *B. Removal of the 2015 Factor Four in the Definition of Legitimate Recycling and Reinstatement of the 2008 Factor Four*

In the 2015 DSW rule, EPA revised the definition of legitimate recycling found at 40 CFR 260.43, which was originally promulgated in the 2008 DSW rule. In both the 2008 and 2015 versions of the regulation, the legitimacy provision was designed to distinguish between real recycling activities—legitimate recycling—and ''sham'' recycling, an activity undertaken by an entity to avoid the requirements of managing a hazardous secondary material as a hazardous waste. This provision represented the codification of a long-standing policy prohibiting sham recycling which had previously been applied via **Federal Register** preamble and guidance documents, most notably through the 1989 ''Lowrance memo'' which discussed over a dozen factors to be considered.

The existing policy in that 1998 memo was condensed and codified into regulation in 2008 as four separate factors, summarized as follows. Factor 1 addresses the concept that legitimate recycling involves a hazardous secondary material that provides a useful contribution to the recycling process, or to a product or intermediate of the recycling process. Factor 2 addresses the concept that the legitimate recycling process produces a valuable product or intermediate. Factor 3 addresses the concept that under legitimate recycling, the generator and the recycler manages the hazardous secondary material as a valuable commodity when it is under their control. Factor 4 addresses the concept that the product of the recycling process is comparable to a legitimate product or intermediate in terms of hazardous constituents or characteristics. Under the 2008 rule, the first two factors had to be satisfied while the latter two factors had to be considered. In addition, the codified legitimacy test only applied to the then-new Generator-Controlled and Transfer-based exclusions, and to non-waste determinations under 260.34. *See* 40 CFR 260.43(b), (c) (2008).

The 2015 revisions made the following changes to the four legitimacy factors: (1) All four factors were made to apply to all excluded recycling, including recycling exclusions that predated the 2008 rule (2) Factors 3 and 4 became mandatory factors (in the 2008 rule, they were merely factors to be ''considered''), and (3) the substance of Factors 3 and 4 changed to add flexibility since the factors had become mandatory.

In its decisions, the Court vacated Factor 4, but left in place all other 2015 changes to the legitimacy factors. The net result is as follows: (1) The 2015 version of Factor 4 is vacated in its entirety; (2) the 2015 change making the legitimacy factors applicable to all exclusions remains; (3) Factor 3 remains mandatory per the 2015 changes; and (4) the 2008 version of Factor 4 (which

[3] The **Federal Register** citation for the ''2015 DSW rule'' is 80 FR 1694, January 13, 2015, and for the ''2008 DSW rule'' is 73 FR 64668, October 30, 2008.

[4] The court characterized the 2008 transfer-based exclusion this way: ''EPA adopted the first edition, the Transfer-Based Exclusion, as part of its 2008 Rule . . . previously codified at 40 CFR 261.4(a)(24)–(25) (2014).'' *API,* 862 F.3d at 64. The court's citation encompasses both the domestic (*i.e.,* paragraph (a)(24) and export (*i.e.,* paragraph (a)(25)) parts of the exclusion. The court then concluded that ''the [2008] Transfer-Based Exclusion is reinstated.'' *Id.* at 75. Consequently, this action includes both paragraphs (a)(24) and (25).

requires only that the factor be ''considered'') replaces the now-vacated 2015 version. In addition, a reference in 40 CFR 261.4(a)(23)(ii)(E) requiring documentation of how ''all four factors in 40 CFR 260.43(a) are met'' has been revised to conform with the court decisions.

## IV. When will the final rule become effective?

The revisions to 40 CFR 260.42, 40 CFR 260.43, 40 CFR 261.4(a)(23) and 40 CFR 261.4(a)(24); the reinstatement of 261.4(a)(25), and the removal of 40 CFR 260.30(f) and 260.31(d) are effective immediately.

## V. State Authorization

### *A. Applicability of Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements and prohibitions promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated under HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out the HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. Under RCRA section 3009, states may impose standards that are more stringent than those in the federal program (see also 40 CFR 271.1(i)). Therefore, authorized states are not required to adopt new federal regulations that are considered less stringent than previous federal regulations or that narrow the scope of the RCRA program. Previously authorized hazardous waste regulations would continue to apply in those states that do not adopt ''deregulatory'' rules.

### *B. Effect on State Authorization of D.C. Circuit Court Vacaturs*

On March 14, 2018, the D.C. Circuit Court issued its mandate, effectuating the vacaturs as described earlier in this document. The court's vacaturs mean that the vacated provisions of these federal rules are legally null and void and the corresponding regulatory requirements that were previously in effect are reinstated as if the vacated parts of the rules never existed. At the federal level, because the effect of the vacaturs means, in essence, that the vacated provisions of these rules should not have been promulgated, this **Federal Register** action serves to remove the vacated provisions from the federal regulations and replaces them with the regulations that were previously in effect. At the state level, because no state rules were challenged in the litigation, the court decision does not directly affect any state regulations. However, the vacaturs do have an impact on the authorization status of state regulations. The multiple scenarios that exist in the states are discussed below.

#### 1. States Without Final RCRA Authorization

For states and territories that have no RCRA authorization, the vacaturs mean that the reinstated federal rules are now effect in those states and this **Federal Register** action alerts interested parties of the removal of the vacated parts of the rules from the Code of Federal Regulations and their replacement with the previously promulgated provisions.

#### 2. States That Have Final Authorization But Did Not Promulgate Similar Rules

For states and territories that have RCRA authorization but did not adopt the 2015 verified recycler exclusion (and therefore were not authorized for the exclusion), these states are not required to adopt or become authorized for the transfer-based exclusion being reinstated today because the transfer-based exclusion is less stringent than full Subtitle C hazardous waste regulation.

However, states and territories that have RCRA authorization but have not adopted the 2015 definition of legitimate recycling at 40 CFR 260.43 are required to adopt and become authorized for a definition of legitimate recycling that is equivalent to and at least as stringent as the definition being promulgated today.

#### 3. States That Adopted Similar Rules But Are Not Yet Authorized for Them

For states that have adopted rules similar to the verified recycler exclusion and the 2015 definition of legitimate recycling, but have not yet been authorized for them, the vacatur of the federal rules will not change the authorization status of the state programs. The authorization status that was established prior to the adoption of the state counterpart rules remains in effect. The vacaturs and subsequent reinstatement of various provisions of the prior federal rules will result in state provisions that are broader in scope than the federal program as it pertains to the specific vacated provisions.

#### 4. States That Adopted Similar Rules and Have Been Authorized for Them

For states that have previously been authorized for rules similar to the verified recycler exclusion and the 2015 definition of legitimate recycling, and have been authorized for them, the effect of the vacaturs is that those previously-authorized state provisions will be considered broader in scope than the federally program as it pertains to the specific vacated provisions.

## VI. Statutory and Executive Order (E.O.) Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), the Office of Management and Budget (OMB) waived review of this action. Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule is not a significant regulatory action under Executive Order 12866, this final rule is not subject to Executive Order 13771, entitled Reducing Regulations and Controlling Regulatory Costs; Executive Order 13211, entitled Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001); or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*A. Paperwork Reduction Act (PRA)*

To implement the court vacatur, EPA submitted an emergency ICR amendment to OMB with OMB control number 2050–0202 (EPA ICR Number 2310.05). You can find a copy of the ICR amendment in the docket for this rule. The ICR amendment reflects changes due to the vacatur, which are expected to affect a total of 105 facilities, resulting in a total net burden reduction of 2,122 hours and $26,132.21 per year. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*B. Congressional Review Act (CRA)*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this final action only implements the court vacatur, and the Agency has made a good cause finding that notice and comment is unnecessary, it is not subject to the Congressional Review Act.

**List of Subjects**

*40 CFR Part 260*

Environmental protection, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements.

*40 CFR Part 261*

Environmental protection, Hazardous waste, Recycling, Solid waste.

Dated: May 23, 2018.

**E. Scott Pruitt,**

*Administrator.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

### § 260.30 [Amended]

■ 2. Section 260.30 is amended by removing paragraph (f).

### § 260.31 [Amended]

■ 3. Section 260.31 is amended by removing paragraph (d).

■ 4. Section 260.42 is amended by revising paragraph (a) to read as follows:

### § 260.42 Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under §§ 260.30, 261.4(a)(23), 261.4(a)(24), 261.4(a)(25), or 261.4(a)(27) must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Regional Administrator using EPA Form 8700–12 that includes the following information:

(1) The name, address, and EPA ID number (if applicable) of the facility;

(2) The name and telephone number of a contact person;

(3) The NAICS code of the facility;

(4) The regulation under which the hazardous secondary materials will be managed;

(5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with § 261.4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);

(6) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

(7) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

(8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

(9) The quantity of each hazardous secondary material to be managed annually; and

(10) The certification (included in EPA Form 8700–12) signed and dated by an authorized representative of the facility.

■ 5. Section 260.43 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

### § 260.43 Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph and must consider the requirements of paragraph (b) of this section.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(b) The following factor must be considered in making a determination as to the overall legitimacy of a specific recycling activity.

(1) The product of the recycling process does not:

(i) Contain significant concentrations of any hazardous constituents found in appendix VIII of part 261 that are not found in analogous products; or

(ii) Contain concentrations of hazardous constituents found in appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products, or

(iii) Exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

(2) In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

* * * * *

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 6. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

### Subpart A—General

■ 7. Section 261.4 is amended as follows:

■ a. Republish paragraph (a) introductory text;

■ b. Revise paragraphs (a)(23) introductory text, (a)(23)(ii), and (a)(24); and

■ c. Add paragraph (a)(25).

The revisions and additions read as follows:

**§ 261.4 Exclusions.**

(a) *Materials which are not solid wastes.* The following materials are not solid wastes for the purpose of this part:

* * * * *

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs (a)(23)(i) and (ii) of this section:

* * * * *

(ii)(A) The hazardous secondary material is contained as defined in § 260.10 of this chapter. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in § 261.1(c)(8).

(C) Notice is provided as required by § 260.42 of this chapter.

(D) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see §§ 266.80 and 273.2 of this chapter).

(E) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all three factors in § 260.43(a) and how the factor in § 260.43(b) was considered. Documentation must be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in subpart M of this part are met.

(24) Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in § 261.1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in § 260.10 of this chapter, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see §§ 266.80 and 273.2 of this chapter);

(iv) The reclamation of the material is legitimate, as specified under § 260.43 of this chapter;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material must be contained as defined in § 260.10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards, the hazardous secondary material generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards, the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts must be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(*1*) Does the available information indicate that the reclamation process is legitimate pursuant to § 260.43 of this chapter? In answering this question, the

hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (*e.g.,* the reclamation facility, audit reports, etc.) about the reclamation process.

(*2*) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to § 260.42 of this chapter and have they notified the appropriate authorities that the financial assurance condition is satisfied per paragraph (a)(24)(vi)(F) of this section? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per § 260.42 of this chapter, including the requirement in § 260.42(a)(5) to notify EPA whether the reclaimer or intermediate facility has financial assurance.

(*3*) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has been classified as a significant non-complier with RCRA Subtitle C, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

(*4*) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(*5*) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator must maintain for a minimum of three years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification must be made available upon request by a regulatory authority within 72 hours, or within a longer period of time as specified by the regulatory authority. The certification statement must:

(*1*) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(*2*) Incorporate the following language: ''I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with § 261.4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information.''

(D) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(*3*) The type and quantity of hazardous secondary material in the shipment.

(E) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

(F) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in subpart M of this part.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in § 260.10 of this chapter satisfy all of the following conditions:

(A) The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of the hazardous secondary material generator

and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(*3*) The type and quantity of hazardous secondary material in the shipment; and

(*4*) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(D) The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An ''analogous raw material'' is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to subpart C of 40 CFR part 261, or if they themselves are specifically listed in subpart D of 40 CFR part 261, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of 40 CFR parts 260 through 272.

(F) The reclaimer and intermediate facility have financial assurance as required under subpart H of 40 CFR part 261,

(vii) In addition, all persons claiming the exclusion under this paragraph (a)(24) of this section must provide notification as required under § 260.42 of this chapter.

(25) Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of paragraph (a)(24)(i)–(v) of this section (excepting paragraph (a)(24)(v)(B)(*2*) of this section for foreign reclaimers and foreign intermediate facilities), and that the hazardous secondary material generator also complies with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification must be submitted at least sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

(C) The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

(F) A description of the means by which each shipment of the hazardous secondary material will be transported (*e.g.,* mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there (for purposes of this section, the terms ''EPA Acknowledgement of Consent'', ''country of import'' and ''country of transit'' are used as defined in 40 CFR 262.81 with the exception that the terms in this section refer to hazardous secondary materials, rather than hazardous waste):

(ii) Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(iii) Except for changes to the telephone number in paragraph (a)(25)(i)(A) of this section and decreases in the quantity of hazardous secondary material indicated pursuant to paragraph (a)(25)(i)(D) of this section, when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification), the hazardous secondary material generator must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes (except for changes to paragraph (a)(25)(i)(I) of this section and in the ports of entry to and departure from countries of transit pursuant to paragraphs (a)(25)(i)(E) of this section) has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(25)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(25)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under this paragraph (a)(25) is prohibited unless the country of import consents to the intended export. When the country of import

consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to paragraph (a)(25)(i) of this section within thirty (30) days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent must accompany the shipment. The shipment must conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator must re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with paragraph (iii) of this section and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators must keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under this section if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators must file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. Such reports must include the following information:

(A) Name, mailing and site address, and EPA ID number (if applicable) of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number (where applicable) for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: ''I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.''

(xii) All persons claiming an exclusion under this paragraph (a)(25) must provide notification as required by § 260.42 of this chapter.

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[FR Doc. 2018–11578 Filed 5–29–18; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 71

**[Docket No. CDC–2016–0068]**

**RIN 0920–AA63**

## Control of Communicable Diseases; Technical Correction

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces a technical correction to the final rule published on July 10, 2017. The July 10, 2017, technical correction provided amendments to a final rule published on January 19, 2017, but contained an error. HHS/CDC is therefore submitting a new correction to correct that error.

**DATES:** This correcting amendment is effective May 30, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–E03, Atlanta, Georgia 30329. Telephone: (404) 498–1600.

**SUPPLEMENTARY INFORMATION:** On January 19, 2017, HHS/CDC published a final rule (82 FR 6890) that included several non-substantive errors. On July 10, 2017, HHS/CDC published a technical correction (82 FR 31728) to correct errors made in the final rule. However, one new error was inadvertently created by including an instruction to change a word in the title of 42 CFR 71.5 dealing with vessels from ''voyage'' to ''flight.'' HHS/CDC therefore, is publishing this correction notice amendment to fix the publication error that was made in the previous technical correction notice.

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an