



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 262, 263, 264, 265, and 271**

**[EPA-HQ-OLEM-2016-0177; FRL-9940-99-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:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) proposes its user fee methodology applicable to electronic and paper manifests submitted to the national electronic manifest system (or e-Manifest system) that is being established by EPA under the Hazardous Waste Electronic Manifest Establishment Act. After the implementation date for the e-Manifest system, certain users of the hazardous waste manifest would be required to pay a prescribed fee for each electronic and paper manifest they use and submit to the system in order for EPA to recover its costs of developing and operating the national e-Manifest system. The final rule that EPA develops in response to public comments on this action's proposed fee methodology will include the final fee methodology. In addition, EPA will include the initial fee schedule and the implementation date for the e-Manifest system in the preamble to the final rule.

This action also proposes several amendments to the regulations governing the use of electronic hazardous waste manifests and the completion of manifests. These amendments propose: to change EPA's longstanding regulations regarding transporter changes to shipment routing information on the manifest during transportation, to specify a process by which

receiving facilities may submit manifest data corrections to the e-Manifest system, and to modify a provision of the current electronic manifest use requirements that precludes the use of mixed electronic and paper manifests by those users desiring to make use of electronic manifests in settings where not all users are able to participate electronically. This action is expected to result in net cost savings amounting to \$34 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 VII of this preamble.

**DATES:** Comments must be received on or before *[insert date 60 days after publication in the Federal Register]*. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before *[insert date thirty days after date of publication in the Federal Register]*.

**ADDRESSES:** For this rule, EPA is requesting comments be submitted electronically on a comment platform being piloted at <https://epa-notice.usa.gov>. Alternatively, commenters may choose to submit comments by postal mail or electronically through Regulations.gov. For comments submitted via postal mail or Regulations.gov, EPA is further requesting comments be submitted using comment headings. Please see SUPPLEMENTARY INFORMATION, section I.E. (Submitting Comments) for more information on the pilot, use of comment headings, and other general instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding specific aspects of this document, contact Richard LaShier, Office of Resource Conservation and Recovery, (703) 308-8796, [lashier.rich@epa.gov](mailto:lashier.rich@epa.gov), or Bryan Groce, Office of Resource Conservation and Recovery, (703) 308-8750, [groce.bryan@epa.gov](mailto:groce.bryan@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

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

The hazardous waste manifest affects approximately 80,000 federally regulated entities and an equal or greater number of entities handling state-only regulated wastes in at least 45 industries. These industries are involved in shipping off-site, transporting, and receiving several million tons<sup>1</sup> annually of wastes that are hazardous under the Resource Conservation and Recovery Act (RCRA) or state-only regulated wastes that are subject to the tracking of their movements with the RCRA hazardous waste manifest. EPA estimates that these entities currently use between 3 and 5 million hazardous waste manifests (EPA Form 8700-22) and continuation sheets (EPA Form 8700-22A) to track RCRA hazardous and state-only<sup>2</sup> regulated wastes from generation sites to receiving facilities for their management. The affected entities include hazardous waste generators, hazardous waste transporters, and owners and 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, as explained in section III.B.3 of this preamble, this proposed rule would primarily affect the several hundred commercial TSDFs that receive hazardous and state-only regulated wastes from off-site for management at their permitted or interim status facilities. Under this proposed rule, these commercial TSDFs would be the focal point for the payment and collection of the user fees under the proposed rule. EPA has tentatively concluded that payment

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<sup>1</sup> The 2011 RCRA Biennial Report discloses that RCRA large quantity generators (LQGs) alone shipped about 6.2 million tons of waste in 2010. Small quantity generators and state regulated wastes subject to manifesting would likely produce several million more tons of wastes each year to be tracked with manifests.

<sup>2</sup> EPA uses the term “state-only regulated wastes” to refer to all types of wastes that are required under state law to be tracked with the RCRA hazardous waste manifest, though they exceed the coverage (i.e., beyond the scope) of the listed and characteristic wastes that are regulated federally as RCRA hazardous wastes.

of this proposal's user fees by the several hundred commercial TSDFs is the most efficient and expedient means for implementing a user fee requirement for the national e-Manifest system.

Potentially affected categories and entities include, but are not necessarily limited to:

<b>NAICS Description</b>	<b>NAICS Code</b>	<b>Examples of Potentially affected Entities</b>
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 entities likely to be regulated by this action. This table lists the types of entities that EPA is aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in title 40 of the Code of Federal Regulations (CFR) parts 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 EPA is requesting comment on its proposed fee formula and methodology for implementing a user fee to recover costs incurred in developing, operating, maintaining, and upgrading a national e-Manifest system, including any costs incurred in collecting and processing data from any paper manifest submitted to the e-Manifest system after the date on which the system begins to operate. The EPA is also requesting comment on its proposed changes to modify its current regulations regarding transporter changes to shipment routing information on the manifest during transportation.

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

The authority to propose 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 further amended by the Hazardous Waste Electronic Manifest Establishment Act, PL 112-195, section 6939g.

*D. What is the scope of this proposed rule?*

This proposed rule addresses several key policy issues related to the implementation of user fees to recover and fund the costs of developing and operating a national e-Manifest system, including:

1. Which users of manifests and manifest data will be charged user fees?
2. What will be the transactional basis for assessing user fee obligations?
3. How will users be expected to pay their owed fees?
4. What model or formula will EPA rely upon for the determination of users' fees?
5. How will the rule address fee trajectory and fee schedule revisions?
6. Which, if any, manifest transactions warrant a fee premium?
7. What sanctions are being proposed to induce prompt payment of user fees?
8. How will EPA conduct the financial tracking and reporting functions essential to the proper calculation and determination of fees and to the oversight of the e-Manifest fee program?

In addition, the proposed rule addresses several regulatory amendments related to the use of electronic manifests and the completion of manifests. These additional regulatory proposals are not user fee related, and address these issues: (1) a proposal that would allow certain changes to the routing of a hazardous waste shipment indicated on the manifest, while the shipment is in transportation; (2) a proposal that would allow hazardous waste receiving facilities to make corrections electronically to previously submitted manifest data; and (3) a proposal that would allow a manifest user, in certain instances, to execute and use a hazardous waste manifest that combines the use of a paper manifest with the use of an electronic manifest.

#### *E. Submitting comments*

##### 1. Notice and Comment Pilot.

EPA partnered with the General Services Administration's 18F Team to pilot a platform for submitting comments on this rule. The new platform is designed to assist readers in understanding the rule and proposed regulatory changes, as well as to assist EPA in collecting structured comments. EPA is requesting commenters to use the new comment platform, which can be found at <https://epa-notice.usa.gov>. The pilot comment platform is a federal application supporting the EPA in its rulemaking process. Comments filed through the pilot comment platform are filed to the official docket for this rule. EPA will process comments submitted through the pilot using the same rules and restrictions (<https://www.epa.gov/dockets/commenting-epa-dockets#rules>) that apply to comments received from any other method. If a comment meets the aforementioned requirements, then the comment will be publically posted to Regulations.gov. Commenters, that use the pilot to submit comments, do not need to submit duplicative comments through another method (e.g., Regulations.gov or postal mail).

The use of the pilot comment platform is optional; Commenters may still choose to submit comments by postal mail or electronically through Regulations.gov.

## 2. Comment Headings.

For comments not submitted through the pilot comment platform, and instead submitted via postal mail or Regulations.gov, EPA is requesting commenters to identify their comments on specific issues by using the appropriate number and comment heading listed below. If your comment covers multiple issues, please use all the heading numbers and names that relate to that comment. As an example of this optional method, where one individual comment relates to issue #1 and a second individual comment pertains to issues #2 and #3, a set of comments would be submitted as follows, where the number and comment headings are underlined:

**1. Data Access Services**

*Your comment here...*

**2. Billable Event; 3. Fee Methodology**

*Your comment here...*

The list below also contains the proposed rule section numbers with which you can find more information on each issue. Similarly, throughout the proposed rule, parentheticals in italics have been added to identify the heading number and name to be used when commenting on the specific issues. The description following each comment heading summarizes the individual issues. More detailed descriptions of the issues and issue-specific questions can be found in the indicated sections of the rule.

Although submission of your comments using the aforementioned format is not required at this time, it is encouraged so as to not only assist the Agency in efficiently and effectively considering and responding to comments received, but also provide commenters more effective means of informing environmental decision making.

## **Comment Headings**

**1. Data Access Services** – EPA requests comment on the proposal for TSDF user fees to cover cost of public data access services. (See Section III.A.2)

**2. Billable Event** – EPA requests comment on the proposal to use the final manifest submission by the TSDFs as the billable event for purposes of assessing user fees. (Section III.B.3)

**3. Fee Methodology** - EPA requests comment on the proposed fee formula, alternative fee formulas, transition period for application of different formulas, amortization period for costs, possible omitted costs, incentivizing material management behavior through the fee methodology, and other fee formula related issues. (Section III.C.6)

**4. Disallow Postal Mailed Manifests** - EPA requests comment on another approach under which TSDFs would be restricted to submitting their paper manifest data to EPA by electronic means only, that is, by uploading image files to EPA, or by uploading a data file (e.g., XML file) of manifest data accompanied by an image file. (Section III.C.6)

**5. Inflation Adjuster** – EPA requests comment on the proposal for an inflation adjustment factor predicated on the use of the CPI-U, for all items, not seasonally adjusted, as a sufficiently representative inflationary index and a means to adjust e-Manifest user fees for inflation between the first year and second year of the two-year fee schedules. (Section III.D.3.a and Section III.D.4)

**6. Revenue Recovery Adjuster** – EPA is requesting comment on the inclusion of a revenue recovery adjuster in the proposed fee trajectory methodology and on the emphasis on inflation, manifest usage estimates, and uncollectable manifests as the



key sources of revenue instability that the adjusters should address in the trajectory methodology. (Section III.D.3.b and Section III.D.4)

**7. Two-Year Fee Schedule Revision Cycle** – EPA is requesting comment on the proposed two-year fee schedule revision cycle. (Section III.D.4)

**8. 90-Day Lead Time for Fee Schedule Changes** – EPA is requesting comment on the proposal to have EPA publish the fee schedule changes to the e-Manifest website 90 days prior to the effective date of fee schedule changes. (Section III.D.4)

**9. Stray and Extraneous Documents** – EPA is requesting comment on proposed fee premiums for processing stray and extraneous documents. (Section III.E.2.a.v)

**10. Paper Manifest Corrections** – EPA is requesting comment on proposed fee premiums for processing a correction to a paper manifest. (Section III.E.2.a.vi)

**11. Incentivize Electronic Manifest Use** – EPA is requesting comment on a proposal to rely on the fee formula itself to incentivize electronic manifest use, and not to include a distinct monetary penalty to discourage paper manifest use. (Section III.E.2.a.vii)

**12. Payment Options** - EPA requests comment on the proposed monthly invoicing approach and the alternative options. (Section III.F.6)

**13. Fee Dispute Resolution** - EPA requests comment on the proposed informal fee dispute resolution and appeals process. (Section III.G)

**14. Financial Sanctions** – EPA requests comment on the proposal to incorporate the financial interest and penalty charges set out in the Federal claims collection statutes as the first and second tier of e-Manifest fee payment sanctions. (Section III.H.2.a)

**15. Delinquent Payors List** – EPA requests comment on the inclusion of a Delinquent

Payors List among the sanctions that would be available to the Agency in the event of serious, continued delinquency of e-Manifest user fee payments. (Section III.H.2.b)

**16. Denial of Service Sanction** - EPA requests comment on the appropriateness and

means by which EPA could deny access to e-Manifest services to those users who are exceedingly delinquent in their manifest fee payments. (Section III.H.2.d)

**17. Suspension of Facility Authorization** - EPA requests comment on possible

authorization sanctions on facilities that are delinquent on e-Manifest payments. (Section III.H.2.d)

**18. Changing Transporters en Route** – EPA requests comment on the proposal to

modify its current regulations regarding transporter changes to shipment routing on the manifest. (Section IV.B)

**19. Submission of Manifest Data Corrections** - EPA requests comments on the

proposed approach for the submission of manifest data corrections to the system, and the fees to be assessed for such corrections. (Section V.C)

**20. Hybrid Approach** - EPA requests comment on the proposal for mixed paper and

electronic manifest transactions. (Section VI.B)

**21. RIA** - In total, discounting at 7% over six years, the annualized baseline costs of the

paper manifest system are estimated to be \$183 million. EPA would appreciate any information to improve the accuracy of this estimate. (Section VII.C)

**22. ICR** – EPA requests comments on the Agency’s need for information under ICR

0801.21, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA. NOTE: You may also send your ICR-

related comments to OMB's Office of Information and Regulatory Affairs via email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than 30 days after publication in the *Federal Register*. (Section IX.B)

**23. OTHER** – any comments not falling under one of the preceding categories should be identified using 'OTHER' as the comment header.

### 3. General Information for Submitting Comments.

Comments submitted through Regulations.gov (at <http://www.regulations.gov>) or submitted by postal mail should be identified by Docket ID No. EPA-HQ-OLEM-2016-0177. For comments submitted through Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Please note the Agency will not accept comments submitted via email or fax.

## II. Background

### A. *Enactment of Electronic Manifest Legislation.*

In 2012, Congress enacted the Hazardous Waste Electronic Manifest Establishment Act, Public Law 112-195 (hereafter, the e-Manifest Act or Act). The goal of this legislation was to provide the users of the hazardous waste manifest with a much more efficient and modern option to the 6-copy paper manifest forms that have been used for more than 30 years to track hazardous waste shipments from “cradle-to-grave.” The e-Manifest Act directed EPA to establish a national electronic manifest system that would enable users, at their option, to obtain and submit electronic manifests to track waste shipments involving either RCRA hazardous wastes or certain state-only regulated wastes subject to manifesting requirements under federal or state law. It was the intent of the Act that a data repository would be established within the e-Manifest system, and that this national data repository would collect and retain waste shipment data from the electronic manifests obtained from the system, as well as from processing the data from any paper manifests that continued in use after the deployment of the e-Manifest system.

Of particular significance to this proposed rule are the funding provisions of the e-Manifest Act. While section 2(i) of the Act authorized Congress to appropriate funds to cover start-up activities and costs, Congress intended that the e-Manifest system would ultimately be self-sustaining once deployed. Under section 2(c) of the Act, EPA was authorized to impose and collect reasonable service fees (user fees) necessary to pay the costs of developing, operating, maintaining, and upgrading the e-Manifest system, including any costs incurred in collecting and processing paper manifests submitted to the system. Section 2(d) of the Act further authorized the establishment of a special System Fund in the U.S. Treasury for the deposit of collected service fees. By the terms of sections 2(d)(2) and 2(c)(4) of the Act, funds deposited in the System Fund could be transferred from Treasury to EPA at the Administrator’s request and spent for system related costs to the extent of and in the amount provided in advance in appropriations

Acts. The fees collected and deposited in the System Fund would be used to fund the system's operating costs and other system related costs, as well as to offset any appropriated funds authorized under section 2(i) of the Act to seed the start-up activities and system development costs.

In particular, section 2(c) of the Act confers broad discretion to EPA to determine the user fees to be imposed on users of the system. This provision states that EPA "may impose on users such reasonable service fees as the Administrator *determines to be necessary* to pay costs in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation" (emphasis supplied).

On the issue of timing of fee collections, section 2(c)(2)(A) of the Act provides EPA discretion to collect fees from users either in advance of services being provided, or, as reimbursement for the provision of system-related services by EPA.

The user fee provisions of the Act further speak to the matter of fee adjustments. Under section 2(c)(3)(B) of the Act, EPA shall, in consultation with the Board<sup>3</sup>, increase or decrease the amounts of the fees so that the amounts collected and aggregated in the System Fund are sufficient (and not more than reasonably necessary) to cover current and projected system costs, including necessary upgrades. Moreover, the fees should be maintained at levels that minimize, to the maximum extent practicable, the accumulation of unused amounts<sup>4</sup> in the Fund. Where the timing of fee adjustments is concerned, section 2(c)(3)(B)(iii) of the Act specifies that the fee

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<sup>3</sup> "Board" refers to the e-Manifest System Advisory Board, a 9-person Federal Advisory Committee of stakeholders that EPA must establish pursuant to the Federal Advisory Committee Act to advise EPA on the effectiveness of the system, to consult with EPA on service fee adjustments, and to make recommendations relating to the system.

<sup>4</sup> The Act provides an exception whereby a revenue surplus not exceeding \$2 million may be accumulated in the Fund over the initial 3-year period of system operations.

schedule shall be adjusted initially when start-up costs have been recovered, and periodically thereafter, whenever an annual audit report on the system's finances discloses a significant disparity between fees collected in a fiscal year, and expenditures made for system related services during that fiscal year.

*B. Issuance of First e-Manifest Regulation in February 2014*

In response to the e-Manifest Act's mandate<sup>5</sup> to issue regulations authorizing electronic manifests within one year of enactment of the statute, EPA issued its first final regulation pertaining to e-Manifest on February 7, 2014 (79 FR 7518 -7563). Because of the mandate to issue this final regulation within one year of the statute, EPA refers to this regulation as the e-Manifest One Year Rule.

The purposes of the One Year Rule were to codify key provisions of the Act touching upon the scope of users and manifests eligible to participate in e-Manifest, to codify the provisions of the Act requiring consistent implementation of electronic manifests in all the states, to finalize EPA's decision to establish a national electronic hazardous waste manifest system, and to announce policy decisions related to using and implementing electronic manifests. Fundamentally, the One Year Rule provides clarity with respect to the validity of electronic manifests. The Rule explains that the electronic manifest format obtained from and supported by the national e-Manifest system shall be the one electronic manifest format authorized for national use, that electronic manifests obtained from and submitted to the e-Manifest system in accordance with the One Year Rule are the legal equivalent to paper manifests in all relevant

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<sup>5</sup> This mandate appears in section 2(g)(1)(A) of the Act, which directs EPA to promulgate final regulations to carry out the Act within one year of enactment of the Act, after consultation with the Secretary of Transportation. EPA consults regularly with the Department of Transportation (DOT) on its manifest requirements and other transportation related actions, since the manifest is a shipping paper that is grounded on the joint authority of RCRA §3002(a)(5) and DOT's hazardous materials regulations or HMRs.

respects, and that all authorized states must respect the validity of the national electronic manifest and revise their authorized programs to allow the use of electronic manifests. The One Year Rule also clarified that manifest data could not be subject to confidential business information claims or protections, and explained how e-Manifest and the recommended electronic signature methods discussed in the Rule's preamble would comply with EPA's electronic reporting policies as articulated in the Agency's Cross Media Electronic Reporting Rule or CROMERR (70 FR 59848, October 13, 2005). Thus, the One Year Rule announced the legal and policy framework governing the authorization and use of electronic hazardous waste manifests within EPA's national e-Manifest system.

While the One Year Rule addressed fundamental scope and policy issues related to the use of electronic manifests, it did not speak to user fees to any significant extent. When developing the One Year Rule, EPA realized it would not be in a position to determine in that rule's timeframe all the various components of the e-Manifest information technology system and their costs, and thus would not be able to determine the program's initial schedule of user fees as a part of the One Year Rule. Moreover, the issues raised and determined in the One Year Rule had been noticed for public comment in previous proposals and regulatory notices, while the content of the Fee Rule had not yet been scoped out and noticed for public comment. Therefore, EPA concluded that the development of an e-Manifest user fee methodology and fee schedules would be undertaken as a separate rulemaking. This proposed rule is thus the means by which EPA will solicit comment from the public on our proposed Fee Rule methodology, suggest the likely range of fees that will result, identify our economic models and assumptions, and propose for comment the related scope and other policy issues related to determining and collecting e-Manifest user fees.

### *C. Federal User Fee Design Guidance*

The development of this action was influenced greatly by two federal guidance documents that apply to user fee design and implementation by executive department agencies. They are: (1) OMB Circular A-25, a Memorandum for Heads of Executive Departments and Establishments addressing the subject of "User Charges," and (2) the United States Government Accountability Office (GAO) Report No. GAO-08-386SP, *Federal User Fees, A Design Guide*, (May 2008).

#### 1. OMB Circular A-25.

The purpose of Circular A-25 is to establish federal policy regarding user charges or fees assessed for government services under the Independent Offices Appropriations Act or IOAA, 31 U.S.C. 9701, and 31 U.S.C. 1111. It explains for executive agencies the scope and type of activities subject to user charges and the basis on which user charges should be set. It also provides guidance for agencies on the implementation of user charges or fees and on the disposition of fee collections. The guidance presented in Circular A-25 applies to user fees implemented generally under the IOAA, as well as to implementations of user fees that are governed specifically by a statute, such as the e-Manifest Act, to the extent that Circular A-25 is not inconsistent with the e-Manifest Act.

The Circular A-25 guidance that is most relevant to this action includes the following points:

- User charges should be assessed against identifiable recipients that receive special benefits derived from federal activities beyond those received by the general public.



- When the provision of special benefits to identifiable recipients also results in an incidental benefit to the general public, an agency need not allocate any costs to the public and should seek to recover the cost of providing the services from the identifiable recipients of special benefits.
- User charges should be set so as to recover the "full cost" to the Federal Government of providing the good or service, where "full cost" includes all direct and indirect costs to any part of the government of providing the good or service.
- The relevant direct and indirect costs to be recovered by user charges include, but are not limited to, an appropriate share of:
  - Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement costs,
  - Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, travel, and rents or imputed rents on land, buildings, and equipment,
  - Management and supervisory costs, and
  - Costs of enforcement, collection, research, establishment of standards and regulations, including environmental impact statements.
- It is general policy that user charges will be instituted through the promulgation of regulations.
- In their implementation of user charges, agencies should:

- Review all sources of statutory authority, in addition to the IOAA, that may authorize the implementation of user charges;<sup>6</sup>
- Make every effort to keep the costs of collection to a minimum;
- Initiate and adopt user charge schedules consistent with the policies of the Circular;
- Review the user charges for agency programs biennially, to provide assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values;
- Ensure that internal control systems and appropriate audit standards are applied to collection; and
- Maintain readily accessible records of the information used to establish charges, the specific methods used to determine them, and the collections from each user charge imposed.<sup>7</sup>

## 2. The GAO Federal User Fees Design Guide.

The May 2008 GAO User Fees Design Guide presents a very useful analytical framework for addressing the equity, efficiency, and cost allocation issues posed by setting user fees. The User Fees Design Guide identifies and discusses at length four key design questions,

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<sup>6</sup> The e-Manifest Act clearly authorizes user charges, and the Act's provisions on user fees must be accommodated with Circular A-25 policies.

<sup>7</sup> Circular A-25, Section 8(g), provides that this information should be provided on request to OMB in accordance with OMB Circular No. A-11.

and sub-questions for each, that agencies should address when establishing user fees for a good or service provided by the government:

- How are user fees set? What total program costs are considered and allocated among beneficiaries? Does the beneficiary pay principle apply, or are there special considerations, such as particular beneficiaries' ability-to-pay, that affect the setting of fees? If exemptions are established for one class of beneficiaries, how are their costs recovered?
- How are user fees collected? How is the proper balance struck between ensuring compliance with fees and minimizing administrative costs?
- How are user fees used by the government? What is the balance between Congressional oversight/appropriations controls and agency flexibility? Are fees dedicated only to the related agency program, or, are they deposited in the general fund of the Treasury?
- How are user fees reviewed and updated? Are the fee rates aligned with actual program costs and activities, and how are they adjusted for changes in program costs? What opportunities are there for stakeholder input in fee reviews and how does this affect acceptance?

In addressing the key design questions, the GAO Guide explains that the design of user fees typically involves a balancing of several outcomes, including:

- The economic efficiency of user fees, including a consideration of the alignment of users' costs with the social costs of providing the services, and any incentives for reducing costs;

- The equity of the fee system, which may involve trade-offs between the principle that all beneficiaries of services should "pay their fair share," and considerations of ability-to-pay;
- The adequacy of resulting revenues, insofar as revenues being sufficient to cover all known program related costs (direct and indirect) as well as to keep pace with inflation and other increases to program costs, and
- The administrative burden of the fees, which requires a consideration or balancing of the compliance burden imposed by fee administration and collection, as well as the costs of collection and enforcement of fees.

Circular A-25 and the GAO User Fees Design Guide contain a wealth of information that is relevant to the administrative processes of setting, revising, collecting, and reporting fees. As EPA discusses its rationale for setting e-Manifest fees in the remainder of this preamble, the Agency will rely heavily on the policies and principles identified in these two federal guidance documents.

### **III. Detailed Discussion of the Proposed Rule**

#### *A. Which Users of Manifests and Manifest Data Will Be Charged User Fees?*

##### **1. Background**

Under Circular A-25 policy, user fees should be designed to recover all system related costs that arise from the development and operation of the e-Manifest system. EPA recognizes that there are two distinct classes of entities that might be considered as users with respect to the e-Manifest system: (1) the class of users who represent the waste handlers that must actually use

the waste manifest in connection with tracking wastes that they generate, transport, or receive as RCRA designated facilities; and (2) the class of data consumers who do not use the manifest for regulatory compliance, but who might wish to access e-Manifest to obtain data on others' waste movements or activities. The latter class could include members of the general public, law firms, trade associations, and research organizations. This class of data users also includes state or tribal officials that may not have access to an internal tracking system for manifest data. While EPA believes that the preponderance of system related costs would arise in connection with the provision of manifest services to those using the manifest for waste shipment tracking or regulatory compliance purposes, there would likely be additional costs associated with providing members of the public with access to manifest data. For example, EPA might develop a public facing module within the e-Manifest system for the very purpose of distributing manifest data to the general public, or, EPA might expend resources distributing such data to the public through another data distribution service, such as the Envirofacts data warehouse or similar service. How should these costs be recovered under a user fee system?

Of relevance to this issue is the statutory definition of "user" included in the e-Manifest Act. In section 2(a)(5), the Act defines "user" to mean a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

- Is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling, and

- Elects to use the system to complete and transmit an electronic manifest format, or submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy) in accordance with such regulations as the Administrator may promulgate to require such a submission.

EPA incorporated this statutory definition of “user” within the terms of the February 2014 One Year Rule, which included in 40 CFR 260.10, a definition of “user of the electronic manifest system” that is consistent with the statutory definition. Both the statutory and regulatory definitions focus on the members of the regulated community that are required to use the manifest to comply with a federal or state requirement to track the generation, transportation, and receipt of waste shipments.

## 2. What is EPA Proposing on this Issue?

As a threshold issue, EPA is proposing to limit the imposition of user fees to only the members of the regulated community that must use the manifest as a matter of regulatory compliance for tracking the generation, transportation, or receipt of hazardous waste or other regulated waste shipments (e.g., state-only regulated wastes or special wastes) that are subject to a manifest requirement under federal or state law. EPA is not proposing to charge members of the general public, nor officials from federal, state, or tribal agencies, any service fees for their accessing manifest data from the e-Manifest system.<sup>8</sup>

This proposal is based on the Agency’s belief that by defining the term “user” with reference only to the members of the regulated community who must use the manifest for

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<sup>8</sup> EPA notes that public requests for information that are submitted to EPA pursuant to the Freedom of Information Act or FOIA may give rise to distinct FOIA imposed fees under FOIA requirements.

regulatory compliance with waste shipment tracking requirements, Congress similarly intended that the imposition of user fees would be limited to the class of “users” as defined under the Act.

EPA also believes that this proposal is supported by OMB Circular A-25 policy, as well as by principles of the GAO User Fees Design Guide. While the establishment of e-Manifest will provide significant benefits to waste handlers, the EPA believes the general public should also benefit from e-Manifest. These benefits, however, will likely be incidental to those afforded to the regulated waste handlers. Thus, under section 5.A.3 of Circular A-25, it would not be appropriate to allocate system costs to the public by charging members of the public a user fee to access e-Manifest data.

Therefore, EPA is proposing to limit the imposition of user fees to the class of hazardous or other regulated waste handlers who must use the manifest for tracking waste shipments. User fees will not be assessed against members of the general public for their access to manifest data. As a result, the costs of providing the public with access to manifest data will be recovered through user fees applicable to the members of the regulated community who are defined as “users” under the e-Manifest Act. There will be a small, incremental increase in the resulting user fees to cover the cost of the incidental provision of data access services. EPA requests comment on this proposal (*If submitting comments on this issue, please use comment header: **1. Data Access Services***).

#### *B. What Will Be the Transactional Basis for Assessing User Fee Obligations?*

##### **1. Background**

Section 2(c)(1) of the e-Manifest Act provides EPA authority to “impose on users such reasonable service fees as the Administrator determines to be necessary to pay the costs incurred

in developing, operating, maintaining, and upgrading the system.” This authority to impose such fees extends to electronic manifest activities and to the processing of data from paper manifests that continue in use after e-Manifest is implemented. Moreover, under section 2(c)(2) of the Act, EPA may collect fees from users in advance of, or as reimbursement for, the provision of system-related manifest services. Apart from this direction, however, the Act provides EPA with broad discretion insofar as determining the amounts of applicable fees, and determining what system activities should give rise to a fee.

EPA believes that an important scoping consideration for e-Manifest user fees is determining what transactions should be the basis for manifest fees. This issue involves both the matter of what manifest-related event should be the trigger or “billable event” for assessing a user fee, and it also involves where in the manifest business process this event occurs, and which user entity should thus be responsible for paying the fee. There is also the issue of whether the fee should be assessed on a per manifest basis, necessitating numerous fee payments of relatively small amounts, or, whether there should be a larger, aggregate payment paid perhaps in advance, based on recent manifest usage as perhaps the best indicator of likely current usage.

In determining this issue for this proposed rule, EPA will follow the principles of the 2008 GAO User Fee Design Guide. The Agency will attempt to balance: (1) the economic efficiency of the fees so that the fees align with the costs of providing services; (2) the equity of the resulting fee system by considering “beneficiaries pay their fair share” and “ability-to-pay” principles; and (3) assuring adequacy of resulting revenues, while minimizing the administrative burden of implementing the fee.

## 2. What Options Did EPA Consider?



EPA considered several options for determining the transactional basis for e-Manifest fees. Obviously, there appears to be a natural linkage between the system costs that accrue and the number of manifest transactions engaged in by the users. Thus, all options involve a consideration of manifest usage as a determining factor in assessing user fees. The options here differ in terms of what event in the manifest business process triggers the fee, and which entity is thus responsible for that fee.

While the consideration of the transactional basis for fee assessments might also consider the question of whether fees should be collected as a lump sum payment vs. collected from multiple manifest transactions, that issue is addressed later in this preamble in section III.F, dealing with how fee payments will be made and collected. The remainder of this section addresses the appropriate event in the manifest business process for assessing fees and which of the regulated community users of the manifest should therefore be responsible for e-Manifest fee payments.

As a first option, EPA considered imposing a per manifest fee on the hazardous waste generators at the time they initiate their manifests in the system. The system would track manifest usage by each generator, and payments could be collected either at the time of provision of manifests to the generators, or, these generators could be billed for their usage on a monthly basis. This option would ensure that all manifest users, including the many generators that initiate the manifest and that are responsible for much of the manifest content, pay their fair share for the services they would use. However, this option would also entail establishing 100,000 or more payment accounts for the many hazardous waste and state-only regulated waste generators and engaging in invoicing and collection activities with all those accounts. Thus, the

“all pay their fair share” principle must be balanced against the administrative efficiency of assessing fees from the many generators in the system.

The alternative option considered would also impose a per-manifest fee, but the billable event under this option would be the submission of the final manifest by the TSDF to the system. While this option necessarily entails providing manifest services to waste handlers prior to the final copy submission by the TSDF, it involves the significant advantage that there are only a few hundred commercial or captive TSDFs that receive waste from off-site and that would be submitting final manifests to the system. Thus, there would be far fewer parties responsible for paying fees under this approach. Many more manifests would be concentrated among these several hundred TSDFs, so the fee collections would be far more efficient than pursuing 100,000 or more generators for payments of smaller amounts. Also, with the TSDFs primarily responsible for payment of user fees to EPA, these facilities would be able to pass their fee costs through to their generator customers as part of their waste management service charges, if so desired. When this option was discussed with the waste industry members, they appeared to accept this option as the preferred approach for dealing with fees and their customer relations. Industry members were particularly supportive of this option if it were implemented with a monthly billing cycle, under which they would be billed each month for the prior month’s actual usage, rather than being assessed fees for estimated levels of usage.

### 3. What is EPA proposing on this issue?

EPA is proposing the second option, under which the submission of the final manifest to the e-Manifest system by the TSDF would be the billable event for calculating per manifest fees. This proposal is driven by the far greater administrative efficiency of dealing with a much more manageable base of several hundred TSDFs with payment accounts and collection activity in the

system, rather than having to establish and deal with 100,000 or more generator accounts and the attendant administrative costs of billing and collecting from so many more entities. This option could pose some additional revenue stability risk, if the EPA elects to collect fees monthly as accounts receivable after providing facilities with manifest services. Under this approach, EPA might provide TSDFs with a month of manifest services at significant cost prior to billing the TSDFs on a monthly cycle for their actual manifest usage. Thus, credible sanctions to induce prompt fee payments would appear to be a necessary feature to support this option. Such fee sanctions are discussed in section III.G of this preamble.

EPA requests comments on the merits of treating the final manifest submission by TSDFs as the transactional basis or billable event for purposes of assessing user fees in e-Manifest (*If submitting comments on this issue, please use comment header: **2. Billable Event***). Do commenters agree with EPA's assessment that the more manageable number of commercial and captive TSDFs submitting manifests to the system, relative to the number of generators that might initiate manifests, is an appropriate analysis for the adoption of the policy that the final TSDF submission should be the billable transaction in e-Manifest? Is there another option available that is equally or more effective than this preferred option, insofar as providing a rational means for charging users for their manifest activity in the system, while minimizing the administrative costs of collection?

In the February 2014 final regulation on electronic manifests (i.e., the One Year Rule), EPA codified language in parts 262, 263, and 264/265 that would authorize the Agency to impose reasonable user fees on hazardous waste generators, transporters, and receiving facilities or TSDFs. EPA included this broad authority to impose electronic manifest user fees on all classes of users, as this was consistent with the broad grant of authority to impose such fees in

the e-Manifest Act. In this proposal, EPA is clarifying that its preferred option would be to limit electronic manifest user fee payments and collections to the receiving facilities, thereby excluding generators and transporters from fee payments and collections. If the final rule adopts this approach, and there are no other issues presented that suggest a need for a broader fee collection system, EPA intends to delete the current parts 262 and 263 provisions that now extend fee collection authority to generators and transporters.

### *C. What Model or Formula Will EPA Use to Calculate Fees?*

#### **1. Background.**

In this section, EPA is presenting for comment its proposed methodology for determining the fees that TSDFs will be assessed based on their usage of manifests in the system. As discussed previously in this proposed rule, EPA believes that assigning fees to TSDFs based on a per-manifest charge is the most equitable and efficient means for allocating system costs to users. By relying on a per-manifest charge, users will bear the costs of developing and supporting the system in proportion to their usage of it. The TSDF users would be expected to bear the burden and realize the benefits of the system in proportion to their usage, and because TSDFs can pass their fee expenses through to their generator customers if desired, the system costs can be efficiently shared across the manifest user community.

The proposed fee model or methodology must, of course, fully recover EPA's costs to design, build, operate, maintain, upgrade, and manage the e-Manifest system and program. This will ensure that the Agency can manage the e-Manifest system and program without funds from other appropriations, and avoid the possibility of Anti-Deficiency Act violations. Therefore, the development of a proposed methodology is all about determining first, what are all the activities

related to developing and operating e-Manifest, and what are the costs of these activities?

Second, once the total costs of developing and supporting e-Manifest have been documented, we then must determine how these costs will be allocated over all the manifests that will be submitted to the system. While at the most basic level, one might determine a per manifest fee by simply dividing total system costs by the total number of manifests in use. There are advantages to parsing the fees based on the type of manifest (i.e., electronic or paper types), since some system costs are uniquely associated with paper manifests, while others tend to follow electronic manifest usage. Thus, it may be possible to allocate system costs more equitably to the manifest types that bear their related costs, and perhaps incentivize electronic manifest usage more than would be possible if costs were simply allocated to all manifests equally.

## 2. System Related Cost Categories.

There are several categories of costs under which e-Manifest system-related costs may be grouped and explained. First among these groupings, it is important to distinguish between the System Setup Costs and costs that are described as Operations and Maintenance Costs.

a. System Setup Costs. EPA considers System Setup Costs to include all system-related costs, intramural and extramural, prior to the time the e-Manifest system is fully operational. Intramural costs are those costs related to the efforts exerted by EPA staff and management in developing, operating, and managing e-Manifest. Extramural costs are those costs related to the acquisition of contractors to develop and operate the e-Manifest system. EPA will track System Setup Costs distinctly from post-activation Operations and Maintenance (O&M) Costs, since the e-Manifest Act requires that the System Setup Costs, which are to be funded initially by seed appropriations, be offset eventually by user fee collections and repaid to the Treasury. Thus,

System Setup Costs will be tracked distinctly for the period of system development, which EPA anticipates will require three to five years of effort.

EPA will amortize the System Setup Costs over an initial period of system operations. EPA is proposing an amortization period for System Setup Costs of five years, which EPA believes provides sufficient time to recover the System Setup Costs, while not significantly increasing the fees for the user community.<sup>9</sup> Once the system is operational, all system costs will be tracked as O&M Costs in EPA's fee calculations and in its accounting of system expenditures. Once the five-year amortization period has elapsed, EPA will drop the factor in the fee formula representing the amortization of System Setup Costs from the formula, and will thereafter track all costs as O&M Costs.

Within the broad category of System Setup Costs, EPA will track and calculate fees based on two distinct sub-categories of costs: (1) System Procurement Costs; and (2) EPA Program Costs dedicated to developing the system. The Procurement Cost sub-category is straightforward and includes all the IT-related contracting costs associated with the acquisition and development of the actual e-Manifest IT system and all e-Manifest related IT system services (i.e., accounting, billing, collection, and reporting systems).

The EPA Program Cost sub-category can be described as the EPA Full Time Equivalent (FTE representing EPA's staffing/labor costs) and the non-IT contracting costs to the Agency for

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<sup>9</sup> EPA analyzed the effects of a payback period of three, five, and ten years, and found that varying the amortization period had little effect on the total costs, resulting fee levels, or the efficiency of the proposed fee levels. EPA found that its total system costs are affected much less by the fixed costs of system development than by O&M costs, particularly, the marginal costs of processing manifests submitted to the system and the operations and maintenance costs for the system itself. The Agency's analysis of amortization options showed only a nominal effect on total fixed costs and on how the system's fixed costs would be collected each year in user fees. The impacts of amortization period on total costs and their recovery with the proposed rule's fee levels are overshadowed by the impact of other fee design elements.

developing, running, and managing the system. EPA Program Costs are included in either Setup Costs or O&M Costs based on the year they are incurred. It is the EPA Program Costs that are incurred before the system activation date that we are including in this discussion of Setup Costs. These are EPA staff and non-IT<sup>10</sup> contract costs necessary to the design and development of the e-Manifest system itself and to the development of the overall e-Manifest program. Thus, these costs would include the costs of EPA staff and contracts used for the system planning and design effort, for development of the system architecture, for development of the program regulations, including this user fee regulation, for conducting program outreach and oversight prior to activation, for developing the Help Desk, for developing the FACA Advisory Committee required by the e-Manifest Act, for conducting Capital Planning and Investment Control (CPIC) and other budget related activities for the program, for conducting program management, and other costs related to establishing the e-Manifest system and program prior to the system's activation. All of these types of costs would be EPA Program Costs and included in the System Setup Cost category as they are incurred prior to the system activation date.

b. Operations and Maintenance Costs. The Operations and Maintenance (O&M) Costs include all system-related costs incurred after the e-Manifest system is activated. Important components of O&M costs are the costs of operating the electronic IT system to which electronic manifests will be submitted and all manifest data collected, and the costs of operating the paper manifest processing center that EPA will establish to meet the e-Manifest Act's and One Year Rule's requirements that EPA collect and process the data from any paper manifests that continue

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<sup>10</sup> EPA is tracking closely its e-Manifest program costs by the date the costs are incurred, which is relevant to their classification as System Setup or as O&M costs. Likewise, EPA will establish distinct codes for tracking its contract tasks and their costs so that EPA can accurately distinguish its IT contracting costs (tracked either as System Procurement Costs and Electronic System O&M Costs depending on date incurred) from its non-IT contracting costs, which will be tracked in the formula as EPA Program Costs.

in use after the implementation of e-Manifest. In addition to the costs of running the electronic system and the paper processing center, O&M costs also include the same types of costs described previously as EPA Program Costs (EPA FTE and non-IT contract costs), when these costs are incurred after the e-Manifest system activation date. Other components of O&M Costs include Help Desk Costs necessary to run the e-Manifest Help Desk that will be established to provide technical support to system users; life-cycle enhancements to all e-Manifest system related services, such as the services required for e-Manifest billings and collections; and the CROMERR Costs, which are the costs of implementing solutions for e-Manifest that meet the requirements for electronic reporting to EPA under the Agency's Cross Media Electronic Reporting Rule or CROMERR. The latter costs include certain registration requirements for users and signatories, the requirements for identity proofing (when required) e-Manifest signatories, the costs of collecting, processing, and maintaining Electronic Signature Agreements executed by signatories, and the requirements for producing and retaining copies of record of electronic manifests submitted to the system.

c. Indirect costs. Indirect costs are the intramural and extramural costs that are not captured in any of the previously defined cost categories, but that are necessary to capture because of their necessary enabling and supporting nature, and so that our proposed user fees will accomplish full cost recovery. Indirect costs typically include such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. As discussed in section 2(c)(3)(A) of the statute, the indirect costs include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the immediate program office (the Office of Resource Conservation and Recovery or ORCR) that is primarily responsible for implementing the e-Manifest program. These other EPA offices and upper



management personnel provide support to all aspects of the e-Manifest program, including promulgating the e-Manifest implementing and fee regulations, supporting the IT system planning and system acquisition, and participating in the e-Manifest Advisory Board and the related Federal Advisory Committee Act (FACA) processes. Indirect costs are disparate and more difficult to track than the other cost categories, because they are typically incurred as part of the normal flow of work (e.g., briefings and decision meetings involving upper management) at many offices across the Agency and cannot be attributed directly to the activity they support. Also, the level of indirect costs incurred by a particular office is also likely to change as the e-Manifest program develops and its needs change. For these reasons, it is not practical to account for indirect costs in the same manner as the other categories of e-Manifest costs.

EPA will account for indirect costs in the proposed e-Manifest user fee formulas by the inclusion of an indirect cost factor. This rate is multiplied by the base fee that accounts for the program's direct costs. The product of the indirect cost rate and the base fee is then added to the base fee to determine the final, comprehensive user fee.

The Agency-wide indirect cost rate is determined for all EPA user fee programs by the Agency's Office of Financial Management, according to that Office's indirect cost methodology, and as required by Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Standards and Concepts. The Office of Financial Management publishes annually an indirect cost rate for each of the Agency's Regional Offices and for each of the Assistant Administrator-level program offices within EPA Headquarters. An indirect cost rate customized for the e-Manifest program will be developed, based on consideration of the EPA's existing indirect cost methodology and other indirect costs required to support the e-Manifest program.

Therefore, once the appropriate indirect cost rate for e-Manifest is developed, then the indirect costs for e-Manifest would be captured by our proposed fee formulas as the product of the base fee times that indirect cost factor.<sup>11</sup> The result is that the total or comprehensive user fee is simply the base fee formula times the expression (1 + indirect cost rate).

### 3. Types of Manifests and Fee Categories.

Another piece of information relevant to determining applicable e-Manifest user fees is the type of manifest that is being submitted to the system. In this regard, there are electronic manifests that will be completed by users electronically and submitted electronically to the system, and there are several types of paper manifests that will be received and processed by the e-Manifest system's paper processing center<sup>12</sup>.

Under the One Year Rule, EPA indicated that it would accept paper manifest data from final manifest copies submitted by TSDFs by several modes of delivery. First, paper manifests could be mailed by TSDFs directly to EPA's processing center, where personnel staffing that center would open the mail, scan the paper forms to create image files, and manually key in the data to the national data repository. These paper manifests would likely undergo a significant level of Quality Assurance (QA) activity as well, as the experience of EPA's state partners with

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<sup>11</sup> The EPA is developing an indirect cost rate for the e-Manifest Program. The FY 2015 Interagency Agreement (IA) indirect cost rate for OLEM is 19.74%. This rate is recalculated each year and is therefore subject to change and consideration regarding its applicability to e-Manifest. EPA will calculate the fees with the Final Rule using the then applicable-Manifest Program indirect cost rate, which will be based on a consideration of the OLEM IA indirect cost rate and other appropriate indirect costs attributable to e-Manifest.

<sup>12</sup> Unlike electronic manifests, paper manifest copies (or the scanned images and data from paper manifests) are to be submitted to the national e-Manifest system for data processing purposes only, and are not submitted as copies of record intended to replace paper manifests as valid and enforceable documents. The ink-signed paper manifest copies that are retained at waste handler sites remain the enforceable copies of record where paper manifests continue in use to track waste shipments. The paper copies (or scanned images and data from them) submitted for data processing purposes require no CROMERR related processes or electronic signatures to accompany their submission.

manifest tracking systems suggests that a significant number of paper manifests will present legibility issues, typographical errors, missing data, or other errors requiring follow-up with submitters to clarify or correct. Also, state partners advise EPA that they frequently find extraneous documents or mis-directed mail included with manifests mailed to their systems, and these require clerical attention to sort and return to their senders.

Second, the One Year Rule allows TSDFs to submit scanned images of paper manifests to the processing center in lieu of mailing paper forms to EPA. These scanned image submissions involve less clerical effort insofar as opening mail and returning extraneous mailings, but still require clerical effort to conduct QA activities and to key the data into the data repository.

Third, the One Year Rule provided TSDFs with the alternative of submitting the data from paper manifests to EPA as an image file and data file (e.g., XML file) that can be uploaded into the data repository. The receipt of data files from the TSDFs would involve less processing effort for EPA, as the data could be loaded to the data repository and merged with e-Manifest data directly with little, if any, QA or manual data entry.

Thus, for purposes of this proposed rule, EPA believes there would be four distinct types of manifests that may be submitted to the system for processing. These are electronic manifests submitted in accordance with the national electronic format supported by the system, and three possible types of manifest submissions arising from the continued use of paper manifests: paper manifests mailed to the EPA system operator, scanned images of paper manifests uploaded to the system, and an upload of both an image file produced from a paper manifest and a corresponding data file produced by the TSDF's data system.

As explained in detail later in this document, EPA believes that the several types of manifest submissions discussed here would involve differing effort and burden for EPA or its system operator to process. Indeed, since the premise of this proposed rule is that e-Manifest user fees should be charged on a per manifest basis, the Agency believes that the varying processing burden associated with these four distinct types of manifest submissions would be the key differentiating factor insofar as determining the appropriate user fee for manifests that would be submitted to the system. The varying processing effort involves varying manual labor and other costs arising from each type of submission. These varying human labor and related costs can be thought of as the marginal costs of entering the data from each method of submission and ultimately merging the information into the national e-Manifest data system. Therefore, in the several user fee formula options that EPA considered for this action, we focus on this differing marginal cost per manifest submission type as a significant factor distinguishing the fees calculated by the proposed formula. As further explained in the discussion of the proposed formula, another key factor distinguishing the amount of the calculated fees would be the extent to which the different manifest types are assumed to share in the other O&M costs associated with operating the electronic manifest system and also the paper processing center. The result would be a fee schedule that would announce four distinct per-manifest fee categories based on the four types of manifest submissions, and the varying extent to which marginal labor costs and other system O&M costs would be allocated to each of the submission types by the formula.

#### 4. What Formula Options Did EPA Consider?

EPA considered three distinct fee formula options, which vary by the extent to which they distribute the marginal manifest processing costs and other system O&M costs across the

different manifest submission types. As a result, the three fee formula options vary by the extent to which they differentiate the applicable fees for each of the four manifest submission types.

The fee formula options can be compared on the basis of three important characteristics: Simplicity, Equity, and Resilience. Simplicity refers to the presence or absence of fees differentiated by manifest type. Equity refers to the extent to which a fee formula generates fees that reflect the true costs of each manifest type. Resilience refers to the extent to which uncertainty in the component variables of a formula affects its ability to assess accurate fees, and by extension realize full cost recovery.

Each fee formula option entails a different trade-off between these characteristics, with no formula option outperforming the other two on every characteristic. The first option, the average cost fee, prioritizes simplicity over equity and resilience. The second option, the marginal cost fee, prioritizes resilience and equity over simplicity. The third option, the marginal cost highly differentiated fee, is the most equitable but at the loss of resilience and simplicity. The three fee formula options are explained in greater detail in the following sections.

a. Average Cost Fee Option. The first option is a basic "average cost fee" formula. Under this option, all the manifest submission types would pay the same average fee. This option first calculates a weighted average marginal cost for processing all manifest submission types. To this weighted marginal cost is added another factor which distributes all other system setup and O&M costs equally across all manifests expected to be in use. In other words, under this option, marginal costs are averaged, setup and O&M costs are allocated equally to all manifest types, and there is no attempt to use the fee formula to differentiate among the manifest types.

The mathematical expression of the Average Cost Fee Option is as follows:

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

Where:

$$Average\ Marginal\ Cost = \frac{\sum(N_i \times Marginal\ Cost_i)}{N_t}$$

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

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

This option has the advantage of simplicity, as it results in one average or standard fee to be paid on a per-manifest basis for all four of the manifest submission types. However, it is quite sensitive, meaning it may not collect sufficient revenue, since the use of a weighted average marginal cost assumes that EPA can accurately predict the prevalence of each manifest submission type each year. If the actual distribution of manifest types differs from these projections, then this formula will likely under- or over-collect fee revenue relative to program costs.

Additionally, this option is not very equitable. There is simplicity in using this formula to arrive at a standard fee, but it results in this option permitting a portion of the costs of paper manifest use to be subsidized by electronic manifests. Paper manifest submission types will almost certainly bear greater marginal costs than fully electronic manifests, but this formula does not recognize such differential costs when it prescribes one average fee for all manifests. Therefore, this option would not be very helpful in effectuating the Agency's goal of promoting the greater use of electronic manifests in the system.

b. Marginal Cost Differentiated Fee Option. The second option considered by EPA would attempt to differentiate among the different manifest submission types by focusing most on the

varying marginal or human labor cost of processing each manifest submission type into the national e-Manifest data system. As a part of the economic analysis EPA conducted for these fee formula options, EPA developed estimates of the marginal, human labor cost of processing paper manifests received in the mail, processing image files uploaded to EPA, processing data (XML) files uploaded to EPA with image files, and processing fully electronic manifests into e-Manifest. This option keys off the differing marginal cost of processing manifests as the factor that differentiates the resulting manifest user fees. Otherwise, it addresses System Setup Costs and O&M Costs in the same manner as Option 1, that is, by amortizing system setup costs over five years, and by otherwise distributing setup costs and O&M costs from overall systems operations equally across all manifest submission types.

The mathematical expression of the Marginal Cost Differentiated Fee Option is as follows:

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

Where:

*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  
+ LifeCycle Cost to Modify or Upgrade eManifest System Related Services  
+ CROMERR Cost*

This fee formula option is premised on our belief that the marginal, human labor costs of opening mail, conducting QA on paper submission types, and conducting data key entry on the paper submission types (other than XML file uploads that load directly into the system) are the costs that most clearly and significantly differentiate manifest submissions for purposes of

determining fees. This option further assumes that since data from all manifest types will be entered into the e-Manifest system's data repository, it is appropriate for all paper submission types to contribute to the electronic system's setup and O&M costs. The option is the most resilient as it does not involve any projections of the prevalence of manifest types such as is involved with the calculation of a weighted average marginal cost under Option 1, so it is less likely to under- or over-collect revenue should such projections not pan out. Another significant advantage of this option is that because it would result in higher differential fees for paper manifest submission types, it is consistent with our goal of promoting the greater use of electronic manifests.

A potential weakness in this option is that it may not be sufficiently aggressive insofar as requiring paper manifest types to bear the full differential costs associated with managing paper manifest submissions. Under this option, for example, electronic manifests share in the costs of establishing the paper processing center and in the O&M costs (other than labor costs) of running the paper center. EPA believes that this option could represent a useful bridge toward the greater use of electronic manifests, particularly in the initial years of e-Manifest program implementation. It will likely require several years for the full transition to electronic manifesting to occur, as manifest users will need to acquire the hardware and capability to participate in e-Manifest, and they will need to gain confidence in the reliability of electronic manifests relative to the paper forms that are so familiar and have served the needs of the program for many years. When EPA discussed fee options with the hazardous waste management community during the development of this proposed rule, industry members confirmed that they anticipated a transition to electronic manifesting, with perhaps a period of time when industry members may first submit XML data file uploads to EPA from their customers' paper manifests, and over time, acquire the



technology and systems to migrate to supplying fully electronic manifests for their customers' use. EPA heard concerns from industry members that the fee formula should be sensitive to the need for a period of transition, and that there should not be too great a premium fee for paper manifest use at the outset.

Thus, EPA believes that this second fee option reflects these concerns, and is consistent both with encouraging electronic manifest use, while recognizing that a transition from paper submissions to XML file submissions may be the course that e-Manifest implementation follows on its ultimate path to electronic manifest use. However, EPA does remain concerned that, over time, the Marginal Cost Differentiated Fee Option may not be effective to promote the full transition to electronic manifesting, and could instead result in the interim arrangements -- the submission of XML files produced from paper manifests -- becoming the end result. While such an outcome would produce a robust data base of manifest data from designated facilities, it would perhaps leave in place a regime in which inefficient and burdensome paper manifests remain in wide circulation among all manifest users.

c. Marginal Cost Highly Differentiated Fee. As a third option for determining the e-Manifest user fee, EPA also considered an approach that goes further than the previous option in requiring paper manifest submission types to bear more of the program costs arising from the continued use of paper manifests. This third fee formula option, the Marginal Cost Highly Differentiated Fee option, is structured similarly to the second option, but with one key difference. Under the third option, the O&M costs of running the paper processing center are allocated only to paper manifest submission types, and not shared equally with the electronic manifests. The premise of this option is that since fully electronic manifests will have no contacts or dealings with the paper processing center, then these fully electronic manifests should bear no

part of the costs of operating the paper center. Thus, in addition to the marginal, human labor costs of processing paper manifest types that are allocated to paper manifest submissions under Option 2, this option more fully allocates the program costs of managing paper manifests to the paper submission types, by adding the other non-labor O&M costs of the paper center to the cost burden to be borne by paper submission types. This also may encourage industry users to migrate to electronic manifests more expeditiously, since it will not mask the true costs of processing paper manifests by subsidizing the non-labor costs of the paper processing center, as occurs with Option 2.

This option does not present the simplicity of Option 1, as the fees it would produce clearly differentiate among several manifest submission types. This option would also appear to be the most equitable of the options, as it would require paper manifest submissions to bear both the labor and non-labor costs of the paper processing center, rather than sharing the non-labor costs with electronic submissions. However, the equity of this option is achieved at the expense of resiliency, as this option would require that EPA estimate with precision the number of electronic manifest and the number of paper-variant manifests in order to properly assign non-labor paper center O&M costs to paper manifests. Thus, as a result of uncertainties affecting the numbers of electronic and paper submission, this fee option is more likely to over- or under-recover revenue than Option 2. Moreover, because this option is somewhat more aggressive than the second option in allocating program costs to paper manifest types, it could be more effective than Option 2 in promoting the greater use of electronic manifests. However, this option could be perceived by users as imposing initially too great of a premium fee on paper manifest types, before electronic manifesting is widely available to and embraced by users.

Mathematically, the Marginal Cost Highly Differentiated Fee option can be expressed as follows:

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

Where:

*System Setup Cost = Procurement Cost + EPA Program Cost*

*O&M<sub>fully electronic</sub>*

*= Electronic System O&M Cost + Help Desk Cost + EPA Program Cost  
+ CROMERR Cost  
+ LifeCycle Cost to Modify of Upgrade eManifest System Related Services*

*O&M<sub>all other</sub> = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost  
+ EPA Program Cost + CROMERR Cost  
+ LifeCycle Cost to Modify or Upgrade eManifest System Related Services*

## 5. What Fee Formula is EPA Proposing?

EPA's preferred option for this proposed rule is actually a combination of the second and third options discussed earlier. In other words, EPA is proposing that it would initially implement the Marginal Cost Differentiated Fee Option (2<sup>nd</sup> option), but would reserve the ability to transition to the Marginal Cost Highly Differentiated Fee Option (3<sup>rd</sup> option), should a triggering condition included in this rule be actuated, suggesting that a more aggressive fee formula is needed to promote greater levels of electronic manifest use.

By proposing this combined or hybrid option, EPA acknowledges that the second option represents a useful compromise between promoting electronic manifest use initially, while recognizing that a transition from paper submissions, to XML submissions, to fully electronic submissions may be a useful path for industry and the e-Manifest system to pursue. EPA believes that the Marginal Cost Differentiated Fee Option is consistent with such a transition approach. Indeed, if the e-Manifest option is fully adopted by most hazardous waste handlers, the fee

formula represented by this option may be the only fee formula necessary to determine fees for the e-Manifest program.

However, EPA is concerned that after the desired transition period has run, that it may require some additional incentives to effectuate a fuller migration to electronic manifest usage. Under the second formula option, the fee differential between electronic manifests and those paper manifest submissions uploaded by TSDFs as XML files is not very great, with the XML submissions bearing fees that are perhaps only 15% greater than the electronic manifests. Paper manifests mailed to EPA for processing would incur a per-manifest fee about 88% greater than the fee for electronic manifests. Thus, there is a possibility that the transition to XML file submissions from paper manifest use could become a plateau in the program implementation that is difficult to move beyond without greater fee incentives. So, upon an appropriate triggering condition, EPA believes it would be useful to change the fee formula to the third formula option, so that the paper submission types bear a fuller share of the program costs related to using and processing paper manifests.

Another issue for this proposed rule, therefore, is what is the appropriate condition that should trigger the implementation of the Marginal Cost Highly Differentiated Fee Option after a transition period? For several years, EPA has indicated to stakeholders and to the program's overseers that the Agency believed that it could accomplish significant paperwork burden reductions and cost savings if 75% electronic manifest usage could be attained after program implementation. Based on very preliminary estimates of possible program adoption rates, EPA further postulated that under favorable conditions, adoption of electronic manifesting by some of the larger manifest user companies might bring about a 75% use rate after a period of about five years. That being the estimate or goal previously announced, EPA believes that this stated goal,

with a slight modification to comport with our proposed two-year cycles<sup>13</sup> for reviewing and revising our fee schedules, could represent a useful trigger condition for this proposed rule.

Therefore, EPA is proposing that the e-Manifest user fee schedule would be initially developed using the second option's Marginal Cost Differentiated Fee formula for the base fee. EPA is also proposing that if, however, EPA finds after four years of e-Manifest system operations that electronic manifest usage has not yet reached our goal of 75% penetration, then EPA will thereafter use the third option's Marginal Cost Highly Differentiated Fee formula for developing the applicable user fee schedules.

## 6. Request for Comment

EPA requests comment on its preferred option that would initially calculate per-manifest fees based on the Marginal Cost Differentiated Fee formula, and then transition to the Marginal Cost Highly Differentiated Fee formula should electronic manifests not attain a 75% usage rate after four years of system operations (*If submitting comments on this issue, please use comment header: **3. Fee Methodology***). Do commenters agree that the combination of these two formula options is superior to the other options alone? Do commenters agree with EPA's strategy of starting with the less aggressive fee formula in the initial years of program implementation, to foster a smoother transition from paper manifest use to electronic manifesting? Do commenters agree that after an initial period of transition, it makes sense to adopt a fee formula that more aggressively allocates paper manifest management costs to the paper manifest submission types that remain in use? Has EPA proposed a sensible trigger condition for shifting between the fee formulas? Is the goal of 75% electronic manifest penetration a reasonable goal, and if not, why

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<sup>13</sup> The proposal to publish revised fee schedules at two-year intervals is discussed in the following section III.D, of this preamble. Because we propose to revise the fee schedules at two-year intervals, it makes sense to examine whether electronic manifest use has reached a 75% adoption rate after four years, rather than five years.

not? Would some other period be preferable for EPA to measure electronic manifest implementation progress? If so, what is that period of time and why would it be preferable? Is the third fee formula option sufficiently aggressive to accomplish this purpose, and will it likely promote the adoption of higher levels of electronic manifest usage?

In addition, EPA would appreciate comments addressing these fee formula questions (*If submitting comments on any of the questions in the following seven bullets, please use comment header: **3. Fee Methodology***).

- Is the proposed fee formula sufficiently clear insofar as identifying the program costs that will be allocated among manifests, and explaining how the fee amounts will be determined? How can the clarity of the fee formula be improved?
- Do commenters agree with the general premise of the fee formula that per-manifest fees should be charged to manifests based on the type of manifest submission, and that the marginal cost (human labor cost of data key entry and QA activities) should be a significant factor in determining the appropriate fees? What other bases are there for differentiating manifest fees?
- Do commenters agree with the proposed fee methodology that first determines the marginal human labor cost for processing each manifest submission type, and then adds to that cost estimate a factor that distributes setup and O&M costs over the numbers of manifest in use? Are there other fee models that would more effectively and equitably allocate program costs to users and determine appropriate fees for the various manifest submission types?

- Do commenters agree that a five-year amortization period is an appropriate period of time over which to recover system setup costs? Is there another amortization period that EPA should adopt for this purpose, and if so, why?
- Do commenters agree with EPA's analysis of the options considered, and that EPA has selected the most desirable fee option? Does the proposed fee approach promote EPA's goals of accomplishing full program cost recovery and promoting electronic manifest use?
- Has EPA omitted any program costs that should be included in our determination of e-Manifest user fees?
- In developing its fee methodology, EPA has not proposed any specific fee or other incentives to promote desirable materials management behaviors, such as waste minimization or recycling of hazardous secondary materials. In many instances, our hazardous waste regulations provide manifest exemptions for hazardous secondary materials, so in one sense, the user fee costs that this action would impose on shipments subject to the manifest may provide some additional incentive for recycling or waste minimization. Are there other incentives that could be included in this user fee regulation that would promote greater recycling of these materials? If such incentives would involve fee discounts or monetary incentives, how should EPA allocate the revenue effects of such incentives among the manifest users who would pay fees under this action? Are there other incentives that EPA could consider for this user fee regulation? EPA welcomes comments on these matters.

Finally, EPA emphasizes that this proposal addresses the submission of paper manifests by adopting a fee approach that assigns fees to paper manifest submissions from TSDFs based upon the difference in marginal costs of processing the various paper manifest types. The submission of paper forms to EPA by mail would bear the highest fees, while submission of image files, or data and image files, would involve less processing effort and thus reduced fees under the proposed fee methodology.

EPA has heard from TSDFs that they generally would prefer to submit data files from their paper manifests to EPA, rather than incurring the costs of mailing paper forms to EPA for full processing. However, EPA has consulted primarily with a trade association (the ETC) that is comprised of larger TSDFs, so we do not know whether mid-size or smaller TSDFs would be similarly inclined to submit data files and scanned images of manifests to EPA and avoid mailing paper forms to EPA for processing. The differential fee approach we propose should itself discourage TSDFs from submitting large numbers of manifests by mail. However, it is difficult for EPA to project with confidence how many paper manifests will be mailed to the Agency in the initial years of e-Manifest operations. This is a concern for EPA, as 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. 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 appropriated funds than anticipated to process mailed manifests. Therefore, EPA is requesting comment on another approach under which TSDFs would be restricted to submitting their paper manifest data to EPA by electronic means only, that is, by uploading image files to EPA, or by uploading a data file (e.g., XML file) of manifest data accompanied by



an image file (*If submitting comments on this issue, please use comment header: **4. Disallow Postal Mailed Manifests***). Would TSDFs support an option that precluded their mailing paper manifest forms to the Agency, as this would reduce EPA's processing costs and the associated user fees? Are there TSDFs that would find this approach objectionable, because it requires the capacity to scan documents and upload data to EPA, or for other reasons? Is the proposed differential fee approach for paper manifest types sufficient to regulate the number of mail submissions to EPA, or is a more forceful approach (i.e., restricting paper copy data submissions to digital methods only) necessary to keep the paper processing costs and fees in check? Are the processing efforts related to mailed paper manifests that different from the effort related to processing image files sent to the Agency?<sup>14</sup> EPA requests specific comments on the merits of an approach that would restrict TSDFs to submitting their paper manifest data to the Agency by digital methods only, and not by mailing hard copies to the EPA system.

#### 7. Illustrative Range of User Fees Using the Proposed Fee Formula

EPA has developed illustrative ranges of user fees based on varying the system development costs and allocating such costs across a large range of possible manifest usage numbers. These illustrative ranges are intended to show the relative difference in possible fee amounts among the various manifest submission types. The illustrative ranges also suggest generally the users' possible exposure to fees, and show the effect on fees of varying the overall system-related costs and the numbers of manifests that will share in these costs when fees are assessed. The result is a possible or illustrative range of user fee estimates that are displayed in the following tables. Since EPA's fee determination model was based on the varying marginal

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<sup>14</sup> EPA anticipates that fees for processing mailed manifests will be about 20 – 25% greater than for scanned images, because manifests delivered by mail will need to be opened, sorted for errant submissions, logged, stored and retrieved prior to processing, scanned by paper center personnel, and then disposed of after scanning.

cost of processing the several types of manifest submissions, we have included a distinct table presenting illustrative fee ranges for fully electronic manifests and each of the three paper manifest submission types.

Per Manifest Fee, Fully Electronic Manifests			
Number of Manifests (millions)	System Procurement Costs (millions \$)		
	10	15	20
5	\$9.00	\$9.00	\$9.50
4.5	\$10.00	\$10.00	\$11.00
4	\$11.50	\$11.50	\$12.00
3.5	\$13.00	\$13.00	\$14.00
3	\$15.00	\$15.50	\$15.50
2.5	\$18.00	\$18.50	\$19.00
2	\$23.00	\$23.50	\$24.00

Per Manifest Fee, XML Submissions from Paper Manifests			
Number of Manifests (millions)	System Procurement Costs (millions \$)		
	10	15	20
5	\$11.50	\$11.50	\$12.00
4.5	\$12.50	\$12.50	\$12.50
4	\$14.00	\$14.00	\$14.50
3.5	\$15.00	\$15.50	\$15.50
3	\$17.50	\$18.00	\$18.00
2.5	\$20.50	\$21.00	\$21.50
2	\$24.50	\$25.00	\$25.50

Per Manifest Fee, Image File Submissions from Paper Manifests			
Number of Manifests (millions)	System Procurement Costs (millions \$)		
	10	15	20

5	\$17.00	\$17.00	\$17.50
4.5	\$18.00	\$18.00	\$18.50
4	\$19.00	\$19.00	\$20.00
3.5	\$20.50	\$21.00	\$21.50
3	\$23.00	\$23.50	\$23.50
2.5	\$25.50	\$26.50	\$27.00
2	\$30.50	\$31.00	\$31.50

Per Manifest Fee, Postal Mail Manifests			
Number of Manifests (millions)	System Procurement Costs (millions \$)		
	10	15	20
5	\$21.00	\$21.00	\$21.50
4.5	\$22.00	\$22.00	\$22.00
4	\$23.50	\$23.50	\$24.00
3.5	\$24.50	\$25.00	\$25.00
3	\$27.00	\$27.50	\$27.50
2.5	\$30.00	\$30.50	\$31.00
2	\$34.00	\$34.50	\$35.50

#### *D. How Does the Proposal Address Fee Trajectory Issues?*

##### 1. Background

The topic of fee trajectory is concerned with the actions that EPA will take to adjust e-Manifest user fees to inflationary or other program cost changes, so that fee schedules and resulting revenues keep pace with program costs. In the document, *Federal User Fees, A Design Guide*, GAO emphasized the significance of this issue in ensuring that a user fee program is able to maintain full cost recovery. GAO noted that if fees are not reviewed and adjusted regularly, programs will run the risk of overcharging or undercharging users, while also raising equity, efficiency, and revenue adequacy concerns. GAO further noted that the questions affecting fee trajectory and revisions include:

- What are the fixed and variable costs of fee-funded activities?
- What are the timing and pattern of program spending?
- How quickly can the program adjust fee rates in response to changes in collections or costs?
- Are there other sources of funding or authority for a reserve that may mitigate shortfalls?
- Can the Agency update its fees more frequently by rule, and if so, how will the Agency enhance stakeholders' trust in its revision methodology?

The e-Manifest Act does speak to several of these matters. Sections 2(c)(1) and 2(c)(3)(B) of the Act clearly confer discretion on EPA to set and periodically adjust e-Manifest fees to ensure alignment with program costs. The latter section authorizes EPA to consult with the System Advisory Board on fee revisions, and to increase or decrease the amount of fees to a level that results in the collection of revenue that is sufficient, but not more than reasonably necessary, to cover current and projected system related costs (including upgrades). Fee adjustments are also required to maintain revenues at a level that will minimize the accumulation of unused amounts in the System Fund.<sup>15</sup>

On the question of the timing of fee revisions, the Act provides that an initial adjustment to user fees shall be made at the time at which initial system development costs have been recovered, and periodically thereafter, upon receipt of information in annual financial accounting or audit reports, disclosing a significant disparity between fee collections for a fiscal year and

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<sup>15</sup> EPA must recover the system development costs and repay the Treasury for the funds advanced for system development work. EPA will amortize development costs over 5 years, and while the fee collections corresponding to these development costs may accumulate in the System Fund, they would not be counted toward any surplus.

expenditures made that year for program related costs. Thus, EPA does have discretion to revise fees as necessary to maintain balance between revenues from fee collections and program costs as changes occur over time. The e-Manifest Act authorizes EPA to accumulate a revenue surplus of not more than \$2 million over the initial three-year period of operations, presumably out of recognition that there might be imprecision in cost estimates and revenue forecasts in the initial period of system operations.

EPA attaches great significance to the role of the System Advisory Board in consulting with EPA on fee revisions. As the Board will be comprised of a cross-section of program stakeholders, EPA believes that this consultation role will be very important to maintaining trust in EPA fee setting and revision methodology. Financial reports and audits will be shared with the Advisory Board, and current and projected program budgets and their effects on proposed fee revisions will be a regular agenda item for EPA's discussions with the Advisory Board. Therefore, it is essential that these discussions, our fee setting methodology, and our fee revision methodology be rational and transparent to our stakeholders. Thus, this section of the preamble is intended to explain the fee revision methodology and schedule we propose to follow in our regular efforts to maintain balance between fee collections and program costs.

Additional Federal guidance relating to fee revisions appears in OMB Circular A-25. In Section 8.e. of this Circular, addressing Agency responsibilities, OMB states that each agency will review the user charges for agency programs biennially to include, among other things, "assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values." Thus, it is the objective of this action to propose a fee trajectory or revision methodology that implements the direction provided by the e-Manifest Act, as well as the applicable guidance in Circular A-25 and the GAO Design Guide.

## 2. What Methodology and Process is EPA Proposing for e-Manifest Fee Revisions?

EPA is proposing a fee revision methodology under which the Rule's fee formula would be re-run at two-year intervals, with the most recent program cost and manifest usage numbers being used in running the fee formula to calculate the fees for each manifest submission type. The result would be a fee schedule that announces the fees for each of the next two years. EPA would publish the revised fee schedules at the e-Manifest program's web site, and would also provide a link to users when they access the e-Manifest system so that they could be immediately notified of and directed to the new fee schedules. We would provide this type of actual notice to system users (via a link to the publication at the program's web site) 90 days prior to the effective date of the new fee schedule. This proposal would require revisions to several provisions of the One Year Rule that EPA issued in February 2014. In the One Year Rule, EPA stated in several regulatory provisions that it would update e-Manifest user fees from time to time, and that fee schedules would be published as an appendix to 40 CFR part 262. This proposed rulemaking would instead publish the fee schedules and their revisions to users at the e-Manifest program's web site, and not codify the fee schedules in an appendix to part 262. Therefore, this proposed rule would delete the requirement to codify fee schedules in a part 262 appendix from the current regulations at 40 CFR §§ 262.24(g), 263.20(a)(8), 264.71(j), and 265.71(j).

Thus, while EPA would develop the initial fee schedule under this action using notice-and-comment rulemaking procedures, it is not EPA's intent to issue the subsequent fee schedule revisions through notice-and-comment proceedings. Rather, EPA is proposing its methodology for fee calculations and revisions in this rulemaking, and when we finalize this rule in response to comments, our final methodology will be announced and used to calculate the initial set of program fees. However, with each two year fee revision cycle thereafter, EPA will re-run the fee

calculations using the latest program costs and manifest numbers, but will not subject the revised fee schedules to notice-and-comment proceedings, as long as the fee revision calculations are based on the same fee methodology that we develop with this action. Our intent is to develop a fee setting and revision methodology that would be durable and could be used repeatedly over the coming years, with adjustments to fees being announced consistently with the formulas and adjusters included in this methodology. However, if EPA alters significantly its methodology for calculating or adjusting fees, or the fees are affected by significant new program costs not anticipated in the formulas we include in our initial fee-setting methodology, then EPA would follow notice-and-comment procedures before announcing any revised fees based on a significantly new fee methodology.

EPA also considered a process under which the Agency would run the fee formula with the most recent costs and manifest usage numbers on an annual basis. While this option would appear to be most responsive to program cost changes, it is not our preferred option for this proposal. EPA is instead proposing a two-year cycle for re-running the fee formula and publishing fee schedules, because we believe that a two-year cycle strikes a better balance between revenue accuracy, process burdens, and fee program stability for users. With a two-year cycle, the user community will know and be able to budget for the fees that will be owed for each manifest submission over a more stable period of two years, rather than having to deal with a fee schedule that is constantly under revision. For EPA, there will also be advantages, in that the Agency will not need to incur the administrative costs of re-issuing fee schedules and publishing them each year, and explaining the resulting fee changes to the Advisory Board and user community. Moreover, EPA believes that a two-year cycle for issuing fee schedule

revisions is consistent with the guidance of OMB Circular A-25, which requires agencies to conduct biennial reviews of its user fees, including adjustments in fee charges.

### 3. What Adjusters Would Be Included in the Proposed Fee Revision Methodology?

Obviously, with each re-running of the fee setting formula at our proposed two-year interval, the fees that are so determined will have been “adjusted” to reflect the most recent program costs from each of the cost categories discussed in the formula, and to reflect the number and type of manifest submissions. Nevertheless, we are proposing additional adjusters to further enhance our ability to keep fee revenues in balance with program costs.

a. Inflation Adjuster. First, since fee schedules will be announced for each of the two years following the issuance of the new fee schedule, we believe it may be necessary to include an adjuster to account for inflationary effects between the first and second years of each fee schedule. While inflation has been very modest in recent years, and it may not seem worthwhile at existing inflation rates to adjust for inflation in the second year’s schedule, it is not clear that the recent experience with marginal rates of inflation will continue into the future. Since EPA desires to establish a durable fee revision methodology that will service the program’s needs for several years, we believe it is prudent to include an inflation based factor to deal with inflationary impacts to program costs between the two years covered by each fee schedule.

One such inflation based adjustment would make use of the Consumer Price Index (CPI) or similar index of price or labor cost changes to represent the impact of inflation in changing the program costs to be recovered from user fees. It is not uncommon for the CPI that is published by the Bureau of Labor Statistics (BLS) to be used in fee programs such as e-Manifest to represent the impact of inflation on program costs generally. Given the manner in which the CPI



is determined by BLS, the CPI may not be an entirely accurate measure of the changes in the costs of labor and IT services and commodities that are being purchased to support the e-Manifest project. However, absent a demonstration that there is another index that is more specific to and more representative of program costs changes for e-Manifest, the Agency is proposing to rely on the use of the CPI as a sufficiently representative index for our fee adjustment purposes.

According to BLS, the CPI is intended as a measure of the average change over time in the prices paid by urban consumers for a so-called “market basket” of consumer goods and services. The CPI market basket is determined from surveys of the purchases and spending habits by several thousand urban families from around the country. For this urban population, the CPI market basket represents goods and services purchased for consumption from more than 200 categories of items drawn from eight major groups: food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services. Charges for certain government services, such as water and sewer charges, auto registration fees, and vehicle tolls are also included in the calculation of the CPI. The broadest and most comprehensive CPI published by the BLS is known as the All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average, 1982-84 = 100. Many other CPI indices are published, involving various seasonal or regional adjustments or to specifically include or exclude certain goods or services. However, for purposes of e-Manifest fee inflation adjustments, EPA proposes to rely on the CPI based on all items, and not seasonally adjusted.

The CPI is certainly a commonly relied upon measure of inflation, which has been defined as a process of continuously rising prices or of the continuously falling value of money. The CPI is skewed toward consumer goods and services, so it does measure inflation as

experienced by consumers in their day-to-day living expenses. However, it is not the only measure of inflation that is available as a gauge of inflation's possible effects on e-Manifest program costs. There is also a Producer Price Index (PPI) for measuring inflation at earlier stages of the production process; there is an Employment Cost Index (ECI) to measure the effects of inflation in the labor market; and there is a Gross Domestic Product Deflator to measure inflation experienced by both consumers and governments and other institutions providing goods and services to consumers. There are also other more specialized measures that could be used for this purpose as well. However, other federal user fee programs tend to use the CPI as the means to measure inflationary impacts on their program costs, and barring persuasive evidence that there is a more suitable index for e-Manifest, we believe that the CPI should be sufficient for this purpose.

A CPI-based adjuster used to adjust the second year of e-Manifest fees in a two-year fee schedule could be structured as follows:

$Fee_{i_{Year\ 2}} = Fee_{i_{Year\ 1}} \times (CPI_{Year\ 2-2}/CPI_{Year\ 2-1})$ , where

$Fee_{i_{Year\ 2}}$  is the Fee for each type of manifest submission “*i*” in Year 2 of the fee cycle,

$Fee_{i_{Year\ 1}}$  is the Fee for each type of manifest submission “*i*” in Year 1 of the fee cycle, and

$CPI_{Year\ 2-2}/CPI_{Year\ 2-1}$  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.

Thus, by factoring the Fee for Year 1 for each manifest submission type by the ratio of the two most recent years' CPI's, the result would represent the second year fee amount corrected for inflation under this proposed rule.

In summary, EPA is proposing an inflation adjustment factor predicated on the use of the CPI-U, for all items, not seasonally adjusted, as a sufficiently representative inflationary index

and a means to adjust e-Manifest user fees for inflation between the first year and second year of the two-year fee schedules that EPA will develop and publish to the e-Manifest program website. We request comment on this aspect of the proposed rule (*If submitting comments on this issue, please use comment header: **5. Inflation Adjuster***).

b. Revenue Recovery Adjusters. In addition to an inflation adjuster, EPA is proposing an additional adjuster that would be aimed at recapturing revenue that was lost on account of imprecision in estimating the numbers and types of manifest submissions that would be processed by the e-Manifest system. We also are proposing an adjuster that would recover revenue lost on account of manifest submissions that were uncollectable from the users that submitted manifests but did not pay their fees when due or in response to collection actions. Unlike the inflation adjuster, which operates to adjust fees between the first and second years of each two-year fee cycle, these two adjusters would be “look back” adjusters that would look back to the previous two-year fee cycle, and attempt to recover revenue losses from that previous cycle through adjustments to the fee schedules for the new cycle. The revenue recaptured through these adjusters would be added to the O&M Costs in the fee calculation formula, so that this recaptured revenue would be re-allocated like other program operation costs to the fees charged on a per-manifest basis.

In support of this user fee regulation, EPA has developed a model that provides estimates over several years of assumed adoption rates for each manifest type, of call center costs, of electronic system O&M costs, of paper center costs, of system setup costs, of EPA Program Costs, of CROMERR implementation costs, of e-Manifest related system enhancement costs, and of the marginal costs of each manifest submission type. These cost categories are the major elements of program costs that our user fees will allocate to users through the development of per

manifest unit charges or fees. As EPA develops more current information on actual program and system procurement costs incurred in developing and operating e-Manifest, these actual cost figures will be inserted in the fee formulas to develop our initial and subsequent fee schedules. However, an area of high sensitivity for the accuracy of e-Manifest fees that are determined on a per manifest basis is the accuracy of our projections about manifest usage. Particularly at the outset of the e-Manifest program, when we are capturing fee revenue based on unproven projections about how many total manifests and how many manifests of each type will be submitted, there is a risk of revenue instability for the program if these initial projections are not accurate.

To address this revenue stability risk, EPA is proposing an adjuster that would add to the revenues to be collected in a new fee cycle the revenues lost in the previous cycle on account of imprecision in the manifest usage numbers used as assumptions in the development of the previous fee amounts. This manifest number adjuster could be expressed as follows:

Revenue Recapture<sub>*i*</sub> = [(N<sub>iYear1</sub> + N<sub>iYear2</sub>)<sub>Actual</sub> (N<sub>iYear1</sub> + N<sub>iYear2</sub>)<sub>Est</sub>] X [Fee<sub>i(Ave of Yrs1and2)</sub>], where:

Revenue Recapture<sub>*i*</sub> is the amount of fee revenue to be recaptured for each type of manifest submission “*i*”; (N<sub>iYear1</sub> + N<sub>iYear2</sub>)<sub>Actual</sub> (N<sub>iYear1</sub> + N<sub>iYear2</sub>)<sub>Est</sub> is the difference between actual manifest numbers submitted to the system for each manifest type during the previous two-year cycle and the numbers estimated when we developed the previous cycle’s fee schedule; and Fee<sub>i(Ave)</sub> is the average fee charged per manifest type over the previous two-year cycle.

By factoring the average fee times the difference between manifest numbers actually collected and the manifest numbers estimated, the proposed adjuster would return to the program the revenues that were lost to the program because our estimates of manifest usage did not match

actual experience during the two-year fee cycle. Of course, it is possible that this adjuster could also result in a negative adjustment and reduce fee revenues in the next fee cycle, because the Agency underestimated manifest numbers in the prior cycle and actually generated surplus revenue from the greater numbers actually submitted. In either case, this look back adjuster would attempt to reconcile actual manifest usage with estimates used to develop fee schedules, so as to restore revenue balance. EPA requests comment on the inclusion of this adjuster in the proposed fee trajectory methodology (*If submitting comments on this issue, please use comment header: **6. Revenue Recovery Adjuster***).

A second revenue recapture adjuster we are proposing in this fee regulation is an adjuster aimed at recovering revenues lost on account of "uncollectable" manifests, that is, manifests for which the fees were not paid by the user when due or after fee collection activities. While EPA expects that most TSDFs will be current with their e-Manifest fee obligations, there is a possibility that despite the Agency's best efforts at collection of fees, and despite imposition of sanctions for non-payment, some manifest fee obligations may remain uncollectable. This revenue stability risk becomes more significant should fee payments occur predominantly as accounts receivable for reimbursement of services, rather than as advance payments for manifest related services. Therefore, in order for EPA to ensure that we are able to maintain a fee program that accomplishes full cost recovery, we are proposing an adjuster that would recover revenue lost from the previous two-year fee cycle on account of uncollectable fees.

This proposed adjuster for uncollectable fees would be expressed as follows:

Uncollectable Revenue<sub>i</sub> = (N<sub>iYear1</sub> + N<sub>iYear2</sub>)UNCOLLECTABLE x Fee<sub>i(Ave)</sub>, where

$(N_{iYear1} + N_{iYear2})_{UNCOLLECTABLE}$  is the sum of the number of uncollectable manifests of each type “i” over the previous two-year cycle, and  $Fee_{i(Ave)}$  is the average fee charged for each manifest type “i” during the previous two-year cycle.

#### 4. Requests for Comment

EPA requests comment on the uncollectable manifest adjuster and the other adjusters and processes included in the proposed fee trajectory methodology. In particular, EPA requests comments responding to these questions:

- Do commenters generally agree with the trajectory proposal’s emphasis on inflation, manifest usage estimates, and uncollectable manifests as the key sources of revenue instability that the adjusters should address? Are there other sources of revenue instability that are not addressed or could be addressed better by another methodology? *(If submitting comments on this issue, please use comment header: **6. Revenue Recovery Adjuster**)*
- Do commenters agree that a two-year fee schedule revision cycle is desirable and practical for keeping pace with program cost changes? Do commenters agree that stability and avoidance of administrative burden are sound reasons for not adjusting fees annually or at some other frequency? Should fees be adjusted less frequently than every two years? *(If submitting comments on this issue, please use comment header: **7. Two-Year Fee Schedule Revision Cycle**)*
- Do commenters agree that EPA's publication of fee schedule changes to the e-Manifest site 90 days prior to the effective date of fee schedule changes is sufficient

notice to users of fee revisions? *(If submitting comments on this issue, please use comment header: **8. 90-Day Lead Time for Fee Schedule Changes**)*

- Do commenters agree with the use of the CPI-U to measure inflationary impacts on program costs between the first and second year of each fee schedule? Is there a different index or another measure of cost changes that would more accurately reflect the changes in the labor and IT commodities and services costs that are more representative of our e-Manifest program costs than the "market basket" of consumer goods and services which BLS tracks with the CPI? *(If submitting comments on this issue, please use comment header: **5. Inflation Adjuster**)*
- Do commenters agree that uncollectable manifests are appropriate for inclusion in a revenue adjuster to be paid for as fee increments by those users who are timely with their fee payments? How else can EPA ensure full cost recovery in the face of the instability posed by those who might become delinquent in their payments? *(If submitting comments on this issue, please use comment header: **6. Revenue Recovery Adjuster**)*

#### *E. What Manifest Transactions Warrant Fee Premiums?*

##### **1. Background**

The consideration of fee premiums touches upon several of the user fee design principles discussed previously. Specifically, the EPA must balance economic efficiencies of user fees (align users' fees with the costs of providing services) and the equity of the fee system (beneficiaries pay their fair share vs. ability to pay considerations), while assuring the adequacy of resulting revenues and minimizing the administrative burden of the fee system. Consequently,

EPA prefers to keep the fee structure as simple as possible and balance the desirability of any fee premiums with the resulting complexity to the fee system and any resulting equity issues.

Therefore, the EPA does not strongly favor adding fee premiums to the fee structure, unless there is a compelling basis for such premiums. The EPA believes fee premiums could be appropriate to recover e-Manifest system related costs where:

- The activity benefits a particular user to a significant extent;
- It is more equitable to charge that user for a service than to have the costs shared collectively;
- The cost of the premium service can be estimated accurately, and is not outweighed by collection costs; and
- The premium could deter undesirable activities or produce other favorable policy outcomes.

## 2. What Fee Premiums has EPA Considered?

Based on the factors discussed earlier, EPA has considered the following as candidates for e-Manifest user fee premiums:

- Complex manifest transactions that incur greater cost (e.g., rejections and discrepancies, consolidated loads, split loads),
- Submission to and return of stray documents from the paper center,
- Help desk encounters,
- Manifest Q/A and correction submissions, and
- An additional paper manifest use penalty.

a. Complex Manifest Transactions. Complex manifest transactions typically require use of more than one manifest to effectively track and closeout the original manifest. There are



several variations of complex manifests, some of which<sup>16</sup> are detailed as possible candidates for fee premiums.

*i. Consolidated Shipments.* Consolidated shipments or split loads often require use of one or more manifests to effectively track and closeout the original manifest for the hazardous waste shipment. For instance, consolidated shipments require manifest users to link individual manifests from consolidated loads to a new manifest to present the overall description. The original manifests for such shipments must be linked and carried forward so that they may be closed out on receipt to the original generators. EPA has concluded that manifest activities for consolidated shipments do not necessitate fee premiums, because the multiple manifest nature of these transactions will itself provide for ample fees to be collected. Therefore, the EPA will not assess any additional fee premium for such shipments. Instead, EPA will assess a per manifest charge for each original manifest that is consolidated, plus an additional per manifest charge for the “cover” manifest that provides linkages to the original manifests and describes the total quantities of waste that are shipped.

*ii. Split or Breakdown Shipments.* This type of complex shipment occurs when a larger shipment of waste is divided into smaller shipments for transport, such as a rail car cargo that is off-loaded and reshipped on several truck shipment manifests. Thus, the larger shipment is considered to be "split" into or "broken down" into several smaller shipments that require individual, separate tracking. These split shipments may occur at either permitted facilities or at non-permitted RCRA 10-day transfer facilities.<sup>17</sup> EPA has concluded that a distinct fee premium

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<sup>16</sup> EPA did not include imports or exports, as we do not believe that completing the Item 16 data for international shipments introduced significant processing costs. Also, continuation sheets were not included as a candidate for a premium, as each sheet submitted as a continuation sheet would be charged a separate per manifest fee.

<sup>17</sup> These types of shipments may also occur at intermodal facilities, a specific type of permitted or transfer facility at which waste materials are transferred between modes of transportation, e.g., truck to rail.

is not needed for split or breakdown shipments. Again, because the tracking of these shipments will itself require the use of multiple manifests, the per manifest fees that result are ample to cover the costs of these complex tracking transactions. At a permitted facility, for example, the EPA would assess a fee for the original manifest when it is closed out at the permitted facility and also assess a separate per manifest fee for each resulting split load that is recorded on a new manifest. Further, if split shipments occur at a transfer facility, then the original manifest would be amended to indicate lesser quantities for a portion of the split load while another manifest(s) would be prepared for any remaining hazardous wastes. Thus, EPA would assess a per manifest charge for the amended original manifest and any additional manifests prepared for the split waste shipments when processed at a transfer facility. In such cases, no useful cost recovery purpose would be served by assessing any premium fee.

*iii. Hazardous Waste Rejections or Regulated Residues.* These complex manifest transactions occur when a designated facility receives a hazardous waste shipment but does not accept it, either because of restrictions in the facility's permit, capacity limitations, or other reasons. A partial rejection occurs if a designated facility accepts a portion of the shipment but rejects the remainder. Container residues, on the other hand, are hazardous wastes that remain in regulated amounts in containers such as drums and in tank vehicles used for transport, after most of the contents have been removed. The rejected hazardous wastes or regulated residues often are forwarded on new manifests that are linked to the original manifests. While the manifest tracking procedures for these shipment are complex, the EPA has determined that such transactions do not warrant a distinct premium fee, because EPA will assess a per manifest charge for the original manifest and a per manifest charge for the new manifest used to forward the full or partial shipment, or residue shipment.

In some instances, however, hazardous wastes rejections are forwarded on the original manifests and do not require use of a new manifest to forward the shipment or return it to the generator. EPA acknowledges that in these limited cases, the original manifest may be used to forward or return full rejections, and that additional data elements will need to be supplied to track such shipments. EPA, however, has concluded for this proposal that a premium is not necessary for such transactions. While completion of Item 18b to track continued shipping of rejected wastes on the original form will necessitate additional data entries, the intent of Item 18b is to enable continued tracking without completing a new form. EPA believes that it would be counter-productive to charge a fee premium for continuing the original form. In addition, the EPA does not believe significant costs to EPA would result from processing the additional Item 18b entries.

iv. *Help Desk Encounters.* A help desk will be established to assist e-Manifest users with technical issues (e.g., password, log-on, troubleshooting system connectivity issues) that arise in connection with their use of electronic manifests. Currently, the proposed Fee Formula discussed in Section III.C of the preamble includes help desk costs among the O&M costs that will be allocated generally to each manifest in the system. Help desk costs are a type of intervention for which there is some rationality in charging a per encounter fee to the users. This is particularly valid if it is found that certain users utilize the help desk excessively, thereby obtaining more than their "fair share" of services, and depriving others of help desk services. Despite the logic for charging a premium for help desk encounters, the EPA has determined at this time that the agency will not assess fee premiums for help desk costs. EPA intends to aggregate and apportion help desk costs as system O&M costs on a per manifest basis, as intended by the current fee calculation formula. Further, it is not clear whether a per encounter charge or a charge based on

time utilized would be more equitable for any premium. Given the uncertainties of pricing and collecting these types of fees, the EPA believes it makes greater sense to spread help desk costs across all manifests by aggregating these costs as part of system O&M costs.

*v. Submission and Return of Stray Documents.* Based on consultations with the states, the EPA has discovered that states frequently (about 25% of incoming mail) receive extraneous documents that are forwarded to their tracking programs along with the required manifests for processing. These extraneous documents can include cover letters, Land Disposal Restriction (LDR) or other regulatory documents, and even miscellaneous flyers or other documents of no relevance to the manifest. While the EPA will not collect and process these documents in the e-Manifest system, the agency has some obligation to return such stray documents to their senders. Therefore, the Agency intends to return stray documents (other than cover letters) to the senders without processing their content and initially retain the envelopes to enable their return. The effort to sort and return these documents by mail to their senders will introduce costs that EPA believes should be recovered by a fee premium.

The EPA has made this determination for a couple of reasons. First, the EPA believes that the administrative costs to the agency would be significant for scanning or retaining envelopes, weeding out stray documents for return, and for the postage and clerical costs of returning these items to senders. Consequently, the EPA believes it would be more appropriate for the agency to assess a premium fee per stray document for such activities rather than apportion them across all manifests by aggregating these costs as part of system O&M costs. Second, the EPA believes a fee identified with these submissions should help to deter these submissions from occurring prospectively. Based on these two factors, the EPA is proposing to assess a premium fee per stray document to TSDf users who include extraneous documents in

their submissions. The EPA also proposes to charge the fee at the time of paper manifest submission, so stray document premium fees could be added to the regular per manifest fee without difficulty. EPA requests comment on this proposed fee premium and on the point in the process for which the fee would be assessed (*If submitting comments on this issue, please use comment header: **9. Stray and Extraneous Documents***).

vi. *Manifest QA and Correction Submissions*. Based on consultations with several states with relatively robust manifest programs, EPA has learned approximately 10-20% of all manifests require corrections following submission to the states. Each state has its own method for conducting QA/QC with specific validation rules.

The most common issue found during state validation is illegible handwriting on the paper manifest, which seems to be the focal point of each state's QA/QC process. Some states will validate the handler IDs on the manifest against their database housing RCRA IDs. Other states attempt to identify typos or obvious errors with quantities, units of measure, and the handler information. Currently, if a manifest fails the state's QA/QC process, the state will notify the facility through official notice of correction, phone, or email of the needed correction along with any appropriate fines. In response, the facility will return the correction to the state, along with appropriate payments. Some states, such as California, have regulated processes for submitting signed correction letters with the corrected manifest. Other states may accept corrections verified by the handler via phone or email.

Because EPA will collect both electronic manifests and paper manifests that continue in use, the e-Manifest program must assume some responsibility in the QA/QC manifest process. The states also expect that the EPA would run some type of federal QA/QC on manifests received, such as several basic validation rules. Following the EPA's QA/QC process, the states

would then execute their state-specific QA/QC, as desired. Currently, the EPA is actively engaged in the development of the EPA system, and will establish the validation rules as part of system design. Prior to system launch, the EPA will request input from both industry and state stakeholders on the validation rules that would be used to identify manifest errors or share the validation rules with industry to help mitigate invalid manifests sent to EPA. Additionally, EPA could develop a validation engine that could be used by industry prior to submitting manifests.

Although EPA continues in its efforts for system planning and has not made final decisions regarding system design, the agency believes that there should be some submission required by TSDF users to execute manifest corrections in the e-Manifest data system. In section III.V of this preamble, the Agency in fact proposes such a data correction submission and process for initiating manifest data corrections. The regulatory requirements for such correction submission are proposed at §§ 264.71(l) and 265.71(l) of this proposed rule. In addition, the EPA anticipates that it would not receive manifest corrections by postal mail but would instead receive all manifest correction related submissions electronically. The section III.V corrections process discussed later in this preamble and in the proposed regulations would require all such corrections to be submitted electronically by facilities.

The Agency believes that it should not incur significant administrative costs resulting from electronic manifest corrections. For electronic manifests, manifest edit checks and corrections would primarily occur prior to submission. The e-Manifest system would apply validation rules that could be executed automatically, and the system could alert the user of any errors. Thus, the EPA is proposing at this time that it will not assess fee premiums for processing corrections submissions for electronic manifests. Instead, QA/QC process costs for electronic

manifests would be spread among the O&M costs that will be allocated generally to each manifest in the system.

While the EPA anticipates to also use some automated validation rules for all paper submission types (i.e., XML, postal mail, image file), the automated QA/QC checks in some instances would occur after manifest submission, particularly for postal mail submissions. Thus, the EPA believes it is likely that significant administrative costs will result to EPA for processing corrections to paper submissions. Thus, the EPA believes the paper manifest corrections process would involve allocable system costs in responding to the correction submissions and re-keying data to correct previous entries made in the system. For that reason, the EPA is proposing to assess fee premiums for processing corrections submissions for paper manifests. The EPA requests comment on the proposed premium fee for processing a correction submission for paper manifests. In addition, the agency requests comment on when in the paper processing operation such premium fees should be assessed and collected (*If submitting comments on this issue, please use comment header: **10. Paper Manifest Corrections***).

vii. *Paper Use Penalty.* As discussed previously in Section III.C of the preamble, EPA is proposing to assign a differential fee to each manifest type (fully electronic, XML, image, paper) based on the varying labor costs to EPA to process data from each type into the system. In addition, should electronic manifest adoption lag (not achieve 75% use in four years), EPA is proposing to transition to a fee calculation formula that would allocate the paper center's operation and maintenance costs only to the paper manifest submission types. The cost-based approach of the proposed fee calculation formula for allocating system development and operating costs would already result in a higher differential fee assessed for paper manifest use than for electronic manifests. For example, under the proposed fee formula, the EPA now

estimates paper manifests mailed to the system carry a per manifest charge about 88% greater than electronic manifests, while the paper manifests submitted as XML files would carry per manifest charges about 15% greater than fully electronic manifests. Thus, there is already a "premium" associated with paper manifest types, based solely on the formula's cost considerations. Moreover, the fee formula as proposed could become even more aggressive in elevating paper manifest fees in four years. Therefore, the EPA at this time does not believe that paper manifest usage necessitates a distinct or additional fee premium. Instead the EPA will defer any additional paper manifest premium until we see how actual implementation unfolds, and how the proposed fee formula itself operates as an incentive for greater electronic manifest use. The EPA requests comment on this proposal to rely on the fee formula itself to incentivize electronic manifest use, and not to include a distinct monetary penalty to discourage paper manifest use (*If submitting comments on this issue, please use comment header: **11. Incentivize Electronic Manifest Use***).

#### *F. How Will Fee Payments Be Made?*

##### 1. Background

The e-Manifest Act provides EPA the authority to collect fees for both electronic manifests and paper manifests that continue in use. The Act also granted EPA broad discretion to collect such fees in advance or as reimbursement services. Because Congress intended that the fees fully fund the e-Manifest system, EPA must institute a fee collection process that facilitates prompt payment of fees to ensure that the agency produces a stable revenue stream that will fully recover program developmental and operational costs. The EPA has considered several options to address how the e-Manifest system can most effectively and efficiently collect a large number of small value fees from TSDFs.



Specifically, EPA examined existing user programs within the agency to ascertain how these programs determine and revise their fee schedules, and to identify features or experiences in these programs that are takeaways for e-Manifest. For instance, the Toxics Substance Control Act (TSCA) authorizes fees for the Office of Chemical Safety and Pollution Prevention's (OCSPP's) lead abatement program. TSCA section 402(a)(3) authorizes fees for the accreditation of lead contractor training programs and certification of contractors engaged in activities that disturb lead-based paint during painting, renovation, remodeling, and repair of target housing. The original fees for the Lead-based Paint Activities program (the lead abatement program) were established in 1999.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) amendments passed by Congress in 2004 authorized a registration fee program to defray EPA's costs in reviewing and approving applications for specific pesticide registrations, amended registrations, and associated tolerance actions. The goal of this fee system is to create a more predictable evaluation process for affected pesticide decisions and to couple the collection of individual fees with specific decision review periods. The 2004 amendments are also known as the Pesticide Registration Improvement Act of 2003 (PRIA).

Section 217 of the Clean Air Act authorizes EPA to collect fees to recover Agency costs related to various activities (i.e. new vehicle or engine certifications, compliance monitoring, testing, etc.) incurred by the Office of Air and Radiation to administer its motor vehicle and engine compliance program (MVECP). Unlike the e-Manifest program, these programs receive additional appropriated funds, unrelated to the fees, to fund their program operations.

In addition, EPA consulted with the ETC, a trade association of commercial environmental firms that recycle, treat and dispose of industrial and hazardous waste. EPA

conferred with ETC and its members in April 2015 to gather feedback on several of the fee collection issues and options discussed in this proposed rule, as its members would be primary users of the system and responsible for fee payments. Based on examination of existing fee programs and our consultations with ETC, EPA is considering several fee collection approaches for e-Manifest. Specifically, the Agency is considering pre-payment options based on projected or historic use, and an invoicing option under which users would be invoiced for fees based on their actual manifest usage during the previous billing cycle.

## 2. Payment Collection Options Under Consideration

a. Pre-payments Based on Projected or Historic Use. EPA examined two variations of advance payments. Under the first approach, TSDF users would pay in advance one lump sum annual fee for their projected manifest usage for an entire year. Under the second approach, TSDFs would make monthly recurring payments of an advance, fixed amount. There is precedent for advance payments of user fees in several of EPA's existing user fee programs. For example, the EPA's Office of Chemical Safety and Pollution Prevention and Office of Air and Radiation fee programs typically require advance payment prior to administering program services involving the review of applications for the various certifications and registrations administered by those programs. Under the first advance payment approach, TSDFs would pay a one-time annual fee for the entire year. TSDFs users would self-declare on a fee calculation form provided by EPA the number of manifests they expect to use based on the prior year's usage amounts. In addition, TSDFs would be expected to apportion manifest usage between electronic and paper manifests. EPA would charge and collect the lump sum fee based on these projections. EPA would either credit TSDFs for overpayment (if their actual usage was less than predicted by previous year's usage), or invoice facilities at the end of the year for a reconciliation payment for

any actual underpayment, should actual usage exceed the estimates based on the previous year's usage.

Under the second pre-payment approach, EPA would charge TSDF users a fixed one-twelfth payment amounts on the first of each month, with the payments occurring as a pre-authorized Automated Clearinghouse (ACH) debit from a facility's commercial account. Like the lump sum advance payment option, TSDFs would be expected to self-declare the number of manifests they expect to use (based on prior year's usage) on a fee calculation form provided online by EPA. Facilities would also apportion their manifest usage between electronic manifests and paper manifests. In addition, the TSDFs would then divide their annual use projections by twelve to calculate the number of electronic and paper manifests projected per month. The appropriate monthly fee for electronic and paper manifests would be calculated, and from this calculation, the amount of the recurring monthly debit would be determined. The EPA would either credit TSDFs for overpayment (if their actual usage was less than predicted by previous year's usage), or invoice the facilities at the end of the year for a reconciliation payment for any underpayment, should actual usage exceed the estimates based on the previous year's usage.

b. Invoicing Users Monthly for Actual Usage. Under this approach, EPA would allow TSDF users to use manifests for a monthly period and then electronically invoice users for their actual manifest use over that billing month. Precedent exists at EPA for invoicing user fees, particularly in the Office of Pesticide Program's pesticide maintenance fee program, which invoices holders of active pesticide registration each year for the fees necessary to maintain their registrations.

The invoice for e-Manifest services would provide the following information:

- The TSDF's name, address and EPA ID Number;

- The total number of paper and electronic manifests transactions during the billing cycle;
- The manifest ID numbers and dates of service for each paper and electronic manifest used during the billing cycle;
- The billing cycle dates and invoice due date; and
- Any premium fees assessed during the billing cycle.

Unlike the aforementioned pre-pay options, the fees collected under this option in the first year and beyond are not based on projections from previous year's usage data, and are more precise in matching fee liability to a facility's actual manifest usage.

### 3. What methods of payment will be accepted?

TSDF users could use any payment method of their choice supported by the Department of the Treasury's Pay.gov<sup>18</sup> electronic payment collection services (or any applicable alternative or successor to Pay.gov developed by Treasury) as long as EPA's financial tracking systems are able to obtain and process the selected method of payment. Specifically, TSDFs would be expected to create payment accounts in Pay.gov and use one of the electronic payment methods currently supported by Pay.gov (e.g., Automated Clearing House debits (ACH) from bank accounts, credit card payments, debit card payments, or PayPal or Dwolla). Because Pay.gov does not accept paper checks as an approved method of payment, EPA will not accept paper checks as payment for e-Manifest services.

EPA will either develop with e-Manifest system activity data an invoice based on manifest usage, or, the Agency will transmit usage information to Pay.gov, which will generate electronic bills for facilities using Pay.gov's e-Billing Service. Thus, either EPA or Pay.gov will send notifications regarding bills electronically to facilities, and not by postal mail. Regardless

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<sup>18</sup> The URL for Pay.gov is <http://www.pay.gov>

whether the e-Manifest system or Pay.gov sends the electronic bill notification, it will direct the TSDF users to go to the Pay.gov payment site to obtain their invoices, and to make their electronic payment using one of the aforementioned electronic payment methods.

In the case of advanced payments, TSDF users would have to authorize EPA to debit their commercial banking accounts automatically, for the amount of the one lump sum payment in advance for the entire year of projected manifest usage. EPA would then invoice the TSDF user for a second or reconciliation payment, or credit its account for overpayment, at the end of the year.

Similarly, under the monthly pre-payment approach, TSDF users would have to pre-authorize EPA to debit their commercial banking accounts for the amount payable to EPA through Pay.gov automatically so that the recurring one-twelfth fixed payment amount could be debited each month. EPA would invoice a final reconciliation payment to a TSDF user, or credit its account for overpayment, at the end of the year so that actual usage and fee obligations could be squared with the projected usage figures used to generate the advance fee payments.

#### 4. Analysis of Payment Collection Options

EPA believes the pre-payment options as well as the monthly invoicing (reimbursement for services) option detailed previously are authorized by statute, attractive and implementable for e-Manifest. However, each option has distinct characteristics that create risks or complexities for either EPA or industry stakeholders. As mentioned previously, the user fees are intended to provide the resources necessary to enable full funding of the e-Manifest program without the need for additional sources of funding.

On an administrative level, the pre-payment options are advantageous, as they 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 could also 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 could also generate revenue more promptly for the initial year of system operations, facilitating EPA's ability to pay promptly its system related expenses, and also reduce the revenue stability risks posed by late or non-payments. However, the advance payment options would entail a greater administrative burden on the back-end of the collection process, because of the necessity to bill or invoice users at the end of the year for a reconciliation payment to square actual usage with estimated payments, or to process a credit in the case of overpayments. If users do not monitor their monthly payment records and track closely their actual manifest usage levels over the course of the year, disparities could develop that might produce unexpected billing amounts or possibly disputes at the end of the year. Finally, the monthly advance payment option has the advantage of harmonizing with the fixed, recurring electronic payment option supported by Treasury through Pay.gov. Currently, a recurring monthly payment to Pay.gov can occur as an ACH electronic payment, but only if the recurring monthly payment is for a fixed amount. EPA has aligned the advance monthly payment option, with its estimated monthly payment calculation, with the Pay.gov fixed recurring payment approach in order to take advantage of the nearly automatic nature of this specific electronic payment process.

Under the monthly invoicing (reimbursement) option, developing and executing invoices each month for several hundred facilities will entail more of an administrative burden on the front-end of the collections process, as EPA would need to process and each facility would receive and respond to 12 monthly invoices each year, rather than one reconciliation invoice at the end of each year. However, this option would eliminate the need for an annual reconciliation

process at the end of the year, and any billing surprises that might arise if estimated payments and actual usage should diverge during the year. For users, the monthly invoicing option also avoids the necessity for TSDFs to complete their application at the start of each year that computes the amount of their monthly fixed payment amount. Finally, the monthly invoicing (reimbursement) option is advantageous for users, as it bills facilities based on their actual manifest usage and their actual involvement with electronic and paper manifests. This approach does not raise issues of imprecision in revenue collection, as it would bill facilities for exactly the amounts due from the actual numbers and types of manifests submitted. However, the flipside of this advantage is that it potentially creates some revenue vulnerability to the e-Manifest program if payments are not made regularly and on time. In that event, EPA would be forced to engage in collection activities and pursue sanctions against delinquent fee payers, entailing additional administrative costs to the Agency.

In consultations with the ETC, the Agency learned that ETC members generally favor the invoicing approach to the advance payment options. ETC members advised that there are variations in manifest usage from year to year, and billing for actual usage avoids the imprecision of trying to estimate fees based on a previous year's usage. ETC members did indicate that with respect to advance payments, that option could be more attractive if the advance payments were paid monthly rather than as a lump sum, and if there were incentives (e.g., cost savings) tied to using this method.<sup>19</sup>

## 5. What is EPA proposing for its fee collection methods?

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<sup>19</sup> In a preliminary analysis of potential cost savings performed by EPA's Research Triangle Park Finance Center, it was estimated that an advance monthly payment option might result in cost savings to EPA of several hundred thousand dollars, primarily because of lesser staffing (FTE) needs for the reduced invoicing effort associated with this option. If these cost savings were distributed across all manifests, user fees under the advance monthly payment option could be reduced by perhaps 10 to 20 cents per manifest.

While EPA requests comment on both the advance monthly fixed payment approach and the monthly invoicing approach discussed previously, EPA is proposing to implement e-Manifest user fee payments, at least initially, by invoicing users monthly for their actual manifest usage activity in the prior month. EPA believes that there are advantages to billing monthly for actual usage, rather than for estimated usage from prior years' activities, and that this proposal will result in revenues matching system activity by users more precisely. The e-Manifest system will maintain records of manifest submission activity by users, and these records should provide a solid foundation for accurate billing and payment collections. However, the proposed approach will entail significant administrative effort by EPA to generate monthly invoices for all receiving facilities, and the potential for additional effort pursuing collection activities for any delinquent payments. These administrative efforts from invoicing facilities for monthly payments will result in additional operational costs that will need to be captured by the e-Manifest user fees. Despite the administrative effort and cost of invoicing monthly, the Agency believes that the monthly invoicing approach is a sound option for e-Manifest to implement initially.

While EPA is proposing the monthly invoicing option, we are also soliciting comment on the advance monthly payment option and an alternative option that combines these two approaches to payment collection. Under this alternative or combined option, EPA would initially invoice TSDFs in the first year (or longer period) based on their actual monthly manifest usage. EPA understands that during the initial period of the system's operations, there might be too many uncertainties about manifest usage rates and the numbers of electronic vs. paper manifests in use to enable the advance payment method to be used with confidence. However, after more is known about facilities' actual manifest usage, these concerns could diminish. Therefore, EPA is requesting comment on an approach to fee collections where after conducting



monthly invoicing for the initial year (or other period) of system operations, the Agency would then transition users to the use of payment plans enabling facilities to authorize a debit from a commercial account of a fixed, monthly advance ACH payment. This alternative is premised on the assumption that developing a baseline of manifest usage data from a year or more of invoicing activity would be helpful to projecting future manifest usage, and that such information would be sufficient to develop estimated monthly payments under an advance fixed payment method. As discussed earlier, this option would enable users to take advantage of a nearly automatic monthly electronic payment that could be scheduled and debited on the same day each month. Any deviation between projected and actual usage and fees would be addressed by the reconciliation process at the end of the year, resulting in an electronic bill for the amount owed or a credit.

#### 6. Request for Comment.

EPA requests comment on the proposed monthly invoicing approach and the alternative options (*If submitting comments on this issue, please use comment header: **12. Payment Options***). Do commenters agree that a monthly invoicing approach based on actual manifest usage is preferred to the other options, even though it may entail additional administrative effort and cost to implement? If there are concerns with the proposed approach, what are those concerns, and what payment option(s) would commenters prefer to the proposed approach?

With respect to the advance monthly fixed payment option, EPA requests comments on the perceived advantages and drawbacks of this option. Is there sufficient attractiveness to users in being able to make a nearly automatic monthly payment rather than having to respond to an invoice? Are the TSDF receiving facilities able and willing to authorize automatic ACH debits, e.g., on the 1st of each month, from their commercial bank accounts to cover a fixed, monthly e-

Manifest fee payment? Are the differential costs and savings from using advance monthly payments sufficient as an incentive to encourage their use? What other features or incentives could be included in this payment approach to make it more agreeable to users? What risks might this payment method pose to users if implemented?

With respect to the alternative or combined option, EPA requests comment on the merits of a transition to advance payments after an initial period of experience with monthly invoicing. The Agency asks also for comments whether the one year timeframe discussed previously would provide adequate time for TSDf users to develop a reliable baseline of manifest usage. Is there some other timeframe that would be more suitable to support the transition to advance monthly ACH payments? If comments should disclose significant support for advance monthly payments, and there are cost savings under this approach, should EPA promote or require the transition from invoicing to advance payments?

If EPA were to decide in the final rule to offer both an advance monthly payment option and an option with monthly invoicing or reimbursement for services, should EPA impose a differential fee or premium fee reflecting the different administrative cost of processing payments under the two approaches? The Agency solicits comment on these matters.

*G. How will EPA Address User Fee Disputes?*

EPA recognizes that over the course of invoicing many facilities for their manifest fee obligations, errors may occasionally be made, and such errors may give rise to disputes concerning the amount of a user fee payment that is due in response to an invoice. In this regard, EPA emphasizes that the fee disputes relevant to this discussion are instances in which a facility questions the amount of an invoice because of an error in applying the fee formula to the facility's reported manifest activities. These disputes are not related to questions about the fee

formula itself, or the underlying methodology EPA is proposing in this notice to determine the fee levels that apply to manifest related transactions. There are regulatory or judicial processes available for participating in or challenging such regulatory decisions. In addition, the Agency will conduct regular meetings with the e-Manifest Advisory Board to discuss any concerns with the fee setting process, the program's fee levels, and the financial reports of the system's revenue collection and expenditure activities.

Therefore, the issues that EPA considers to qualify as fee disputes for purposes of this discussion are those that arise when a facility's monthly invoice presents the facility with a fee amount that the facility challenges, because the invoice does not accurately describe the numbers of manifests submitted in the prior billing period, because the invoice does not accurately describe the types of manifests (paper types vs. electronic) submitted by the facility in the prior billing period, or, because the invoice appears to have made a mathematical error in generating the amount of fees due under the invoice.

EPA 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 believes will be sufficient and less burdensome than a formal process.

EPA will post on the e-Manifest web site a phone number and an e-mail address where users may take up 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 e-mail, 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 e-mail 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 be expected 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 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.

EPA requests comment on the proposed informal dispute resolution process (*If submitting comments on this issue, please use comment header: **13. Fee Dispute Resolution***).

#### *H. How Does the Proposed Rule Address Fee Sanctions?*

##### 1. Background

In this section of the proposed rule preamble, EPA discusses the sanctions that will be included in the e-Manifest fee program to induce manifest users to pay their fee obligations promptly. Particularly because e-Manifest fees may be collected as accounts receivable or as reimbursement for manifest services provided, it is important that the fee program include a set of credible and significant sanctions, so that delinquent payments will be discouraged. Otherwise, if delinquency or non-payments were to be commonplace<sup>20</sup>, the e-Manifest fee program would become vulnerable to revenue instability. Such instability would quickly jeopardize our ability to operate the e-Manifest system on a self-sustaining basis and to meet our user fee and financial obligations.

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<sup>20</sup> EPA expects that most RCRA TSDFs will in fact stay current with their e-Manifest fee obligations, and that delinquent or non-payment issues involving the user community will be relatively rare. Nevertheless, the Agency must be prudent and develop the necessary sanction tools that will provide it with the remedies to ensure the credibility of the e-Manifest fee program.

EPA finds relevant to this topic this additional federal user fee design guidance from the GAO that speaks to the need for fee payment sanctions as a necessary means to promote revenue stability in user fee programs.<sup>21</sup> In a section of this September 2013 report addressing remittance compliance, the GAO noted that penalties and other tools may be necessary to ensure timely fee remittance. GAO provided examples that included interest charges and denial of agency services.<sup>22</sup> In addition, in another report reviewing the U.S. Customs and Border Protection's (CBP's) international air passenger inspection program, the GAO observed that agencies should develop fee remittance sanctions that are "strong enough to deter unwanted behavior, but not so severe that they cannot practically be imposed."<sup>23</sup> Thus, drawing from the experience and guidance reported by the GAO, the challenge for the Agency in proposing e-Manifest user fee sanctions is to propose a mix of sanctions which are strong enough to ensure prompt payment of fees and revenue stability, while avoiding sanctions that are so severe that they are unlikely to be imposed and are thus perceived as not credible by manifest users.

## 2. What Fee Payment Sanctions Are Being Proposed by EPA?

For the purpose of ensuring timely payment of e-Manifest user fees, EPA is proposing a mix of financial, publication, and RCRA enforcement sanctions, and requesting comment on denial of services and the suspension of a facility's authority to receive wastes as other possible sanctions. Our aim in announcing these proposed sanctions is to develop a plausible mix of

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<sup>21</sup> U. S. Government Accountability Office, *Federal User Fees, Fee Design Options and Implications for Managing Revenue Instability*, pp. 28 – 29, September 2013.

<sup>22</sup> The examples cited in this section by GAO included denial of landing rights to airlines by Customs and Border Patrol (CBP) for non- or late payments of international air passenger inspection fees, and withholding Federal Communications Commission action on licensing proceedings involving delinquent licensees until arrangements made for payment of fees.

<sup>23</sup> GAO-07-1131, *Federal User Fees, Key Aspects of International Air Passenger Inspection Fees Should be Addressed Regardless of Whether Fees are Consolidated*, pp. 32-33, September 2007. GAO noted that the sanction that would deny landing rights to airlines for delinquent or non-paid fees had only been invoked 4 times in 20 years, suggesting that the sanction was perceived as too severe to be credible.

available sanctions that can be scaled to the degree of the offense caused by delinquency or non-payment. That is, we intend to develop sanctions that will ratchet up in their severity based on the degree and duration of the delinquency.

a. Financial Claims Collection Penalties. There are financial penalties that will apply to delinquent e-Manifest fee payments, under the authority included in existing federal claims collection statutes. Under 31 U.S.C. 3717, there are included interest and additional financial penalties that may be imposed on outstanding or delinquent debts arising under a claim owed by a person to the U.S. Government. Specifically, under 31 U.S.C. 3717(a)(1), agencies shall charge a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending September 30th of each year, rounded to the nearest whole percent.<sup>24</sup> Under EPA's implementing Policy Number 2540-9-P2, accounts are considered delinquent when EPA does not receive payment by the due date specified on a bill or invoice. EPA expects and is proposing that the due date for e-Manifest fee payments would be 30 days from the date of invoicing. EPA is proposing that its e-Manifest fee sanctions will cite to this federal claims interest charge authority as the first tier of e-Manifest fee payment sanctions.

Second, under 31 U.S.C. 3717(e), authority is provided to agencies to collect an additional penalty charge of not more than 6% per year for failure to pay any part of a debt more than 90 days past due, as well as additional charge to cover the cost of processing delinquent claims. Under Policy Number 2540-9-P2, the EPA Finance Centers are responsible for issuing demand notices and conducting collection efforts for the Agency. The EPA Finance Centers will

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<sup>24</sup> This rate of interest is known as the Current Value of Funds Rate or CVFR, and is published prior to November 30th of each year by Treasury. At the time this notice was written in 2016, the rate was set at 1.00%.

assess interest, handling, and penalty charges in 30 day increments for late payments, and will assess the 6% penalty with the 3rd demand letter or notice.<sup>25</sup>

EPA therefore proposes to include this additional 6% financial penalty charge for e-Manifest user fee debts that are more than 90 days past due. This would be the second tier of sanction authority under this proposal's set of fee payment sanctions, and would be implemented if the first tier of interest charges (assessed for fees 30 days past due) is not effective in causing a delinquent fee payer to make their payments current.

The Agency requests comment on the proposal to incorporate the financial interest and penalty charges set out in the previously referenced Federal claims collection statutes as the first and second tier of e-Manifest fee payment sanctions (*If submitting comments on this issue, please use comment header: **14. Financial Sanctions***).

b. Publication of a Delinquent Payor's List. As the third tier of proposed fee payment sanctions, this action would include a list or registry of payors whose user fee payments remain delinquent even after the imposition of financial penalties and opportunities to cure the delinquency. Consistent with the policy of ratcheting sanctions, EPA proposes that facilities would become eligible for inclusion in the list of delinquent fee payors when the period of their delinquency extends to 120 days or greater. EPA believes that the negative publicity of being included on such a list would motivate payors to pay their fees promptly. Under this proposal, the List of Delinquent Payors would be maintained by EPA at its e-Manifest program web site. The listing would indicate the name of the delinquent facility, its EPA ID Number, and the amount of the delinquency at the time of the listing. EPA would remove such facilities from the

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<sup>25</sup> Under EPA policy, claims that are 150 days delinquent are referred to the Agency's Cincinnati Claims Officer, who can refer these debts to Treasury for further collection.



Delinquent Payor's List once it has been determined that the delinquency has been cured to the satisfaction of the Agency.

EPA requests comment on the inclusion of a Delinquent Payor's List among the sanctions that would be available to the Agency in the event of serious, continued delinquency of e-Manifest user fee payments (*If submitting comments on this issue, please use comment header: **15. Delinquent Payors List***). Will the publicity resulting from the publication of a facility's delinquent payment status be an effective inducement to pay fees promptly? Is 120 days past due an appropriate period of time to demarcate the more serious fee delinquencies that merit this sanction? Are there other measures that should be included in this sanction that would cause it to be more effective as a possible sanction?

c. RCRA Enforcement. This proposed rule defines a fully completed manifest as one that has been submitted to the system either as an electronic manifest or in one of its paper submission types, and for which the assessed fees for submission and/or correction have been paid when due. EPA contends that if any manifests remain incomplete because of owed fees, then the facility may be in violation for failure to fully complete a manifest per proposed § 264.1315(d) and/or § 265.1315(d). EPA could enforce this violation under RCRA section 3008. The magnitude of fees unpaid, and the duration of their delinquency, are factors to be considered by enforcement officials in determining an enforcement response to this proposed regulatory violation. Any enforcement action taken would be separate from the fee collection process under 31 U.S.C. § 3717, if the enforcement action results in the payment of a penalty rather than an order demanding the payment of fees owed to the government.

d. Denial of Service and Other Sanctions.

EPA also requests comment on the appropriateness and means by which EPA could deny access to e-Manifest services to those users who are exceedingly delinquent in their manifest fee payments (*If submitting comments on this issue, please use comment header: **16. Denial of Service Sanction***). In those instances in which the proposed financial, publication, and enforcement sanctions do not cure delinquent payments, is it appropriate at some point for the Agency to mitigate its revenue losses and cut off e-Manifest services to delinquent fee payors? Should denial of services extend to access to and submission of electronic manifests, to submission of paper manifests for processing by the system, or perhaps to both? Would the "exceedingly delinquent" payment behavior warranting such a severe sanction be determined by the dollar amount of the delinquency, or, by the length of time that payments remain delinquent? What dollar amounts and time periods for delinquencies would be appropriate conditions to impose on this type of sanction? Would a delinquency of 150 days, 180 days, or some other period of delinquency warrant the imposition of such a sanction? What types of notice and opportunities to cure should be provided prior to the imposition of a denial of service sanction? To what extent should the cutting off of e-Manifest services be combined and announced with the publication of the list of delinquent payors? The Agency requests comment on these matters.

Finally, EPA requests comment on other possible sanctions that might be considered as we develop our final user fee regulation (*If submitting comments on this issue, please use comment header: **17. Suspension of Facility Authorization***). While the Agency has requested comment on a denial of e-Manifest services sanction, there are other sanctions that could be targeted more directly on a delinquent facility's operations as an authorized facility to receive hazardous wastes from off-site for management. At what point does the fact of significant, delinquent payments call into question the ability of the facility to continue as a viable

commercial facility? Is there a rational connection between non-payment of manifest fees and a facility's being authorized to continue managing hazardous wastes? If this is a legitimate concern for this regulation, what administrative actions should EPA have available to mitigate the harm posed by such facilities continuing to receive hazardous wastes? Should EPA be able to suspend or withdraw such facilities' EPA ID numbers, so that they cannot be listed as designated facilities on others' manifests? Are there other means by which EPA could prevent such facilities from receiving wastes from others during the time that they remain egregiously delinquent in paying their e-Manifest user fees? What amount or period of delinquency would be the appropriate trigger for this type of sanction? If a facility wishes to dispute the invoices presented to it for payment, how should this be done in the context of the proposed sanctions? What administrative process (i.e., notice, opportunity for hearing or cure) would need to be followed in administering such a sanction and any fee dispute process? EPA requests comment on these issues.

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

##### **A. *What is the EPA proposing to change?***

The EPA is proposing to modify its current regulations regarding transporter changes to shipment routing on the manifest. Specifically, the EPA is proposing to revise the manifest regulations at 40 CFR 263.21 by revising existing paragraphs (a) and (b) of that section so that transporters that act as agents of the generator can change en route the transporters designated on the manifest without prior, explicit approval from the generator, provided that their contract with the generator grants them explicit authority to make such routing changes as agent of the generator. The Agency is limiting this change to only allow the generator's agent to make changes on the generator's manifest and to only allow the generator's agent to change a

transporter designated on the manifest, or to add a new transporter, without explicitly consulting with and obtaining prior approval from the generator each time a change occurs. This proposed regulation does not authorize any broader grant of 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 for the generator 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, this proposed 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. The EPA recognizes that data quality could be improved if transporters corrected errors during transport, but the agency believes that it is inappropriate for transporters to make such changes, because the generator has already certified with its signature that the contents of the shipment are “fully and accurately described.” Transporters typically have had ample opportunity to verify the shipment data with the generator at the time of waste shipment pick-up, and thus should have corrected any errors in shipment data and descriptions prior to beginning transport. Further, EPA believes the reexamination of the container contents or shipping descriptions for accuracy of the shipment

data should be performed by the designated facility, rather than transporters, as they are responsible by regulation to reconcile and report discrepancies related to a generator's shipment.

Finally, this proposed regulation also would not affect EPA's adoption of DOT's Hazardous Materials rules and policies in the March 2005 Manifest Revisions rule pertaining to "offerors" and pre-transportation functions for hazardous waste shipments. Unlike this proposed transporter regulation, the offeror language adopted in that rule applies only to pre-transport functions, such as preparing the manifest and shipment for the generator. 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 proposed regulation, 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. The transporter granted such contract authority must note in Item 14 of the manifest that it is authorized by the generator by contract to designate new or additional transporters as necessary.

*B. Why is EPA proposing changes to 40 CFR 263.21(a) and (b)?*

The EPA's current regulations regarding transporter changes to shipment routing assumes that the generator alone is responsible for identification of the complete chain of transportation and must, therefore, be consulted on and approve of all deviations from the routing plan (June 26, 1991, EPA letter from Sylvia Lowrance, OSW Office Director, to Brian Engel; RCRA Hotline Response # 13781, March 1, 1996). In accordance with the current manifest regulations at 40 CFR 263.21(a) and (b), transporters must deliver the entire quantity of hazardous waste accepted from a generator or transporter to the designated or alternate facility, the next designated transporter, or the designated export destination. Transporters who cannot deliver

hazardous waste according to the generator's designation because emergency conditions prevent delivery must contact the generator to have them designate another facility or transporter. In each case, the delivery options are limited to 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, any changes to the routing plan, including changes to transporters designated on the manifest, require generator consultation and approval.

More recently, however, the transporter industry has argued that agency authority granted to transporters in contracts with their generator customers allows them to sign or act "on behalf of" and change the routing for the generator without specific consultation with the generator on each such change. The transportation industry contends that transportation efficiency often necessitates such changes, particularly at transfer facilities, and that the transporters and brokers have far more expertise than generators in arranging the logistics of hazardous waste shipments. Thus, from the perspective of the transporter industry, generators should be allowed to authorize transporters or brokers, by contract, to fulfill their generator responsibilities. According to the transporter industry, any transporter requirement to consult with the generator regarding routing changes is satisfied when a transporter, acting as agent of the generator, makes a transporter substitution or addition "on behalf of" the generator pursuant to such a contractual provision.

In addition, since the enactment of the e-Manifest Act in October 2012, the EPA has conducted several outreach efforts including face-to-face public meetings with industry stakeholders to ascertain and define current and future manifest workflow and system requirements to help facilitate e-Manifest adoption by current paper manifest users once the system is established and made available for use. Based on conversations with industry, the EPA has learned that generators rely very heavily on transporters or brokers to prepare the shipments

and arrange shipment logistics on their behalf. In fact, many generators have contracts with transporters or brokers, which explicitly authorize them to:

- Identify potential transporter(s) to carry the waste shipment;
- Schedule the transportation;
- Assist the generator in completing the manifest;
- Ensure that manifest paperwork is properly handled and distributed during and after transportation;
- Obtain the generator's signature on the manifest or sign it as the offeror or on behalf of the generator; and
- Assist the generator in the DOT packaging, labeling, marking requirements.

Based on these factors, the EPA is proposing to change its regulations for several reasons. First, we recognize that the current regulation is inconsistent with what appears to be common industry practice regarding transporter changes to the routing of a shipment. The adoption of the 1980 final manifest regulation was based on prominent pre-RCRA incidents in which transporters and brokers often acted unscrupulously by diverting hazardous waste shipments to unauthorized sites involving "roadside" or "midnight" dumping. Thus, the 1980 regulation reflected EPA's intent at that time 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. Since that time, however, EPA further understands that brokers and transporters, not the hazardous waste generators, typically have the greater expertise in arranging the logistics and routing of hazardous waste shipments, and often must make certain

transporter changes for logistical purposes when the shipment is already en route. Many hazardous waste generators, particularly small quantity generators, are quite willing to authorize brokers and transporters, through contracts, to act as their agents to fulfill generators' manifest requirements. Therefore, EPA is proposing to change its regulations related to transporter designations on the hazardous waste manifest during transport to align it more closely with the current industry practice that enables such changes to be made for transportation efficiency pursuant to contractual authority granted by the generator. Proposing this change in regulations would help to maintain a consistent national position on the manifest, particularly as the agency continues its efforts to establish the e-Manifest system. EPA regulations will now more closely reflect industry practice, and EPA can develop technical requirements for the e-Manifest system that are consistent with this proposal.

As a result of the proposal, changes in the description of transporters could 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, as a result of this proposal, 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.

The regulatory changes proposed to effectuate transporter changes would recognize two distinct classes of transporters involved in such changes. Proposed § 263.21(b)(2) would apply 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, the proposed rule would continue the prior requirement to consult with the generator and obtain the generator's explicit



approval of the proposed changes in the shipment's routing. Proposed § 263.21(b)(3) would apply 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 describe its contractual authorization in Item 14 of each manifest for which such a change is made. In addition, proposed § 263.21(b)(4) would clarify 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 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 these proposed regulatory changes.

The EPA requests comment on its proposal (*If submitting comments on this issue, please use comment header: **18. Transporter Changes en Route***).

## **V. Manifest Data Corrections**

### *A. Background*

EPA is including in this action a proposal that would address the process and requirements by which facilities may make corrections to manifest data after the delivery of wastes to a facility under the manifest. At the time of delivery of wastes to a facility by a hazardous waste transporter, the facility owner or operator signs the manifest to certify to the receipt of the waste materials shipped under the manifest, or, to indicate discrepancies. While in

many instances, this may be the last action taken by the receiving facility with respect to the waste shipment, the Agency is aware that there are other instances, perhaps involving as many as 20% of received shipments, where a correction must later be made with respect to the information shown on a manifest that was previously signed by the receiving facility.

In our discussions with industry and state stakeholders, we have heard that there are many instances where a waste handler identification number, or a hazardous waste code, is entered incorrectly or is interpreted incorrectly on account of legibility issues with the manifests. Such inaccuracies may not be caught by the waste handlers while the hazardous waste shipment is en route, but may be flagged by the receiving facility or by state regulators after delivery when they are keying the manifest data into their data systems. There should be a process to correct such data in e-Manifest, so that the appropriate generator sites, transporters, or receiving facilities are identified with the waste shipment in the companies' and agencies' data systems.

There are also a variety of reasons why waste quantity and type data entered on the manifest might require corrections after the delivery of hazardous wastes under the manifest. As we have noted previously, the use of the manifest in practice does not always result in precision in determining the types and quantities of wastes received, particularly at the time of delivery by the transporter. Generators and offerors may provide estimates of quantities of wastes shipped on the manifest, such as by indicating the shipment of three drums of a hazardous waste, and indicating the quantity shipped by using the container capacity as an estimate. Since the piece count (i.e., number of containers) is accurate, the receiving facility could sign for the receipt of the containers, and there would not be a "significant discrepancy" within the meaning of the manifest regulations. However, several hours, days, or perhaps weeks after receipt, the facility may discover on closer inspection that the containers are only partially filled, and that the actual

quantities of wastes received and managed differs from the generator's estimates. Similarly, bulk waste shipments may also be shipped under a manifest showing the quantities estimated by the generator or offeror. However, after receipt at the facility, it may be determined that the actual weight or quantity of bulk waste differs from the generator's or offeror's estimates, but not perhaps at the 10% level or greater that would trigger a "significant discrepancy" that would be required to be noted on the manifest. Even with respect to waste types<sup>26</sup>, there are instances where the types of wastes received may be found to differ from those indicated as shipped on the manifest by the generator or offeror, but either were not obvious at the time of receipt, or could not be determined until well after delivery when the containers were opened and waste analysis was performed on the container contents by the facility. These are just several examples illustrating how inaccuracies in data may arise in connection with the use of the manifest in tracking waste shipments and deliveries. However the inaccuracies arise, the e-Manifest system should provide an orderly process for effectuating changes to the data in the e-Manifest system post-delivery.

#### *B. Why is Manifest Data Correction Important?*

EPA considers the correction of manifest data to be an important system objective for a couple reasons: (1) our state partners need accurate waste handler and waste receipt data in order to assess accurate waste management fees from the generators and receiving facilities that may be subject to such fees in the states; and (2) EPA needs quality waste receipt information from manifests in order to comply with the Manifest Act's mandate that EPA integrate e-Manifest with waste receipt reporting for the RCRA Biennial Report.

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<sup>26</sup> Instances for which differences in waste types or significant discrepancies in bulk waste receipts are not discovered until after delivery may require discrepancy reporting as well. For purposes of this discussion, we are focusing only on the post-delivery process for correcting the manifest data that are found to be inaccurate.

As regards the state interest in waste management revenues, EPA is aware that there are about 23 states that currently maintain state-specific manifest tracking programs. While these manifest tracking programs are useful for a variety of program management and compliance monitoring functions, many of these states depend on the data from hazardous waste manifests to support their assessment of taxes or fees related to waste management activities in their states. Several of these states impose taxes or fees on waste generators based on the amount of hazardous or other state-only regulated wastes that these entities generate in the states. Additional states with tracking programs impose such taxes or fees on their receiving facilities based on the amount of hazardous or other state-only regulated wastes that they receive for management at facilities within these states. In either case, the accuracy of these tax or fee assessments is dependent on the quality of the manifest data available to the state tracking programs. As e-Manifest will assume manifest collection functions now performed by these states, with EPA sharing the data collected by e-Manifest with these states, EPA believes it has a responsibility to the states and industry submitters to ensure that the system retains data of sufficient quality to support this function. The e-Manifest Act, in section 2(e)(3), states that a primary measure of a successful e-Manifest system is the development of a system that “meets the needs of the user community, including States that rely on data contained in manifests.”

As regards the EPA’s interest in the Biennial Report, EPA’s efforts here are governed by section 2(e)(3)(iv) of the Act, which states that an additional measure of a successful e-Manifest effort is the development of a system that “provides the waste receipt data applicable to the biennial reports required by [RCRA] section 3002(a)(6).”

Manifests are by their nature records of off-site shipments of wastes and their receipts at authorized receiving facilities. Thus, manifest data are a good starting point for any effort to

determine biennially what waste types and quantities were received at particular waste management facilities for disposition. The manifest collects for each off-site shipment the information on the quantities and types of wastes shipped, information identifying by site ID the particular generator and receiving facility, and the management method codes describing the intended management process for each waste. However, as suggested earlier, there are known issues surrounding the quality of the data entered on manifests, and these data quality issues touch upon data related to the accurate identification of generator sites and receiving facilities, and to the data related to the accuracy of waste type and quantity information. In scoping out the effort of integrating e-Manifest and the waste receipt reporting functions of the biennial report, EPA understands that a fundamental task that must first be accomplished is an orderly and consistent correction or clean-up process for the data entered on manifests. The objective of such manifest data correction must be to produce final data points that have been sufficiently vetted by the receiving facilities and other interested persons, so that the receiving facility would be satisfied with supplying the corrected manifest data as accurate and complete waste receipt data for biennial reporting purposes.

### *C. What is EPA Proposing for Manifest Data Corrections?*

EPA is proposing that all manifest corrections will be submitted by facilities (TSDFs) electronically, regardless whether the data undergoing correction arises from a paper or electronic manifest. Only the receiving facilities would be permitted to make manifest data corrections in the e-Manifest system. Such corrections or changes could be made by the facility on its own initiative after conducting its own Quality Assurance (QA) activities, or, after notice from another waste handler, or notice from EPA or a state, of an apparent data quality issue with one or more manifests.

Under the approach proposed, facilities would be able to make corrections on-line directly via the e-Manifest system web-based application, or, the facilities could make corrections by uploading a correction submission using a submission format (e.g, XML file) prescribed by the Agency relating to one or a batch of previously submitted manifests. For those corrections made directly via the e-Manifest system web application, EPA would require the person responsible for the correction to execute a CROMERR-compliant electronic signature prior to completing their correction submission (i.e. clicking on the “submit” button). Likewise, for those corrections made through a correction submission relating to one or a batch of manifests, the submission would include and require the execution of a CROMERR-compliant electronic signature. The electronic signatures associated with manifest correction submissions would have the facility’s representative certify, under penalty of law, that to the best of their knowledge and belief, the corrections that are included in the submission will cause the manifest data for each affected waste shipment and receipt to be true, accurate, and complete. In the case of batch corrections, only one certification need be executed for all the manifests and corrections involved in the batch submission.

The web application or the prescribed format for correction submissions would collect information from the facility that includes the Manifest Tracking Number and Date of Facility Receipt of the original manifest that is being corrected, the Item #s of the original manifest that are subject to correction, and for each Item # corrected, the data previously entered and the corresponding data as corrected by the correction submission. Items from the original manifest that are not subject to correction should be omitted from the correction submission, and will be presumed to be unchanged.

EPA is also proposing that all corrections to manifest data in e-Manifest must be completed by the date 90 days from the date of receipt by the facility of the waste shipments recorded on the original manifest. EPA previously determined in the One Year Rule of February, 2014, that the e-Manifest system would not disclose any manifest data to the public until 90 days after the date of receipt of manifested wastes, unless otherwise required by federal law. EPA further explained that the reason for delaying public disclosure for 90 days was the Agency's recognition that manifests are frequently corrected after waste receipts occur, and that EPA considered manifests to be "in process" and excluded from public disclosure until the 90-day window for dealing with discrepancies, exceptions, and other corrections had elapsed. Consistent with this determination, EPA is now proposing that this 90-day window would be the general deadline for correcting and thus finalizing manifest data. Thus, after the 90-day window of the One Year Rule has elapsed, this proposal would clarify that not only would EPA consider manifest data to be open to disclosure to the public, but also to be presumptively final and complete data for all regulatory purposes, including the compilation of waste receipt reports per the RCRA biennial report.

Finally, EPA believes that there should be an orderly process in place for completing all manifest data corrections within the proposed rule's 90-day window. EPA is proposing that all initial correction related notices, whether a voluntary correction submission by the TSDF, or a notice of a data error from another interested person (i.e., other waste handler, EPA, or a state), must be provided no later than 60 days from the date of receipt of the wastes shipment under the affected manifest(s).

For corrections initiated by the facility, once the initial correction submission is entered by the TSDF, other waste handlers and appropriate states would be notified of the facility's

corrections, and these persons would have 15 days to respond to the TSDF's corrections. If a facility's correction should elicit a response from one or more of these persons, then the facility must reconcile by day 90 any responses it receives by either altering the corrected data accordingly, or affirming the correction as initially made by the facility.

For corrections initiated on account of notice received by day 60 from another waste handler or from EPA or a state, the facility would have 15 days to respond to such notice by either entering a correction submission responding to the notice given, or, by affirming that the data originally entered is accurate and needs no correction. While other interested persons, may respond to the TSDF's initial response to the request for data corrections, the reconciliation of all such comments and responses must be concluded by the facility by day 90.

EPA previously indicated that it was proposing a user fee charge for the Q/A and data key entry effort that necessarily would accompany the submission of corrections to the system. Since the proposed approach would rely upon either a direct web application entry of corrections by the TSDF or an XML-based batch upload of corrected data, EPA believes that the per manifest fee that would be charged for XML-based manifest submissions is a fair approximation of the cost and therefore the appropriate fee to charge for manifest data corrections. Thus, this fee would be assessed for each manifest affected by a correction submission, EPA requests comments on the proposed approach for the submission of manifest data corrections to the system, and the fees to be assessed for such corrections (*If submitting comments on this issue, please use comment header: **19. Submission of Manifest Data Corrections***).

## **VI. Mixed Paper and Electronic Manifest Transactions**



## *A. Background*

In the One Year Rule, EPA 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. 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 developing the One Year Rule, EPA initially considered allowing some types of mixed electronic and paper manifests, in the interest of maximizing the number of manifests that could be executed electronically, and thereby leveraging additional paperwork burden reductions. For example, EPA considered an option under which the generator and receiving TSDF might participate and transmit shipment data electronically, with perhaps intermediate transporters being allowed to continue to carry paper forms and execute ink signatures, if such transporters were not able to participate electronically. However, after fleshing out further what steps would be required to maintain a complete log of the custody chain and the entire record of the waste shipment using mixed manifests, EPA rejected the mixed manifest option. See 79 FR 7518 at 7549 (February 7, 2014). EPA explained this decision by observing that there would be too many manual processing steps required of receiving facilities to maintain a complete record of the shipment and sustain a mixed process, and that these additional manual steps (i.e., noting the details of manual signatures on electronic manifests and merging the electronic and paper manifest data in the system) would likely overwhelm any paperwork burden reductions that might otherwise result from using electronic manifests. *Id.* We also noted that such mixed

electronic and paper manifest transactions could pose significant enforcement challenges, as the enforceable record would consist of both paper and electronic components. *Id.*

### *B. Discussion*

EPA is reevaluating whether there are instances in which a mixed electronic and paper manifest might be beneficial, particularly in the early years of e-Manifest implementation. Such a mixed or “hybrid” electronic manifest might be one means to overcome initially the challenges posed by implementing electronic manifesting at certain hazardous waste generator sites that lack the means to participate electronically.

For a variety of practical and administrative reasons, the use of electronic manifests by waste generators poses special challenges for EPA in implementing e-Manifest. First, many waste generators ship small quantities of wastes, and may ship such wastes infrequently. These smaller, occasional generators may operate from sites that lack a live network connection, thus necessitating support for off-line manifest completion. Moreover, these smaller, occasional generator sites may find password-based electronic signatures to be particularly challenging to execute, as they may not only be off-line at the sites where manifest signatures must be executed, but they may not be able to recall or locate their passwords or challenge question responses when they encounter e-Manifest infrequently. Second, as there are tens of thousands of generator sites within the RCRA universe, and each such site may employ several individuals with manifest responsibilities, there will be substantial administrative requirements related to registering generator personnel as authorized users and signatories, identity proofing each such generator signatory, supporting CROMERR copy of record processes that involve individual signatories in responding to post-signature notifications, and otherwise meeting the CROMERR electronic reporting standards as they relate to generators.

After consideration of these challenges at generator sites, EPA is reevaluating whether the current restriction on mixed electronic and paper manifests is an appropriate policy for e-Manifest. Our concern is that the current restriction allows no exceptions, and could unnecessarily rule out implementation flexibility at sites where a phase-in of electronic manifesting may be useful.

For example, EPA is exploring with the user community whether there may be merit to a mixed paper/electronic manifest option whereby some generators may choose to complete the initial generator copy of the manifest as a conventional paper manifest that would be signed in ink by the generator and the initial transporter. The transporter and receiving facility would, however, complete the remainder of the manifest transaction electronically. This ink signed copy could then be left with the generator as its initial generator copy, such as occurs under the existing manifest process. The transporter would deliver the waste to the next transporter or to the designated facility, and at delivery could present the electronic manifest on its portable device to the next handler for its electronic signature. Once the TSDF has signed electronically for waste receipts, the final electronic copy could then be distributed electronically through the e-Manifest system to the various waste handlers and to interested state agencies. Thus, with the exception of the initial copy that is signed in ink and left at the generator site, the remainder of the transaction would be executed electronically, and many of the desired efficiencies and burden reductions from electronic manifesting could still occur across the remainder of the manifest completion and distribution chain.

EPA believes the scenario discussed in this example could be particularly advantageous as an initial or interim phase of e-Manifest implementation. From our initial planning work on e-Manifest, the Agency believes that the implementation challenges posed at such generator sites

may be among the most vexing issues to resolve, particularly with respect to conducting electronic manifesting off-line, to complying with the CROMERR requirements for user and signatory registrations, to conducting identity proofing of signatories, to complying with copy of record processes, and to executing valid electronic signatures. The suggested hybrid approach might circumvent these difficult compliance issues for generators by allowing such generators to execute and retain a paper copy bearing conventional ink signatures.

Therefore, EPA is proposing to amend § 262.24 by modifying the paragraph (c) restriction on mixed electronic and paper manifest transactions. The proposed modification would leave in place the general rule that an electronic manifest may be used only when it is known that all waste handlers may participate electronically, but would create an exception in proposed § 262.24(c)(1) to authorize the generator only to sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter for its records. This proposal would thus excuse generators from participating electronically, while still allowing others in the manifest chain of custody to participate in the electronic manifest. EPA requests comment on this proposal (*If submitting comments on this issue, please use comment header: 20. Hybrid Approach*). Are there other scenarios that would benefit from flexibility on this issue, in addition to the example cited here of generator sites and the unique challenges these sites pose to a fully electronic process? Do commenters agree that the generator site scenario is a good candidate for a mixed or hybrid manifest approach? Can such an approach be implemented with simplicity, avoiding the concerns raised in the One Year Rule that mixed processes might entail additional manual processing steps that might defeat the benefits of electronic manifesting? If commenters believe there are other scenarios that might benefit from a mixed manifest approach, please explain such scenarios in detail, and discuss in your comments how the complete chain of

custody could be documented and accessed easily, without the implementation complexities that gave rise to the ban of mixed manifest processes that we announced in the February 2014 regulation.

## **VII. The Projected Economic Impacts of the Electronic Manifest**

### *A. Introduction*

EPA estimated the costs and benefits of the proposed 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. EPA would appreciate any information to improve the accuracy of this estimate.

### *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 \$183 million. EPA would appreciate any information to improve the

accuracy of this estimate (*If submitting comments on this issue, please use comment header: 21. RIA*).

#### *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 \$149 million when discounting at 7%. Since the pre-rule cost of manifesting is estimated to be \$183 million, annualized cost savings from electronic manifests are estimated to be \$34 million.

EPA expects that electronic manifests will enhance many stakeholders' ability to track and extract data on waste shipments by storing and distributing this 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.
- Foreign governments of countries that ship hazardous waste to, or receive hazardous waste from, the U.S. should benefit from the greater availability of manifest data. They may desire this data for safety, security, and programmatic reasons similar to those of the U.S. federal and state governments.
- 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	Post-rule Costs	Cost Savings
\$183 million	\$149 million	\$34 million

## VIII. State Implementation

### *A. Applicability of Rules in Authorized States*

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, the state 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 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. Thus, 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 not governed by these requirements. Rather, the RCRA manifest requires strict consistency in its implementation, so that any EPA changes to federal manifest requirements 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).

The proposed e-Manifest user fee requirements in subpart FF of 40 CFR parts 264 and 265 would be promulgated under the authority of the e-Manifest Act. However, the user fees addressed in this proposed rule are a uniquely federal requirement that EPA, and not states, must administer. All e-Manifest system fees are to be paid only to EPA, to be deposited in the e-Manifest System Fund, from which EPA may spend such amounts that are appropriated by Congress to offset the system's development and operation costs. Therefore, states cannot be authorized to collect and administer these user fees in lieu of EPA.

Although states cannot receive authorization to administer the federal government's e-Manifest program user fees, state programs would still be required to adopt the user fee provisions of this proposed rule in order to maintain consistency with the federal program. When a state adopts the user fee provisions of this proposed rule (if finalized), 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. Again, the user fee provisions of this proposed rule, if final, would take effect (under federal authority) in all states on the effective date announced in the final rule, and would be administered solely by EPA, and not by the states.

In addition, this proposed rule includes a conforming change to 40 CFR 271.12, that would clarify that authorized state programs must include requirements for hazardous waste management facilities 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).

Finally, EPA notes that several authorized state programs operate manifest tracking programs that collect manifest data from the manifests that arise in connection with waste generation or waste receipts at sites within their states. Several of these states 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 some state manifest tracking programs and related fees may continue for the foreseeable future. However, it is likely that in the future state tracking programs will obtain their manifest data from the e-Manifest system, rather than directly from regulated waste handlers. 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. The e-Manifest system is intended to enhance overall efficiency. As such, state tracking programs will likely rely on the e-Manifest system to provide the manifest data to support their program management needs and their waste generation or management fee

collections. 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.

## **IX. 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 an economic analysis of the potential costs and benefits associated with this action, which is available in the docket.

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

The information collection activities in this proposed 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 0801.21. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This implementation of the 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 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 and benefit estimates in this user fee rule.

*Respondents/affected entities:* Private waste handlers.

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

*Estimated number of respondents:* 56,306.

*Frequency of response:* On occasion.

*Total estimated burden:* 2,002,841 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$91,674,429, includes \$25,554,370 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.

Submit your comments on the Agency’s need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the

EPA using the docket identified at the beginning of this rule (*If submitting comments on this issue, please use comment header: **22. ICR***). You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to [oria\\_submissions@omb.eop.gov](mailto:oria_submissions@omb.eop.gov), Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than **[insert date 30 days after publication in the *Federal Register*]**. The EPA will respond to any ICR-related comments in the final rule.

### *C. Regulatory Flexibility Analysis*

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 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 Regulatory Impact Analysis (RIA) conducted for this rulemaking found that the e-Manifest rule would significantly 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 \$34 million per year when discounted at 7%. The RIA estimates that these savings would accrue to firms of all sizes 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 estimates that the vast majority of manifests will be submitted electronically and therefore concludes that savings from e-Manifest will accrue to small and large firms. Because the e-

Manifest rule will relieve regulatory burden for small firms, the RIA concludes it 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. 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. The RIA, in particular Section 7.2, describes 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.

#### *D. Unfunded Mandates Reform Act*

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.

#### *E. 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.

#### *F. 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.

*G. 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.

*H. 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 is proposing user fees for use of an electronic system, which will not have a significant effect on the supply, distribution or use of energy.

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

This rulemaking does not involve technical standards.



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

The EPA believes 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.

**List of Subjects**

*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, Electronic reporting requirements, Hazardous materials transportation, Hazardous waste.

*40 CFR Part 264*

Environmental protection, Electronic reporting requirements, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Security measures, User fees.

*40 CFR Part 265*

Environmental protection, Electronic reporting requirements, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, User fees.

*40 CFR Part 271*

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

Dated: June 27, 2016.

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Gina McCarthy,  
Administrator.

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

## **PART 262---STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

1. 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.

2. Section 262.24 is amended by revising paragraphs (c) and (g) to 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]

\* \* \* \* \*

(g) *Imposition of user fee.* A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall

maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system.

## **PART 263---STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

3. 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.

4. Section 263.20 is amended by revising paragraph (a)(8) to read as follows:

### **§ 263.20 The manifest system.**

\* \* \* \* \*

(a)(8) *Imposition of user fee for electronic manifest use.* A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system.

\* \* \* \* \*

5. Revise § 263.21 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) If the hazardous waste cannot be delivered in accordance with paragraph (a)(1), (a)(2), or (a)(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 authority for the transport to make such changes on behalf of the generator,

(ii) The transporter describes such authorization in Item 14 of each manifest for which such a change is made, and

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

(4) 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.

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

6. 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**

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

#### **§ 264.71 Use of manifest system.**

\* \* \* \* \*

(j) *Imposition of user fee for electronic manifest use.* An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 264.71(a)(2)(v) of this part. EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system.

\* \* \* \* \*

(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 must be

completed by the owners or operators of the receiving facilities within 90 days of the receipt of manifested shipments of hazardous waste.

(1) Receiving facilities must enter all corrections to manifest data by electronic submission, either by directly entering corrected data to a web based service provided in e-Manifest for such corrections, or by an upload of a data file (e.g., XML 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 facility representative submitting the corrections certifies, under penalty of law, 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.

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



(4) Manifest data corrections initiated by the receiving facility should be initiated by a facility's correction submission no later than 60 days from the date receipt of the hazardous wastes under the affected manifest(s).

(i) Upon receipt of the facility's correction submission, other interested persons (other waste handlers on the manifests, EPA, appropriate states) will be provided electronic notice of the facility's proposed corrections.

(ii) Other interested persons shall have 15 days to respond to the facility's proposed corrections with any comments or suggested changes.

(iii) By the date 90 days after receipt of the original manifests for which data are being corrected, the facility must reconcile any comments received from other interested persons, and must either alter its correction submission accordingly, or affirm the accuracy of the initial correction submission.

(5) Manifest data corrections may be initiated by notice of a suspected data error provided to the facility by other interested persons.

(i) Any notice of a suspected data error from an interested person must be provided to the facility by e-mail or other form of electronic notice no later than the date 60 days after receipt of the original manifests affected by the suspected errors.

(ii) If timely notice of suspected data errors is provided to the facility, the facility shall have 15 days to provide its response to such notice by either submitting a correction submission with responsive data corrections, or by affirming that the data originally submitted are accurate and need no correction.

(iii) The facility must finally reconcile all notices or comments regarding data errors and corrections by the date 90 days after receipt of the affected hazardous waste manifests.

8. Subpart FF is added to read as follows:

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

Sec.

264.1300 Applicability.

264.1310 Definitions applicable to this subpart.

264.1311 Manifest transactions subject to fees.

264.1312 User fee calculation methodology.

264.1313 User fee revisions.

264.1314 How to make user fee payments.

264.1315 Sanctions for delinquent payments.

**§ 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.

*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.

*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, or by submitting both an image file and data file (e.g., XML) in a format supported by the e-Manifest system's paper processing center.

*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) 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 or designated facilities; and

(2) The submission of each paper manifest submission to the paper processing center by owners or operators of receiving or designated facilities;

(b) Supplemental fees shall be assessed on a per transaction basis for the following manifest related transactions:

(1) The sorting, recovery, and return to sender of extraneous documents or other information submitted to the paper processing center with mailed copies of paper manifests by owners or operators of receiving or designated facilities, and

(2) The processing of manifest data correction submissions by owners or operators of receiving or designated facilities, for the data entry, QA, and other activities necessary to process corrected data into the e-Manifest system.

**§ 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:

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

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

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

Where  $Fee_i$  represents the per manifest fee for each manifest submission type “i,”

$N_t$  refers to the total number of manifests completed in a year, and

(b) If after 4 years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA will transition to the following formula or methodology to determine per manifest fees:

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

*System Setup Cost = Procurement Cost + EPA Program Cost*

*O&M<sub>fully electronic</sub> Cost =*

*Electronic System O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services*

*O&M<sub>all other</sub> 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 eManifest System Related Services*

$N_i$  refers to the total number of one of the four manifest submission types “ $i$ ” completed in a year.

$O\&M_i\ Cost$  refers to the differential O&M Cost for each manifest submission type “ $i$ .”

### **§ 264.1313 User fee revisions.**

(a) 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 based on fiscal year data for the fiscal year beginning on October 1 of odd numbered years.

(1) The fee schedules will be published to users through the e-Manifest program web site by March 1 of each even numbered year, and will cover the two-year period beginning on June 1 of that year and ending on May 31 of the next even numbered year two years later.

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

$Fee_{iYear\ 2} = Fee_{iYear\ 1} \times (CPI_{Year\ 2-2}/CPI_{Year\ 2-1})$ , where

$Fee_{iYear\ 2}$  is the Fee for each type of manifest submission “i” in Year 2 of the fee cycle,

$Fee_{iYear\ 1}$  is the Fee for each type of manifest submission “i” in Year 1 of the fee cycle, and

$CPI_{Year\ 2-2}/CPI_{Year\ 2-1}$  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 adjustments to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage and of uncollectable manifests.

(1) The adjustment for imprecise estimates of manifest usage 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:

$Revenue\ Recapture_i = (N_{iYear\ 1} + N_{iYear\ 2})_{Actual} - (N_{iYear\ 1} + N_{iYear\ 2})_{Est} \times Fee_{i(Ave)}$ , where

$Revenue\ Recapture_i$  is the amount of fee revenue recaptured for each type of manifest submission “i,”

$(N_{iYear\ 1} + N_{iYear\ 2})_{Actual} - (N_{iYear\ 1} + N_{iYear\ 2})_{Est}$  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.

(2) The adjustment for uncollectable manifests shall be calculated using the following adjustment formula to calculate an Uncollectable Revenue recovery amount, which will be added to O&M Costs in the fee calculation formula of § 264.1312:

$Uncollectable\ Revenue_i = (N_{iYear\ 1} + N_{iYear\ 2})_{UNCOLLECTABLE} \times Fee_{i(Ave)}$ , where



$(N_{iYear1} + N_{iYear2})_{UNCOLLECTABLE}$  is the sum of the number of uncollectable manifests of each type “*i*” over the previous two-year cycle, and

$Fee_{i(Ave)}$  is the average fee charged for each manifest type “*i*” during the previous 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 or designated facility (the facility) in response to an electronic invoice or bill identifying manifest-related services provided 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 or successor 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 30<sup>th</sup> of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid by 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 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) *Publication of delinquent payors' list.* If e-Manifest user fee accounts remain past due for 120 days or more, EPA may include the facility responsible for the delinquent account on a List of Delinquent Payors that the Agency will maintain on the program's web site or similar medium where e-Manifest program information is provided.

(1) The information about delinquent payors shall include the name of the facility, the facility's EPA ID Number, and the amount of the delinquency at the time of the facility's inclusion on the List.

(2) The facility shall be removed from the List of Delinquent Payors when it has been determined that the delinquency has been cured to the satisfaction of the Agency.

(d) *Compliance with manifest completion requirement.* A manifest is fully complete when:

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

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

**PART 265---INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF  
HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

9. 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**

10. Section 265.71 is amended by revising paragraph (j) and by adding a paragraph (l) to read as follows:

#### **§ 265.71 Use of manifest system.**

\* \* \* \* \*

(j) *Imposition of user fee for electronic manifest use.* An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 265.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system.

\* \* \* \* \*

(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 must be completed by the owners or operators of the receiving facilities within 90 days of the receipt of manifested shipments of hazardous waste.

(1) Receiving facilities must enter all corrections to manifest data by electronic submission, either by directly entering corrected data to a web based service provided in e-Manifest for such corrections, or by an upload of a data file (e.g., XML 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 facility representative submitting the corrections certifies, under penalty of law, 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.

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

(4) Manifest data corrections initiated by the receiving facility should be initiated by a facility's correction submission no later than 60 days from the date receipt of the hazardous wastes under the affected manifest(s).

(i) Upon receipt of the facility's correction submission, other interested persons (other waste handlers on the manifests, EPA, appropriate states) will be provided electronic notice of the facility's proposed corrections.

(ii) Other interested persons shall have 15 days to respond to the facility's proposed corrections with any comments or suggested changes.

(iii) By the date 90 days after receipt of the original manifests for which data are being corrected, the facility must reconcile any comments received from other interested persons, and must either alter its correction submission accordingly, or affirm the accuracy of the initial correction submission.

(5) Manifest data corrections may be initiated by notice of a suspected data error provided to the the facility by other interested persons.

(i) Any notice of a suspected data error from an interested person must be provided to the facility by e-mail or other form of electronic notice no later than the date 60 days after receipt of the original manifests affected by the suspected errors.

(ii) If timely notice of suspected data errors is provided to the facility, the facility shall have 15 days to provide its response to such notice by either submitting a correction submission with responsive data corrections, or by affirming that the data originally submitted are accurate and need no correction.

(iii) The facility must finally reconcile all notices or comments regarding data errors and corrections by the date 90 days after receipt of the affected hazardous waste manifests.

11. Subpart FF is added to read as follows:

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

Sec.

265.1300 Applicability.

265.1310 Definitions applicable to this subpart.

265.1311 Manifest transactions subject to fees.

265.1312 User fee calculation methodology.

265.1313 User fee revisions.

265.1314 How to make user fee payments.

265.1315 Sanctions for delinquent payments.

**§ 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-only 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.

*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, or by submitting both an image file and data file (e.g., XML) in a format supported by the e-Manifest system's paper processing center.

*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) 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 or designated facilities; and
- (2) The submission of each paper manifest submission to the paper processing center by owners or operators of receiving or designated facilities;

(b) Supplemental fees shall be assessed on a per transaction basis for the following manifest related transactions:

(1) The sorting, recovery, and return to sender of extraneous documents or other information submitted to the paper processing center with mailed copies of paper manifests by owners or operators of receiving or designated facilities, and

(2) The processing of manifest data correction submissions by owners or operators of receiving or designated facilities, for the data entry, QA, and other activities necessary to process corrected data into the e-Manifest system.

**§ 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:

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

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

$$O\&M\ Cost =$$

$$Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost +$$

$$EPA\ Program\ Cost + CROMERR\ Cost +$$

$$LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManifest\ System\ Related\ Services$$

Where  $Fee_i$  represents the per manifest fee for each manifest submission type “i,”

$N_t$  refers to the total number of manifests completed in a year, and

(b) If after 4 years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA will transition to the following formula or methodology to determine per manifest fees:

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

*System Setup Cost = Procurement Cost + EPA Program Cost*

*O&M<sub>fully electronic</sub> Cost =*

*Electronic System O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services*

*O&M<sub>all other</sub> 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 eManifest System Related Services*

*N<sub>i</sub>* refers to the total number of one of the four manifest submission types “*i*” completed in a year.

*O&M<sub>i</sub> Cost* refers to the differential O&M Cost for each manifest submission type “*i*.”

#### **§ 265.1313 User fee revisions.**

(a) 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 based on fiscal year data for the fiscal year beginning on October 1 of odd numbered years.

(1) The fee schedules will be published to users through the e-Manifest program web site by March 1 of each even numbered year, and will cover the two-year period beginning on June 1 of that year and ending on May 31 of the next even numbered year two years later.

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

$Fee_{i\text{Year } 2} = Fee_{i\text{Year } 1} \times (CPI_{\text{Year } 2-2} / CPI_{\text{Year } 2-1})$ , where

$Fee_{i\text{Year } 2}$  is the Fee for each type of manifest submission “*i*” in Year 2 of the fee cycle,

$Fee_{i\text{Year } 1}$  is the Fee for each type of manifest submission “*i*” in Year 1 of the fee cycle, and

$CPI_{\text{Year } 2-2} / CPI_{\text{Year } 2-1}$  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 adjustments to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage and of uncollectable manifests.

(1) The adjustment for imprecise estimates of manifest usage 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:

$$\text{Revenue Recapture}_i = (N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{Actual}} - (N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{Est}} \times \text{Fee}_{i(\text{Ave})}$$
, where

$\text{Revenue Recapture}_i$  is the amount of fee revenue recaptured for each type of manifest submission “*i*,”

$(N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{Actual}} - (N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{Est}}$  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

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

(2) The adjustment for uncollectable manifests shall be calculated using the following adjustment formula to calculate an Uncollectable Revenue recovery amount, which will be added to O&M Costs in the fee calculation formula of § 265.1312:

$$\text{Uncollectable Revenue}_i = (N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{UNCOLLECTABLE}} \times \text{Fee}_{i(\text{Ave})}$$
, where

$(N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{UNCOLLECTABLE}}$  is the sum of the number of uncollectable manifests of each type “*i*” over the previous two-year cycle, and

$\text{Fee}_{i(\text{Ave})}$  is the average fee charged for each manifest type “*i*” during the previous 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 or designated facility (the facility) in response to an electronic invoice or bill identifying manifest related services provided 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 or successor 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 30<sup>th</sup> of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid by 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 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) *Publication of delinquent payors' list.* If e-Manifest user fee accounts remain past due for 120 days or more, EPA may include the facility responsible for the delinquent account on a List of Delinquent Payors that the Agency will maintain on the program's web site or similar medium where e-Manifest program information is provided.

(1) The information about delinquent payors shall include the name of the facility, the facility's EPA ID Number, and the amount of the delinquency at the time of the facility's inclusion on the List.

(2) The facility shall be removed from the List of Delinquent Payors when it has been determined that the delinquency has been cured to the satisfaction of the Agency.

(d) *Compliance with manifest completion requirement.* A manifest is fully complete when:

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

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

## **PART 271---REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS**

12. The authority section for part 271 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

13. Section 271.12 is amended by adding paragraph (k) to read as follows:

\* \* \* \* \*

(k) Requirements to pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system.

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