

revisions submitted by the State of Montana on June 28, 2000 and April 16, 2007. The revisions update Administrative Rules of Montana (ARM) provisions for Particulate Matter, and address Interstate Transport Pollution requirements of section 110(a)(2)(D)(i) of the Clean Air Act. On June 28, 2000, the Governor of Montana submitted revisions to ARM rules 17.8.101—Definitions; 17.8.308—Particulate Matter, Airborne; and 17.8.320—Wood Waste Burners. The June 28, 2000 submittal included also a declaration certifying the adequacy of the State SIP in regard to the infrastructure-related PM<sub>2.5</sub> elements of section 110 of the Clean Air Act (CAA). In the April 16, 2007 submission, the Governor requested EPA's review and approval of the "Interstate Transport Rule Declaration" adopted into the Montana SIP on February 12, 2007. In that same letter, the Governor rescinded the State's earlier request for approval of Montana's SIP in regard to the infrastructure-related PM<sub>2.5</sub> elements of section 110 of the CAA. In light of this rescission, EPA is not taking action on this declaration. This action is being proposed under section 110 of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a non-controversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives an adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Written comments must be received on or before March 27, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2007-0646, by one of the following methods:

- <http://www.regulations.gov>. Follow the on line instructions for submitting comments.

- E-mail: [videtich.callie@epa.gov](mailto:videtich.callie@epa.gov) and [mastrangelo.domenico@epa.gov](mailto:mastrangelo.domenico@epa.gov).

- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Callie Videtich, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129.

- Hand Delivery: Callie Videtich, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule, which is located in the Rules Section of this **Federal Register**, for detailed instruction on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Domenico Mastrangelo, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6436, [mastrangelo.domenico@epa.gov](mailto:mastrangelo.domenico@epa.gov).

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title, which is located in the Rules and Regulations section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 29, 2008.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

[FR Doc. E8-3339 Filed 2-25-08; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 260, 261, 262, 263, 264, 265, and 271**

[EPA-HQ-RCRA-2001-0032; FRL-8534-1]

**RIN 2050-AG20**

**Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System**

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

**ACTION:** Notice of data availability and request for comment.

**SUMMARY:** This notice announces the availability of additional information on

the electronic manifest (e-Manifest) project. Specifically, EPA's Office of Solid Waste and Emergency Response (OSWER) has made significant progress on the e-Manifest project since the publication of the April 18, 2006 public notice, which announced and requested comment on our intention to develop a centralized web-based information technology (IT) system that would be hosted on EPA's IT architecture. However, a few issues raised by commenters in response to the April 2006 public notice require further analysis on our part, as we make decisions concerning the e-Manifest system.

We received strong support in response to the April 2006 public notice to establish a national web-based system funded through user-fees. In addition, commenters generally supported our position that use of e-Manifests should be at the election of the users rather than mandatory. However, some commenters expressed concern that an optional system would create dual paper and electronic systems. Furthermore, industry and state comments in response to our position to allow confidential business information (CBI) claims for e-Manifests differed. Therefore, as explained in this notice, we are soliciting additional comment on EPA's position on these two issues. We remain committed to finalizing a federal regulation, once the necessary legislation is enacted, that will authorize the regulated community to use electronic manifests as the legal equivalent of paper manifests, and will consider the comments received on this notice, as well as other comments received from previous actions, before we make a final decision.

**DATES:** Comments must be received on or before April 11, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2001-0032 by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by electronic mail to: [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov), Attention Docket ID No. EPA-HQ-RCRA-2001-0032.

- *Fax:* Comments may be faxed to 202-566-0272, Attention Docket ID No. EPA-HQ-RCRA-2001-0032.

- *Mail:* Comments may be sent to Environmental Protection Agency, EPA Docket Center (EPA/DC), Resource Conservation and Recovery Act (RCRA) Docket, 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-

RCRA-2001-0032. Please include a total of two copies.

• *Hand Delivery:* Comments may be hand-delivered to the Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA-HQ-RCRA-2001-0032. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-RCRA-2001-0032. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

[www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the RCRA Docket, EPA/DC, EPA West,

Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is 202-566-0270. Copies cost \$0.15/page.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding specific aspects of this document, contact Richard LaShier, Office of Solid Waste, (703) 308-8796, [lashier.rich@epa.gov](mailto:lashier.rich@epa.gov), or Bryan Groce, Office of Solid Waste, (703) 308-8750, [groce.bryan@epa.gov](mailto:groce.bryan@epa.gov). Mail inquiries may be directed to the Office of Solid Waste (OSW), (5304W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does This Rule Apply to Me?

This rule could affect up to 223,000 entities in upwards of 600 industries involved in shipping approximately 12 million tons of RCRA hazardous wastes annually, using 5.0 million EPA Uniform Hazardous Waste Manifests (EPA Form 8700-22 and continuation sheets EPA Form 8700-22A). These entities consist of about 15,000 RCRA large quantity generator (LQG) waste shippers, plus about 146,000 RCRA small quantity generator (SQG) waste shippers, plus about 350 waste transporters, plus about 1,500 waste receiving treatment, storage, disposal facilities (TSDFs), plus 60,000 conditionally-exempt small quantity generators (CESQGs),<sup>1</sup> plus 23 state governments known to collect paper manifests as of 2004.<sup>2</sup> If you have any

<sup>1</sup> CESQGs are exempt from Federal RCRA hazardous waste manifesting regulations, but at least one state (CA) requires RCRA CESQGs to use the EPA manifest for hazardous waste shipments. We have included state-regulated CESQGs in the count of possible affected entities for this notice in order to provide a complete economic impact estimate, not just a narrower Federal waste impact estimate, because the operational scope of our planned e-manifest system will encompass manifest processing for state-regulated waste shipments, not just Federal-regulated hazardous waste shipments.

<sup>2</sup> As surveyed in 2004 with 49 states providing responses, 23 state governments currently collect completed paper manifests (source: "Analysis of Site Identification Questionnaire Collected in June and July of 2004", August 23, 2004, compiled by Paula Canter, Ohio EPA Division of Hazardous Waste Management, for the Association of State & Territorial Solid Waste Management Officials). The Michigan Department of Environmental Quality surveyed state government agencies on this question in January 2007, but only received 29 responses, so the older but more comprehensive 2004 survey is cited here. EPA estimates that these 23 states account for 0.74 million (35%) of the 2.14 million Federally-regulated hazardous waste paper manifests per year, and 0.89 million (32%) of the

questions regarding the applicability of this rule to a particular entity, consult the people listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR Part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

*The contents of this notice are listed in the following outline:*

##### I. Background of E-Manifest System

##### II. Final Rulemaking Efforts

###### A. Submission requirements to system for paper manifest copies

2.82 million state-regulated waste manifests collected per year, representing a total 1.63 million (33%) of the 4.96 million total paper manifests completed per year (based on extrapolation from the 2005 Federal hazardous waste shipment tonnage reported in EPA's 2005 RCRA Hazardous Waste Biennial Report).

- B. Public access to electronic manifests and CBI claims for manifest data  
 III. Request for Comments

### I. Background of E-Manifest System

On May 22, 2001, EPA published a notice of proposed rulemaking (NPRM) that proposed several major revisions to the hazardous waste manifest system, including proposed revisions aimed at adopting an electronic manifesting approach that would allow waste shipments to be tracked electronically, thereby mitigating the burdens and inefficiencies associated with the use of paper manifest forms (66 FR 28240).

Although comments generally supported an electronic tracking scheme, several significant issues were raised that necessitated further analysis and stakeholder outreach prior to adopting a final e-Manifest regulation. As a result, EPA held a two-day public meeting on May 19–20, 2004, to discuss and obtain public input on how best to proceed with selecting and implementing the future direction of the e-Manifest. We heard from both the hazardous waste management industry and state government attendees at the public meeting that there is a strong consensus (a) in favor of establishing a nationally centralized e-Manifest system that would consistently and securely generate and process electronic manifests, and (b) that system users would be willing to pay reasonable service fees to fund the development and annual operation of the system. The full proceedings for the May 2004 public meeting have been posted on our EPA Web site at <http://www.epa.gov/epaoswer/hazwaste/gener/manifest/e-man.htm>.

On April 18, 2006, we published a Notice of Data Availability (NODA) to request comment on our preferred approach for electronically completing and transmitting manifests through a national, centralized e-Manifest system that would be established and maintained through user-fees. Comments strongly supported EPA's suggested approach, but also raised a few issues about which we are seeking further comment. Specifically, waste management industry commenters questioned whether the resulting dual paper and centralized e-Manifest system would generate complexity and burden that would frustrate the transition to electronic manifests and thus, undermine the paperwork burden cost savings goal for the e-Manifest. State agency comments indicated that their support for electronic manifesting was contingent upon there being a means to ensure that a complete national set of manifest data would be established,

including data from both electronic manifests and any remaining paper manifests each year. According to these commenters, a centralized system that did not also contain the data from paper manifests would not present a complete picture of all RCRA and state regulated hazardous wastes. Consequently, such a system could result in some states having to maintain duplicative processes and systems to collect and track the data from the remaining paper forms. Thus, both industry and state commenters urged EPA to develop the final rule so as to lessen the effects of dual paper and electronic manifest systems.

The April 2006 notice also raised the issue of potential claims of CBI regarding the manifest data. Some state government commenters generally did not support CBI claims for manifest data and deemed manifests to be public records. Further, these commenters also indicated that their states have state legislation or policies which bar CBI claims with respect to manifests. On the other hand, comments from the waste management industry supported claiming manifest data as CBI. These commenters were especially interested in protecting customer information from being mined from electronic manifests by competitors. The industry members are concerned that the availability of this information electronically will enable competitors to obtain more immediate and efficient access to their customer information. Public access to paper manifests is currently limited by a number of factors: (a) EPA does not collect completed paper manifests, except for export and import manifests from transboundary waste shipments, so public access requests to the vast majority of completed paper manifests must be made to state governments, (b) as of 2004, only 23 state governments collect completed paper manifests representing only about one-third of the 5.0 million national manifests annually; and (c) although EPA's RCRA Hazardous Waste Biennial Report provides national hazardous waste shipment and waste receipt data which reveals EPA ID numbers, company names and addresses for waste shippers and waste receivers, the lag-time for public access to the Biennial Report data is at least one year<sup>3</sup> after any given data reporting year.

<sup>3</sup> EPA's published schedule for data reporting and report implementation milestones for the 2007 RCRA Hazardous Waste Biennial Report, is for completion of the 2007 data year report by December 2008, which represents exactly a one-year lag-time between public access (i.e., data availability over the internet) and the data year (2007); the 2007 Biennial Report schedule is

### II. Final Rulemaking Efforts

We are currently developing the final rule that will authorize the use of electronic manifests, and will address scope and other policy issues. However, the promulgation of this rule is contingent upon the enactment of legislation providing EPA the authority to collect user-fees to fund the development and operation of the system. Nevertheless, we continue to move forward with the rulemaking in anticipation of enactment of the needed legislation.

Based on the comments received in response to the April 2006 public notice regarding the merits of an optional electronic manifest approach and the CBI issue, we are announcing and requesting comment on our preferred approaches for addressing submissions of paper-based manifests to the electronic manifest system and for addressing CBI claims for manifest data. These approaches are discussed below.

#### A. Submission Requirements to System for Paper Manifest Copies

EPA agrees with waste management industry and state government commenters' concern that it would not be efficient to have an electronic manifest system collecting data only from electronic manifests, while another paper-based system addresses the data only from paper manifests. Therefore, we believe that the system being designed should be a unified system for processing and distributing data from all manifests, including data from paper manifests. We considered several options aimed at simplifying the process for collecting paper forms and at ensuring that the data collected from both electronic manifests and paper forms could be efficiently processed so that a comprehensive set of manifest data would be available to users and regulators. We have identified a preferred approach that we believe provides the most efficient solution to the dual paper/electronic systems problem.

Under our preferred approach, the final destination facility (i.e., designated final TSDF), for each hazardous waste shipment involving a paper manifest, would be required to submit the top copy (i.e., Page 1 of the 6-page set) of the paper manifest form to the e-Manifest system operator within 30 days of receipt of the waste shipment. While the

published at <http://www.epa.gov/epaoswer/hazwaste/data/biennialreport/index.htm>. However, the December 2008 scheduled completion of the 2007 Biennial Report database represents a three-year lag period relative to the prior biennial data year 2005.

e-Manifest system is not yet designed, we envision that the designated facility could mail a copy to the e-Manifest system operator or could transmit an image file to the EPA system so that the e-Manifest system operator could key in the data from the paper copies or image files to the data system. Alternatively, the designated facility could submit both the image file and a file presenting the manifest data to the system in image file and data file formats acceptable to the e-Manifest system operator and supported by the Central Data Exchange (CDX). For paper copies mailed to the system by designated facilities, the e-Manifest system operator would create or obtain an image file of each such manifest, and store it on the system for retrieval by state or federal regulators. The e-Manifest system operator also would key in, electronically scan using an optical character recognition (OCR) device, or otherwise transfer the federal- and state-regulated waste data from these paper copies to the e-Manifest system. By having all manifest data in electronic form, EPA could extract any data regarding RCRA hazardous wastes for inclusion in its data systems, while the states could pull off data from the system concerning both federally regulated RCRA and state-regulated wastes for processing in the states' own tracking systems.

We envision that designated facilities would be required to pay a fee to the system operator for processing the data from these final copies of the paper forms, and the fee would presumably vary with the type of submission (mailed copy, image file, or image plus data file), as these submission types would likely present a different level of effort insofar as the processing steps required to enter the form data into the system. It is likely that the fee paid by the designated facility would be passed on to the generator (*i.e.*, the designated facility's customer). We estimate that the paperwork burden cost to TSDFs for submitting a copy of the final manifest could be \$1.95 per paper manifest, for an incremental (*i.e.*, over current baseline) annual cost to TSDFs of between \$1.6 million and \$6.5 million per year. In addition, we estimate the possible fee that EPA's e-Manifest system operator (or other EPA-designated e-Manifest affiliate) might charge TSDFs for receiving paper manifests and for transferring (*i.e.*, imaging and keypunching) paper manifest data to the e-Manifest system, could be between \$0.25 to \$0.75 per paper manifest, for an incremental (*i.e.*, over current baseline) annual cost to TSDFs of between \$0.2 million and \$2.9

million. On a combined basis, we estimate these two components of paper manifest processing incremental costs to TSDFs could total between \$1.8 million and \$9.4 million annually, representing an average incremental cost to TSDFs of \$2.20 to \$2.70 per paper manifest. We invite public comment on our approach and the cost estimates.

We believe such an approach simplifies manifest copy submissions for the regulated TSDFs, who in the future would only need to provide designated facility copies to one location—the national centralized e-Manifest system—rather than supply copies to the numerous state agencies that now collect a copy of the final manifest. Further, it focuses the federal collection effort on a copy of the final paper manifest forms from the designated facilities, which provide the best accounting of the quantities and types of hazardous wastes that were actually received for management. We believe that providing a means to collect a complete set of hazardous waste receipts data from RCRA TSDFs (the merged set of paper and electronic manifest data), also may in the future provide EPA with the means to replace biennial reporting by TSDFs of waste receipts data with a much simpler approach that relies upon the designated facility data reported to the e-Manifest system.<sup>4</sup>

We also believe that there are a number of benefits of this approach to state programs. As states are connected to the e-Manifest system through EPA's National Environmental Information Exchange Network, they would be able to pull off the image files and the data keyed from paper manifests from this central processing service, just as they would be able to obtain the data and presentations of electronic manifests from the eXtensible Markup Language (XML) schemas and stylesheets transmitted on the e-Manifest system. This national data system also presents a much more efficient approach that can eliminate the need for discrete state systems designed to capture manifest data.

In addition, as the e-Manifest system operator would be able to assess appropriate fees for the paper processing and data entry activities necessary to process the data from paper forms and enter them into the e-Manifest system, the actual costs of providing these services would be recovered by the system operator from

the designated facility. Since we expect that electronic manifests will be much more efficient to process than paper forms, the differential fees that are established for paper and electronic manifest processing likely would operate as an additional incentive for the transition to electronic manifests.

While we intend to clarify in the final rule that the use of the electronic manifest format would be optional for members of the regulated community, our preferred approach to collect a copy of the final paper manifest forms from designated facilities and to process the data from these paper forms centrally means that these designated facilities will be required to interact with the e-Manifest system (*i.e.*, submitting data either electronically or by mail and paying established fees). Thus, this NODA confirms our intention to have a single national hazardous waste database.

Facilities that elect to use the electronic manifest format would submit their manifest information electronically as a natural consequence of participating in the e-Manifest system. The e-Manifest system would be designed for the purpose of distributing electronic manifest data among the users and regulatory agencies, while the electronic manifest information is being obtained, processed, and transmitted electronically via the e-Manifest system. On the other hand, those facilities and hazardous waste handlers that choose to use the paper manifest forms or are presented with paper forms rather than electronic manifest formats, would need to process the paper manifest forms physically in the conventional manner that has been the norm since the uniform hazardous waste manifest form was introduced in 1984. However, in place of sending a copy of the final manifest directly to the destination state, the final rule would require the designated facility to send Copy 1 of the paper manifest form to EPA's e-Manifest system operator. Thus, the designated facilities would be required to submit a copy of the final manifest to the e-Manifest system, either in the supported electronic format or as a paper copy, and pay a fee for this service. In other words, the use of the electronic manifest format would be voluntary under the final rule, although the submission of either a completed paper or electronic manifest to the EPA system operator and payment of an associated fee in every case would be required of designated facilities. Once this requirement is effective, and all copies of the final manifest (electronic or paper) from designated facilities are being submitted directly to EPA's e-Manifest system

<sup>4</sup> EPA intends to publish a notice and seek comment on potential changes to the Hazardous Waste Report (*i.e.*, Biennial Report) before any changes are made.

operator, the states would be able to obtain their copies of the final manifest and data from the e-Manifest system through their computer systems on the National Environmental Information Exchange Network. It is EPA's intent that the submission of the final paper manifest copy to the e-Manifest system would replace the requirement to supply paper manifests directly to the states. Since the states would have nodes in place on the Exchange Network for receiving manifest copies from the system, it would no longer be necessary for the states to require the direct submission of paper copies to the states. Thus, the paper copy submission requirement could replace the requirement for facilities to submit copies of the final manifest to the states. Note that the facilities that receive paper manifests will still need to retain a paper manifest copy among their own facility records for the 3-year record retention period in accordance with current requirements. We request comment on our recommendation to collect a copy of the final electronic and paper manifest forms from designated facilities and to process the data from these forms centrally.

#### *B. Public Access to Electronic Manifests and CBI Claims for Manifest Data*

1. *Individual Manifest Records and Commercial Confidentiality Concerns.* With the exception of export and import manifests from transboundary waste shipments, EPA previously has not generally collected hazardous waste manifests. While data from export or import manifests have been claimed as CBI in the past, since the adoption of the new hazardous waste manifest form (EPA Form 8700-22) and continuation sheet (EPA Form 8700-22A) (70 FR 10776 (March 4, 2005); 71 FR 19842, 19847 (April 18, 2006)), our records indicate that no CBI claims have been made at this time regarding any of the data contained in these manifests. Thus, until now, the Agency has not had a need to determine any national policy with respect to the eligibility of manifest data for CBI claims. Based on the information now available to EPA on this question, EPA has concluded that information contained in individual hazardous waste manifest records, including any individual electronic manifests that may be submitted and collected electronically through the e-Manifest system, is essentially public information and therefore is not eligible under federal law for treatment as CBI. The effect of this decision is that EPA would be making a categorical determination that it will not accept any CBI claims that might be asserted in the

future in connection with processing, using, or retaining individual paper or electronic manifests. This decision, we believe, should apply prospectively from the effective date of the e-Manifest final rule because the Agency has not previously announced this position and thus it would be unfair or inappropriate for the Agency to release such information, particularly for those companies that have previously made such a claim. Thus, it would not impact any CBI claims or any determinations made in the past by EPA in resolving manifest-related CBI claims. Our rationale is explained in the following paragraphs.

First, we believe that any CBI claim that might be asserted with respect to individual manifest records would be extremely difficult to sustain under the substantive CBI criteria. 40 CFR Part 2, Subpart B, and 40 CFR 260.2. As manifests are shared with several commercial entities while they are being processed and used, a business concerned with protecting its commercial information would find it exceedingly difficult to protect its individual manifest records from disclosure by all the other persons who come into contact with its manifests. For example, a business desiring to protect commercial information in the manifest context would need to enter into and enforce non-disclosure agreements or similar legal mechanisms with all its customers and other third parties and affected interests who might also be named as waste handlers on its manifests or who otherwise might be expected to come into contact with its manifests. Moreover, as many states now require the submission of generator and/or TSDF copies of manifests, and the data from these manifests are often made publicly available or reported in federal and state information systems, it seems apparent to EPA that much of the information that might be claimed now by industry commenters to be CBI is already available from a number of government and other legitimate sources. We have little information on whether states have withheld manifest or aggregate data, as the State surveys did not disclose any pattern of states withholding data. We do know, however, that California must withhold information in summary reports that links a customer and a transporter.<sup>5</sup>

<sup>5</sup> Hazardous waste transporters that are authorized by CA to use CA's consolidated manifesting procedures must submit quarterly reports to the CA EPA Department of Toxic and Substances Control (DTSC). The consolidated manifesting procedures apply to non-RCRA/CA hazardous waste or to RCRA hazardous waste that is not subject to the federal manifest requirements.

Second, we are aware that some state programs have denied CBI treatment to data contained in manifest records.<sup>6</sup> Some states disclose manifest records freely, and this has been the general practice among those states for more than 20 years. As far as EPA knows, free disclosure has been the common practice for dealing with data from manifest records among some states, and there have not been significant objections raised by members of industry to those states' disclosure practices. EPA is not persuaded that it should reverse this long-standing policy among those states by adopting a Federal policy that conflicts with the prevailing state laws and policies on this issue. We seek comment on other states' CBI treatment of manifest records and the data contained in them.

For these reasons, we believe that individual manifest records and data contained in them should not be subject to CBI claims since they are not entitled to protection as CBI in some states. This policy will apply to electronic and paper manifests, and to domestic and transboundary shipment manifests. While we intend to clarify in the final rule that individual manifest records would not be entitled to CBI protection, we also are considering limiting access to the preliminary/draft manifest data. Access would only be limited while the data are being collected and verified, as manifest data are processed and received by waste handlers, and exceptions or discrepancies are being resolved, in the system and before the manifest information is complete.

Specifically, the preparation and processing of a manifest is an iterative process that begins when the generator

The CA Health and Safety Code § 25160(d) prohibits the disclosure of the association between any specific transporter and specific generator. The list of generators served by a transporter is deemed to be trade secret and confidential business information for purposes of Section 25173 and Section 66260.2 of Title 22 of the California Code of Regulations.

<sup>6</sup> In January of 2007, the MI state representative on EPA's E-Manifest Final Rule Work Group disseminated a survey on behalf of ASTSWMO, through the Hazardous Waste Program Operations Task Force, to interested states in order to request information about their state manifest requirements, including the requirements for public access/CBI to manifest records. Eight states responded on how they currently treat or might treat manifest data as CBI. Responses from the eight states are as follows: One state (NY) denies CBI treatment to manifest records; One state (OH) allows TSDFs to claim CBI on their annual waste report; Four states (ID, OR, SC, CT) do not give CBI treatment to manifest data reported on quarterly or annual reports; and Two states (FL, MI) indicate that they would not give manifest data CBI treatment. In addition, three states (MD, NJ, PA) that participated on the work group, but were not included in the survey indicated that their state would not treat manifest data as CBI.

fills out and signs the generator portion of the manifest; continues as transporters review and correct the generator-supplied information, fill in any additional transporter data fields, and then sign to acknowledge receipt of the shipment; and concludes when the receiving facility enters facility data, signs to acknowledge waste receipts, rejections, or discrepancies, and then verifies the final status of the shipment to the generator (and to many authorized states) by sending the generator and states the final verified copy.

EPA believes that it typically will take up to 60 days from the start of a shipment for all the iterative manifest processing and verification steps to be completed. As part of this process, the designated facility must report waste receipts to the generator of that waste within 30 days of receipt of the waste. 40 CFR 264.71(a)(2)(iv). Any significant discrepancies must be reported to the EPA Regional Administrator or the authorized state if the discrepancy is not resolved between the generator and designated facility within 15 days from the designated facility's receipt of the waste. 40 CFR 264.71(b)(4) and 264.72(c). In addition, the existing regulations provide that exceptions must be reported by generators to EPA or authorized states if 45 days have passed since delivery of the hazardous waste to the initial transporter, and the generator still has not received a copy of the final manifest signed by the designated facility. 40 CFR 262.42.

Therefore, during the time that waste shipments are en route to the receiving facilities, and during the period of time after delivery of the waste when manifest exceptions and discrepancies may be reported, we intend to limit access to incomplete and unverified manifest data to only the entities involved with a shipment (and to regulators and emergency responders). These are the entities that have a need to know about the manifest data being entered on an electronic manifest, while the shipment is en route, or while the manifest data is subject to review and correction—that is, during the time for verifying and reporting waste receipts, exceptions or discrepancies, and resolving the exceptions or discrepancies.

However, after this 60-day period has passed, such that the electronic manifests are considered complete and final for regulatory purposes, EPA intends to make all manifest records available upon request in accordance with the Federal Freedom of Information Act (FOIA), 5 U.S.C. 552. We emphasize that this suggested

limited restriction on access during the manifest creation process is intended to protect the integrity and security of the manifest data during the period of time that the electronic manifest is being processed and verified by the waste handlers that are involved with the management of the waste shipment.

EPA requests comment on our decision to categorically and prospectively exclude manifests from eligibility for CBI claims. In addition, the Agency believes that the FOIA exemption for personal privacy does not exempt from production the names of company employees or independent contractors that appear in the manifests. EPA requests public comment on this position. The Agency also requests comment on its proposed policy of limiting access to incomplete and unverified manifest information to the waste handlers named on particular manifests (as well as regulators and emergency responders), and allowing full disclosure of manifest information that has been completed and verified by the receiving facilities. As we discussed above, EPA believes that the period of limited access to preliminary manifest data should extend no longer than 60 days after the start of the waste shipment. However, we request comment on whether 60 days is appropriate, or whether commenters believe that another period of time is more appropriate.

*2. Release of Aggregate Data and Competitive Harm Concerns.* EPA understands that the waste management industry may be concerned that the aggregation of manifest records and data contained in them in one national electronic system may enable competitors to obtain more immediate and efficient access to their customer information, thus potentially creating competitive consequences not experienced under the current paper system.

Because EPA has not previously collected manifest records electronically, we have no quantifiable evidence at this time to suggest that the manifest data that would be stored in EPA's national system would somehow create or cause competitive harm to persons or companies that would submit data to the e-Manifest system, if that data were released in aggregated form upon a FOIA request. Since the individual manifest records would not be eligible for CBI treatment for the reasons discussed above, it is a novel issue for EPA whether requests under FOIA for data aggregated from multiple manifests would require special handling by EPA under the FOIA

exemption for confidential business information.

Therefore, EPA is seeking public comment on how, if at all, the e-Manifest system should address any future FOIA requests for aggregate manifest data. First, EPA needs information on how substantial the harm would be to a company's competitive position (particularly since we intend to defer the release of electronic manifest data to the general public for 60 days) if aggregate data from multiple manifests could be obtained from EPA under a FOIA request. How would this situation differ quantifiably from the current situation where a FOIA request can be made for multiple manifests and the requester must then aggregate the relevant data in each of these manifests for himself or herself? How different would the situation be from that which occurs now with paper manifests given that a member of the public may generally obtain any number of paper manifests from states under the states' current manifest collection and tracking programs? Also, even if EPA could offer additional protection to aggregate e-Manifest data, what would be the benefit since requesters can instead direct their requests for electronic manifest records to the states? The states will routinely receive electronic manifest records from the e-Manifest system in their capacity as RCRA regulators. However, these states would not be required to follow EPA's determinations under the exemption for CBI of the Federal FOIA and could instead choose or be required to release all electronic manifest data as public information under their state laws and procedures. Given our uncertainty about the adverse effects or competitive harm to waste management businesses that would submit manifests to the national e-Manifest system, we seek comment on whether the release of aggregated data would adversely impact waste management businesses. In particular, we ask that the waste management industry substantiate their concerns, if any, that the aggregation of manifest data and the subsequent disclosure of that data would somehow release their company's confidential business information and thus cause substantial competitive harm to them. We also request information on how the waste management industry protects their confidential business information recorded on manifests in states that currently make manifest data publicly available.

If EPA were to determine that the waste management industry concerns for the disclosure of aggregate

information are legitimate and that they are not sufficiently addressed by the approach described above in this NODA, then we could develop another approach to mitigate the ability to efficiently create customer lists from aggregated data. For instance, we could design the e-Manifest system to provide the aggregated data in a redacted form, protecting either the identity of the generator, transporter, or TSDF so that anyone who requests aggregated data could not generate customer business information from it. We therefore request comment on how EPA should design and implement an approach to protect the disclosure of aggregate data of competitive value, if such an approach were appropriate. For example, what are the indicators of aggregated requests (e.g., requests of 50 or more manifests involving a single transporter or TSDF) that would justify our handling aggregated data differently from individual manifests for FOIA disclosure purposes? What information should be redacted from the data that are released to mitigate any competitive harm from the data disclosure? How can this process be automated so that it can be effectively implemented in an electronic manifest system that must address potentially millions of manifest records annually, and their related FOIA requests, without significant human intervention?

### III. Request for Comments

EPA requests comments on the policy issues discussed in this notice regarding our preferred approach that final copies of paper manifest records be submitted by designated facilities to EPA's e-Manifest system operator for data processing, and our categorical determination that individual or aggregate manifest data may not be claimed as CBI. The Agency also requests comment on various aspects of our proposed policy of limiting access to incomplete and unverified manifest information to the waste handlers named on particular manifests (as well as regulators and emergency responders).

EPA will consider the comments received pursuant to this notice, along with comments on the April 18, 2006 public notice, on the e-Manifest proposal in the May 2001 proposed rule, and the May 2004 Stakeholder meeting, as it prepares a final rule on the e-Manifest system.

Dated: February 19, 2008.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Refugee Resettlement

#### 45 CFR Part 404

**RIN 0970-AC28**

#### **Limitation on Use of Funds and Eligibility for Funds Made Available by the Office of Refugee Resettlement, Within the Administration for Children and Families, of the Department of Health and Human Services, To Monitor and Combat Trafficking in Persons**

**AGENCY:** Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement two provisions of the Trafficking Victims Protection Act (TVPA) (22 U.S.C. Chapter 78), as amended by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 (Pub. L. 108-193), that provide limitations on the use of funds. The provisions at Title 22 of the U.S.C. 7110(g) prohibit programs from using trafficking funds to promote, support, or advocate the legalization or practice of prostitution. They make ineligible to receive funds any organization that promotes, supports, or advocates the legalization or the practice of prostitution if the organization operates a program that targets victims of severe forms of trafficking, unless the organization provides assistance to individuals solely after they are no longer engaged in activities that resulted from their being trafficked. This proposed rule applies to funds that Congress appropriates for the U.S. Department of Health and Human Services for anti-trafficking purposes under Title 22 of the United States Code.

**DATES:** *Comment Date:* HHS will consider comments received on or before April 28, 2008.

**ADDRESSES:** You may submit your comments in writing to the Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human

Services, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., at the Department's offices at the above address. You may download a copy of this regulation at [www.regulations.gov](http://www.regulations.gov), or you may download a copy and transmit written comments electronically via the Internet at the following address: <http://www.regulations.acf.hhs.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

Vanessa Garza, Associate Director for Trafficking Policy, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, (202) 401-2334, or by e-mail at [vanessa.garza@acf.hhs.gov](mailto:vanessa.garza@acf.hhs.gov). Do not e-mail comments on the Proposed Rule to this address.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Statutory Authority**

This proposed rule implements two provisions concerning restrictions on the use of funds that were added to the TVPA by the TVPRA of 2003 and codified at Title 22 of the U.S.C. 7110(g). These provisions: (1) Prohibit any Federal funds appropriated under the TVPA, Public Law 106-386, and the TVPRA of 2003, or any amendments thereto, from being used to promote, support, or advocate the legalization or the practice of prostitution (designated the "Restriction on Programs" in the statute); and (2) make ineligible to receive Federal funds appropriated under the TVPA or TVPRA, or any amendments thereto, any organization that promotes, supports, or advocates the legalization or the practice of prostitution if the organization operates a program that targets victims of severe forms of trafficking, unless the organization provides assistance to individuals solely after they are no longer engaged in the activities that resulted from such victims being trafficked (designated the "Restriction on Organizations" in the statute).

##### **II. Background**

This regulation implements these statutory provisions as part of the U.S. Government's vigorous and comprehensive campaign to eliminate trafficking in persons at home and around the world. Congress and the Executive Branch are especially concerned about the significant role sexual exploitation plays in fueling trafficking in persons. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing,