Agency Name: Department of Health and Environmental Control

Statutory Authority: 44-56-30

Document Number: 4882

Proposed in State Register Volume and Issue: 43/5

Final in State Register Volume and Issue: 43/11

Status: Final

Subject: Hazardous Waste Management Regulations

History: 4882

By Date Action Description Jt. Res. No. Expiration Date

- 05/24/2019 Proposed Reg Published in SR

- 11/22/2019 Final to comply with Federal

Law, exempt GA review

- 11/22/2019 Effective Date unless otherwise

provided for in the Regulation

Document No. 4882

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Section 44‑56‑30

61‑79. Hazardous Waste Management Regulations.

**Synopsis:**

The Department of Health and Environmental Control (“Department”) proposes amending R.61‑79 to adopt three final United States Environmental Protection Agency (“EPA”) rules published in the Federal Register. The EPA requires state adoption of these rules, as the rules do not revise existing standards to make them less stringent. The “Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule,” published on May 30, 2018, at 83 FR 24664‑24671, revises several recycling‑related provisions associated with the definition of solid waste under Subtitle C of the Resource Conservation and Recovery Act (“RCRA”) and portions of the original rule that were vacated by the United States Court of Appeals for the D.C. Circuit. The “Confidentiality Determinations for Hazardous Waste Export and Import Documents,” published on December 26, 2017, at 82 FR 60894‑60901, amends existing export and import hazardous waste regulations by applying a confidentiality determination for documents related to the export, import, and transit of hazardous waste, and export of excluded cathode ray tubes. The “Hazardous Waste Electronic Manifest System User Fee; Final Rule,” published on January 3, 2018, at 83 FR 420‑462, establishes the methodology the EPA uses to determine and revise user fees applicable to the electronic and paper manifest to be submitted to the national Hazardous Waste Electronic Manifest System that became operational nationwide on June 30, 2018. Adoption of these rules is required to comply with federal law and will bring R.61‑79 into conformity with the federal regulations.

The Administrative Procedures Act, S.C. Code Ann. Section 1‑23‑120(H)(1), exempted these amendments from General Assembly review, as the Department promulgates the amendments for compliance with federal law.

The Department had a Notice of Drafting published in the March 22, 2019, *South Carolina State Register*.

**Instructions:**

Amend R.61-79 pursuant to each individual instruction provided with the text of the amendments below.

**Text:**

61‑79. Hazardous Waste Management Regulations.

Statutory Authority: 1976 Code Ann. Section 44‑56‑30

**Revise 61‑79.260. Table of Contents, Subpart A to read:**

Subpart A. General

260.1. Purpose, scope, and applicability.

260.2. Availability of information; confidentiality of information.

260.3. Use of number and gender.

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

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

**Revise 61‑79.260.2(b) to read:**

(b) Except as provided under paragraphs (c) and (d) of this section, any person who submits information to the Department in accordance with R.61‑79.260 through R.61‑79.266 and R.61‑79.268 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in S.C. Code Ann Sections 30‑4‑10 et seq. and 40 CFR 2.203(b). Information covered by such a claim will be disclosed by the Department only to the extent, and by means of the provisions contained in S.C. Code Ann Sections 30‑4‑10 et seq., and by means of the procedures, set forth in 40 CFR part 2, subpart B of this chapter.

**Add 61‑79.260.2(d) to read:**

(d)(1) After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used and submitted under sections 261.39(a)(5) and 261.41(a), and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under sections 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, and 265.71, whether submitted electronically into EPA’s Waste Import Export Tracking System or in paper format.

(2) EPA will make any cathode ray tube export documents prepared, used and submitted under sections 261.39(a)(5) and 261.41(a), and any hazardous waste export, import, and transit documents prepared, used and submitted under sections 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, and 265.71, available to the public under this section when these electronic or paper documents are considered by EPA to be final documents. These submitted electronic and paper documents related to hazardous waste exports, imports and transits and cathode ray tube exports are considered by EPA to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits occur.

**Add 61‑79.260.4. to read:**

**260.4. Manifest copy submission requirements for certain interstate waste shipments.**

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

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

(2) Sign and date the facility certification;

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

(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e‑Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in R.61‑79.264 subpart FF.

**Add 61‑79.260.5. to read:**

**260.5. Applicability of electronic manifest system and user fee requirements to facilities receiving state‑only regulated waste shipments.**

(a) For purposes of this section, “state‑only regulated waste” means:

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

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

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

(1) Comply with the provisions of sections 264.71 (use of the manifest) and 264.72 (manifest discrepancies); and

(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e‑Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in R.61‑79.264 subpart FF.

**Revise 61‑79.260.31(c)(3) through (c)(6) to read:**

(3) Whether the partially‑reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for partially‑reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and

(5) Whether the partially‑reclaimed material is handled to minimize loss.

**Revise 61‑79.260.42(a) to read:**

(a) Facilities managing hazardous secondary materials under sections 260.30, 261.4(a)(23), 261.4(a)(24), 261.4(a)(25), or 261.4(a)(27) must send a notification prior to operating under the regulatory provision and by March 1 of each even‑numbered year thereafter to the Department using EPA Form 8700‑12 that includes the following information:

(1) The name, address, and EPA ID number (if applicable) of the facility;

(2) The name and telephone number of a contact person;

(3) The NAICS code of the facility;

(4) The regulation under which the hazardous secondary materials will be managed;

(5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with section 261.4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);

(6) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

(7) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

(8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land‑based unit;

(9) The quantity of each hazardous secondary material to be managed annually; and

(10) The certification (included in EPA Form 8700‑12) signed and dated by an authorized representative of the facility.

**Revise 61‑79.260.43(a) to read:**

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph and must consider the requirements of paragraph (b) of this section.

**Revise 61‑79.260.43(b) to read:**

(b) The following factor must be considered in making a determination as to the overall legitimacy of a specific recycling activity.

(1) The product of the recycling process does not:

(i) contain significant concentrations of any hazardous constituents found in R.61‑79.261 appendix VIII that are not found in analogous products; or

(ii) contain concentrations of hazardous constituents found in R.61‑79.264 appendix VIII at levels that are significantly elevated from those found in analogous products, or

(iii) exhibit a hazardous characteristic (as defined in R.61‑79.261 subpart C) that analogous products do not exhibit.

(2) In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

**Revise 61‑79.261.2(a)(2)(ii) to remove and reserve:**

(ii) [Reserved]

**Revise 61‑79.261.39(a)(5)(iv) to read:**

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section.

**Remove Appendix from 61‑79.262. Table of Contents:**

**Revise 61‑79.262.20(a)(1) and (2) to read:**

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

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

**Revise 61‑79.262.21(f)(5) to read:**

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

**Revise 61‑79.262.21(f)(6)(i) through (vi) to read:**

(i) Page 1: (top copy): “Designated facility to EPA’s e‑Manifest system”;

(ii) Page 2: “Designated facility to generator”;

(iii) Page 3: “Designated facility copy”;

(iv) Page 4: “Transporter copy";

(v) Page 5 (bottom copy): “Generator’s initial copy".

**Revise 61‑79.262.21(f)(7) to read:**

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

(i) Manifest EPA Form 8700‑22:

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

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

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

(ii) Manifest Form 8700‑22A:

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

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

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

**Add 61‑79.262.21(f)(8) to read:**

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

**Revise 61‑79.262.24(c) to read:**

(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 system, 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]

**Revise 61‑79.262.24(e) to read:**

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

**Remove 61‑79.262.24(g) and reserve:**

(g) [Reserved]

**Add 61‑79.262.24(h) to read:**

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

**Remove 61‑79 Appendix to Part 262:**

**Remove 61‑79.263.20(a)(8) and reserve:**

(8) [Reserved]

**Add 61‑79.263.20(a)(9) to read:**

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

**Revise 61‑79.263.21(a) to read:**

(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:

**Revise 61‑79.263.21(b) to read:**

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

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

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

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

(iii) The generator authorizes the revision.

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

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

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

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

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

**Add 61‑79.263.21(c) to read:**

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

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

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

**Revise 61‑79.264.71(a)(2) to read:**

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

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

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

(iii) Immediately give the transporter at least one (1) copy of the manifest;

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

(v) Paper manifest submission requirements are:

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

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

**Revise 61‑79.264.71(j) to read:**

(j) Imposition of user fee for electronic manifest use.

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

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

**Add 61‑79.264.71(l) to read:**

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

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

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

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

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

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

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

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

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

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

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

**Revise 61‑79.264.1086(c)(4)(i) to read:**

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

**Revise 61‑79.264.1086(d)(4)(i) to read:**

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

**Add Subpart FF to 61‑79.264. Table of Contents to read:**

Subpart FF. Fees for the Electronic Hazardous Waste Manifest Program

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.

264.1316. Informal fee dispute resolution.

**Add 61‑79.264 Subpart FF to read:**

**SUBPART FF: Fees for the Electronic Hazardous Waste Manifest Program**

**264.1300. Applicability.**

(a) This subpart prescribes:

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

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

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

**264.1310. Definitions applicable to this subpart.**

The following definitions apply to this subpart:

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

“**Cross Media Electronic Reporting Rule (CROMERR) costs**” are the sub‑category of operations and maintenance costs that are expended by EPA in implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA’s electronic reporting regulations as set forth in the CROMERR as codified at 40 CFR part 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**264.1312. User fee calculation methodology.**

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

Feei = (System Setup Cost/[Years x Nt]) + (Marginal Costt + [O&M Cost/Nt]) x (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” and *Nt* refers to the total number of manifests completed in a year.

(b)(1) If after four (4) years of system operations, electronic manifest usage does not equal or exceed seventy‑five (75) percent of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

Feei = (System Setup Cost/[Years x Nt]) + (Marginal Costi + [O&Mi Cost/Ni]) x (1 + Indirect Cost Factor)

System Setup Cost = Procurement Cost + EPA Program Cost

O&Mfully electronic 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&Mall other Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

Where *Ni* refers to the total number of one (1) of the four (4) manifest submission types “*i*” completed in a year and *O&Mi* *Cost* refers to the differential O&M Cost for each manifest submission type “*i.*”

(2) At the completion of four (4) years of system operations, EPA shall publish a notice:

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

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

**264.1313. User fee revisions.**

(a) Revision schedule.

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

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

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

Fee*i*Year2 = Fee*i*Year1 × (CPIYear2‑2/CPIYear2‑1)

Where:

Fee*i*Year2 is the Fee for each type of manifest submission *“i”* in Year 2 of the fee cycle;

Fee*i*Year1 is the Fee for each type of manifest submission *“i”* in Year 1 of the fee cycle; and

CPIYear2‑2/CPIYear2‑1 is the ratio of the CPI published for the year two (2) years prior to Year 2 to the CPI for the year one (1) year prior to Year 2 of the cycle.

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

Revenue Recapturei = (NiYear1 + NiYear2)Actual − (NiYear1 + NiYear2)Est × Feei(Ave)

Where:

Revenue Recapture*i* is the amount of fee revenue recaptured for each type of manifest submission “*i;”*

(NiYear1 + NiYear2)Actual − (NiYear1 + NiYear2)Est 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

Feei(Ave) is the average fee charged per manifest type over the previous two‑year cycle.

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

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

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

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within thirty (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 twelve‑month period ending September 30 of each year, rounded to the nearest whole percent.

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

(2) Due dates for invoiced or electronically billed fee amounts shall be thirty (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 ninety (90) days past due (i.e., not paid by date one hundred twenty (120) days from date of invoice) shall be charged an additional penalty of six (6) percent per year assessed on any part of the debt that is past due for more than ninety (90) days, plus any applicable handling charges.

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

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

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

**264.1316. Informal fee dispute resolution.**

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

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

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

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

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

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

(iv) A phone number or email address where the claimant can be contacted.

(2) The fee dispute claimant must provide the system’s billing representatives with sufficient supporting information to identify the nature and amount of the fee dispute, including:

(i) If the alleged error results from the types of manifests submitted being inaccurately described in the invoice, the correct description of the manifest types that should have been billed;

(ii) If the alleged error results from the number of manifests submitted being inaccurately described in the invoice, the correct description of the number of manifests that should have been billed;

(iii) If the alleged error results from a mathematical error made in calculating the amount of the invoice, the correct fee calculations showing the corrected fee amounts; and

(iv) Any other information from the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

(3) EPA’s system billing representatives must respond to billing dispute claims made under this section within ten (10) days of receipt of a claim. In response to a claim, the system’s billing representative will:

(i) State whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility; and

(ii) If a claim is rejected, then the response shall provide a brief statement of the reasons for the rejection of the claim and advise the claimant of their right to appeal the claim to the Office Director for the Office of Resource Conservation and Recovery.

(c) Fee dispute claimants that are not satisfied by the response to their claim from the system’s billing representatives may appeal their claim and initial decision to the Office Director for the Office of Resource Conservation and Recovery.

(1) Any appeal from the initial decision of the system’s billing representatives must be taken within ten (10) days of the initial decision of the system’s billing representatives under paragraph (b) of this section.

(2) The claimant shall provide the Office Director with the claim materials submitted to the system’s billing representatives, the response provided by the system’s billing representatives to the claim, and a brief written statement by the claimant explaining the nature and amount of the billing error, explaining why the claimant believes the decision by the system’s billing representatives is in error, and why the claimant is entitled to the relief requested on its appeal.

(3) The Office Director shall review the record presented to him or her on an appeal under this paragraph (c), and shall determine whether the claimant is entitled to relief from the invoice alleged to be in error, and if so, shall state the amount of the recalculated invoice and the amount of the invoice to be adjusted.

(4) The decision of the Office Director on any appeal brought under this section is final and non‑reviewable.

**Revise 61‑79.265.71(a)(2) to read:**

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

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

(ii) Note any discrepancies (as defined in 265.72(a)) on each copy of the manifest;

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

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

(v) Paper manifest submission requirements are:

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

(B) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy (Page1) of the paper manifest and any paper continuation sheet to the e‑Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within thirty (30) days of the date of delivery. Submissions of copies to the e‑Manifest system shall be made to the electronic mail/submission address specified at the e‑Manifest program website’s directory of services; and

**Revise 61‑79.265.71(j)(1) and (2) to read:**

(j) Imposition of user fee for electronic manifest use.

(1) As prescribed in section 265.1311, and determined in section 265.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in section 265.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of section 265.1314, subject to the informal fee dispute resolution process of section 265.1316, and subject to the sanctions for delinquent payments under section 265.1315.

**Add 61‑79.265.71(l) to read:**

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

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

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

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

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

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

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

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

(ii) A batch upload of data corrections may be submitted under one (1) certification statement.

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

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

**Revise 61‑79.265.1087(c)(4)(i) to read:**

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within twenty‑four (24) hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700‑22 and 8700‑22A), as required under subpart E of this part, at section 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

**Revise 265.1087(d)(4)(i) to read:**

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within twenty‑four (24) hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700‑22 and 8700‑22A), as required under subpart E of this part, at section 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

**Add Subpart FF to 61‑79.265. Table of Contents to read:**

**Add 265 Subpart FF to read:**

**SUBPART FF: Fees for the Electronic Hazardous Waste Manifest Program**

**265.1300. Applicability.**

(a) This subpart prescribes:

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

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

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

**265.1310. Definitions applicable to this subpart.**

The following definitions apply to this subpart:

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

**“CROMERR costs”** are the sub‑category of operations and maintenance costs that are expended by EPA in implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA’s electronic reporting regulations as set forth in the Cross Media Electronic Reporting Rule (CROMERR) as codified at 40 CFR part 3.

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

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

**“Help deskcosts”** 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, quality assurance (QA), scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e‑Manifest system’s data repository.

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

**“Paper manifest submissions”** mean submissions to the paper processing center of the e‑Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700‑22, or a paper Continuation Sheet, EPA Form 8700‑22A. Such submissions may be made by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets in accordance with section 265.1311(b), or by submitting both an image file and data file in accordance with the procedures of section 265.1311(c).

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

**265.1311. Manifest transactions subject to fees.**

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

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

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

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

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

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

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

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

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

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

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

**265.1312. User fee calculation methodology.**

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

Feei = (System Setup Cost/[Years x Nt]) + (Marginal Costi + [O&M Cost/Nt]) x (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” and *N*t refers to the total number of manifests completed in a year.

(b)(1) If after four (4) years of system operations, electronic manifest usage does not equal or exceed seventy‑five (75) percent of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

Feei = (System Setup Cost/[Years x Nt]) + (Marginal Costi + [O&Mi Cost/Ni]) x (1 + Indirect Cost Factor)

System Setup Cost = Procurement Cost + EPA Program Cost

O&Mfully electronic Cost = Electronic System O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost ot Modify or Upgrade eManifest System Related Services

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

Where *N*i refers to the total number of one (1) of the four (4) manifest submission types “*i*” completed in a year and *O&M*i *Cost* refers to the differential O&M Cost for each manifest submission type “*i*.”

(2) At the completion of four (4) years of system operations, EPA shall publish a notice:

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

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

**265.1313. User fee revisions.**

(a) Revision schedule.

(1) EPA will revise the fee schedules for e‑Manifest submissions and related activities at two‑year intervals, by utilizing the applicable fee calculation formula prescribed in section 265.1312 and the most recent program cost and manifest usage numbers.

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

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

Fee*i*Year 2 = Fee*i*Year1 × (CPIYear2‑2/CPIYear2‑1)

Where:

Fee*i*Year2 is the Fee for each type of manifest submission *“i*” in Year 2 of the fee cycle;

Fee*i*Year1 is the Fee for each type of manifest submission *“i”* in Year 1 of the fee cycle; and

CPIYear2‑2/CPIYear2‑1 is the ratio of the CPI published for the year two (2) years prior to Year 2 to the CPI for the year one (1) year prior to Year 2 of the cycle.

(c) Revenue recovery adjusters. The fee schedules published at two‑year intervals under this section shall include an adjustment to recapture revenue lost in the previous two‑year fee cycle on account of imprecise estimates of manifest usage. This adjustment shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of section 265.1312:

Revenue Recapturei = [(NiYear1 + NiYear2)Actual − (NiYear1 + NiYear2)Est] × Feei(Ave)

Where:

Revenue Recapturei is the amount of fee revenue recaptured for each type of manifest submission “*i*;”

(NiYear1 + NiYear2)Actual − (NiYear1 + NiYear2)Est 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

Feei(Ave) is the average fee charged per manifest type over the previous two‑year cycle.

**265.1314. How to make user fee payments.**

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

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

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within thirty (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 twelve‑month period ending September 30 of each year, rounded to the nearest whole percent.

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

(2) Due dates for invoiced or electronically billed fee amounts shall be thirty (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 ninety (90) days past due (i.e., not paid by date one hundred twenty (120) days from date of invoice) shall be charged an additional penalty of six (6) percent per year assessed on any part of the debt that is past due for more than ninety (90) days, plus any applicable processing and handling charges.

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

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

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

**265.1316. Informal fee dispute resolution.**

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

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

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

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

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

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

(iv) A phone number or email address where the claimant can be contacted.

(2) The fee dispute claimant must provide the system’s billing representatives with sufficient supporting information to identify the nature and amount of the fee dispute, including:

(i) If the alleged error results from the types of manifests submitted being inaccurately described in the invoice, the correct description of the manifest types that should have been billed;

(ii) If the alleged error results from the number of manifests submitted being inaccurately described in the invoice, the correct description of the number of manifests that should have been billed;

(iii) If the alleged error results from a mathematical error made in calculating the amount of the invoice, the correct fee calculations showing the corrected fee amounts; and

(iv) Any other information from the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

(3) EPA’s system billing representatives must respond to billing dispute claims made under this section within ten (10) days of receipt of a claim. In response to a claim, the system’s billing representative will:

(i) State whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility; and

(ii) If a claim is rejected, then the response shall provide a brief statement of the reasons for the rejection of the claim and advise the claimant of their right to appeal the claim to the Office Director for the Office of Resource Conservation and Recovery.

(c) Fee dispute claimants that are not satisfied by the response to their claim from the system’s billing representatives may appeal their claim and initial decision to the Office Director for the Office of Resource Conservation and Recovery.

(1) Any appeal from the initial decision of the system’s billing representatives must be taken within ten (10) days of the initial decision of the system’s billing representatives under paragraph (b) of this section.

(2) The claimant shall provide the Office Director with the claim materials submitted to the system’s billing representatives, the response provided by the system’s billing representatives to the claim, and a brief written statement by the claimant explaining the nature and amount of the billing error, explaining why the claimant believes the decision by the system’s billing representatives is in error, and why the claimant is entitled to the relief requested on its appeal.

(3) The Office Director shall review the record presented to him or her on an appeal under this paragraph (c), and shall determine whether the claimant is entitled to relief from the invoice alleged to be in error, and if so, shall state the amount of the recalculated invoice and the amount of the invoice to be adjusted.

(4) The decision of the Office Director on any appeal brought under this section is final and non‑reviewable.

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Sections 1‑23‑115(C)(1)‑(3) and (9)‑(11):

DESCRIPTION OF REGULATION: 61‑79, Hazardous Waste Management Regulations.

Purpose: The purpose of these amendments is to maintain state consistency with the following EPA regulations published in the Federal Register: “Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule,” on May 30, 2018, at 83 FR 24664‑24671; “Confidentiality Determinations for Hazardous Waste Export and Import Documents,” on December 26, 2017, at 82 FR 60894‑60901; and “Hazardous Waste Electronic Manifest System User Fee; Final Rule,” on January 3, 2018, at 83 FR 420‑462.

Legal Authority: 1976 Code Section 44‑56‑30.

Plan for Implementation: The DHEC Regulation Development Update (accessible at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/) provides a summary of and link to these amendments. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendments and any associated information.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The Department adopts three final EPA rules published in the Federal Register. The “Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule,” published on May 30, 2018, at 83 FR 24664‑24671, revises several recycling‑related provisions associated with the definition of solid waste under Subtitle C of RCRA and portions of the original rule that were vacated by the United States Court of Appeals for the D.C. Circuit. The “Confidentiality Determinations for Hazardous Waste Export and Import Documents,” published on December 26, 2017, at 82 FR 60894‑60901, amends existing export and import hazardous waste regulations from and into the United States by applying a confidentiality determination for documents related to the export, import, and transit of hazardous waste, and export of excluded cathode ray tubes. The “Hazardous Waste Electronic Manifest System User Fee; Final Rule,” published on January 3, 2018, at 83 FR 420‑462, establishes the methodology the EPA uses to determine and revise user fees applicable to the electronic and paper manifest to be submitted to the national Hazardous Waste Electronic Manifest System that became operational nationwide on June 30, 2018. Adoption of these rules is required to comply with federal law and brings R.61‑79 into conformity with the federal regulations.

DETERMINATION OF COSTS AND BENEFITS:

These amendments are exempt from the requirements of a Preliminary Fiscal Impact Statement or a Preliminary Assessment Report because the changes are necessary to maintain compliance with federal law.

The EPA estimates in the Federal Register, Volume 80, Number 8, January 13, 2015 on page 1769 that the Definition of Solid Waste Rule will result in cost savings for the regulated community due to increased recycling of hazardous wastes. Likewise, in the Federal Register, Volume 83, Number 2, dated January 3, 2018, page 446, the EPA estimates that the Hazardous Waste Electronic Manifest User Fee Rule will result in cost savings for the regulated community. Finally, in the Federal Register, Volume 82, Number 246, dated December 26, 2017, page 60898, the EPA estimates that the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule will result in greater efficiencies and cost savings for the regulated community.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The revisions to R.61‑79 provide continued protection of the environment and human health in accordance with updates to federal law.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

If South Carolina does not adopt these amendments, the EPA’s delegation of authority to the state to implement environmental protection programs would be compromised. As a delegated state program, the EPA requires South Carolina’s regulations be at least as stringent as the federal regulations. Adoption of these revisions ensures equivalency with federal requirements.