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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, and 262

[EPA–HQ–OLEM–2016–0492; FRL–9971–49–OLEM]

RIN 2050–AG90

Confidentiality Determinations for Hazardous Waste Export and Import Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, this rule applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs). EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation. The rule will result in cost-savings and greater efficiency for EPA and the regulated community as well as facilitate transparency with respect to the documents that are within the scope of this rulemaking. However, EPA is not finalizing the proposed internet posting requirement in the proposed rule.

DATES: The final rule is effective on June 26, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2016–0492. All documents in the docket are listed at *https://www.regulations.gov*. Docket materials are also available in hard copy at the EPA Docket Center Reading Room. Please see *https://www.epa.gov/dockets/epa-docket-center-reading-room* or call (202) 566–1744 for more information on the Docket Center Reading Room.

FOR FURTHER INFORMATION CONTACT: Lia Yohannes, Office of Resource Conservation and Recovery; telephone number: (703) 308–8413; email: *yohannes.lia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

EPA's authority to promulgate this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 *et seq.,* 6912, 6921–6924, and 6938.

B. Does this action apply to me?

The application of confidentiality determinations to RCRA export, import, and transit documents in this action generally affects three (3) groups: (1) All persons who export or import (or arrange for the export or import of) of hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for (a) universal waste for recycling or disposal, (b) spent lead-acid batteries (SLABs) being shipped for reclamation, (c) industrial ethyl alcohol being shipped for reclamation, (d) hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies, and (e) hazardous recyclable materials being shipped for precious metal recovery; (2) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal; and (3) all persons who export (or arrange for the export of) conditionally excluded cathode ray tubes (CRTs) being shipped for recycling.

Potentially affected entities may include, but are not limited to:

NAICS code	NAICS description
211	Oil and Gas Extraction.
324	Petroleum and Coal Products Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
339	Miscellaneous Manufacturing.
423	Merchant Wholesalers, Durable Goods.
424	Merchant Wholesalers, Nondurable Goods.
522	Credit Intermediation and Related Activities.
525	Funds, Trusts, and Other Financial Vehicles.
531	Real Estate.
541	Professional, Scientific, and Technical Services.
561	Administrative and Support Services.
562	Waste Management and Remediation Services.
721	Accommodation.
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations.
211	Oil and Gas Extraction.
324	Petroleum and Coal Products Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On November 28, 2016, EPA proposed revisions to the current RCRA regulations governing imports and exports of hazardous waste and certain other materials in parts 260, 262, 264, 265, and 267 in order to strengthen public accessibility and transparency of import and export-related documentation to better monitor proper compliance with EPA's hazardous waste regulations and help ensure that hazardous waste shipments are properly received and disposed (81 FR 85459). The internet Posting of and Confidentiality Determinations for Hazardous Waste Export and Import Documents Proposed Rule was a companion action to EPA's Hazardous

Waste Export-Import Revisions Final Rule (''Revisions Final Rule'') published on November 28, 2016 (81 FR 85696), which was one of the Agency's priority actions under its plan for periodic retrospective reviews of existing regulations, as required by Executive Order 13563. Under the Revisions Final Rule, export notices for hazardous waste and excluded CRTs exported for recycling are currently required to be submitted electronically to EPA using EPA's Waste Import Export Tracking System (WIETS) as of December 31, 2016. Export annual reports for hazardous waste and excluded CRTs exported for recycling will be required to be submitted electronically to EPA using WIETS on March 1, 2019. Other import and export documents for hazardous waste and excluded CRTs exported for recycling are transitioning from paper submittal to electronic submittal, and will be required to be submitted electronically to EPA using WIETS on a future compliance date to be announced in a future, separate **Federal Register** notice.

The proposed rulemaking for this final action consisted of two parts. First, EPA proposed requiring exporters and receiving facilities of hazardous waste from foreign sources to post *confirmation of receipt* and *confirmation of recovery or disposal* documents on publicly accessible websites when such documents are required for individual export and import shipments of hazardous wastes. EPA proposed that the documents be publicly accessible on company websites by the first of March of each year and that the websites include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter or sent out by the receiving facility related to exports or imports of hazardous waste made during the previous calendar year. Each document was to be made available for a period of at least three years following the date on which each document was first posted to the website. The proposed internet posting requirement was planned to be effective during the interim period prior to the electronic import-export reporting compliance date when electronic submittal to EPA of confirmations of receipt and confirmations of recovery or disposal for hazardous waste shipments will be required in EPA's WIETS system per the Revisions Final Rule. The second part of the proposed rule consisted of applying confidentiality determinations such that no person could assert CBI claims for individual documents and compiled data for required documents related to the export, import, and transit of hazardous waste and export of conditionally excluded cathode ray tubes (CRTs).

III. Detailed Discussion of the Final Rule

A. Summary of the Final Rule

This section provides an overview of this final rule and describes the way in which it differs from the proposal. With this action, EPA finalizes the application of confidentiality determinations such that no CBI claims may be asserted by any person with respect to any of the following documents related to the export, import, and transit of hazardous waste and export of excluded CRTs:

(1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subpart H, including but not limited to the notifications of intent to export, contracts submitted in response to requests for supplemental information from countries of import or transit, RCRA manifests, annual reports, EPA acknowledgements of consent, any subsequent communication withdrawing a prior consent or objection, responses that neither consent nor object, exception reports, transit notifications, and renotifications;

(2) Documents related to the import of hazardous waste, under 40 CFR part 262, subpart H, including but not limited to contracts and notifications of intent to import hazardous waste into the U.S. from foreign countries or U.S. importers;

(3) Documents related to the confirmation of receipt and confirmation of recovery or disposal of hazardous waste exports and imports, under 40 CFR part 262, subpart H;

(4) Documents related to the transit of hazardous waste, under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.;

(5) Documents related to the export of cathode ray tubes (CRTs), under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs;

(6) Documents related to the export and import of non-crushed spent lead acid batteries (SLABs) with intact casings, under 40 CFR part 266 subpart G, including but not limited to notifications of intent to export SLABs;

(7) Submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including but not limited to receiving facility notices of the need to arrange alternate management or return of an import shipment under 40 CFR 264.12(a) and 265.12(a); and

(8) Documents related to the export and import of RCRA universal waste under 40 CFR part 273, subparts B, C, D, and F.

(9) Documents required under 40 CFR 262, subparts E, F, and H and submitted in accordance with consents issued prior to December 31, 2016.

Unless otherwise required by Federal law, EPA is not considering the documents described in items (1) through (9) in this preamble to be final until March 1 of the year after which the shipments occur.

These changes will be reflected in revisions to 40 CFR part 260, as proposed, and in conforming revisions to 40 CFR parts 261 and 262.

EPA is not finalizing the proposed internet posting requirement of *confirmation of receipt* and *confirmation of recovery or disposal* documents where they would have been required for individual export and import shipments of hazardous wastes. As required under the recordkeeping requirements for exports and imports of hazardous waste under 40 CFR part 262, subpart H, exporters and receiving facilities of hazardous waste from foreign sources are required to retain paper copies of such confirmations such that copies are available for viewing and production if requested by any EPA or authorized state inspector. Once electronic submittals of the confirmation documents are required after the electronic import-export reporting compliance date that EPA will establish in a separate **Federal Register** notice, electronically submitted confirmations can be retained in EPA's Waste Import Export Tracking System (WIETS), or its successor system, such that copies are available for viewing and production if requested by any EPA or authorized state inspector.

B. Summary of Public Comments

The Agency received seven unique comments in response to its November 28, 2016 proposed rule. Of the seven comments, two were submitted anonymously, two were submitted from individual companies, one was submitted by a trade association representing hazardous waste treatment, recycling and disposal companies, one was submitted by a coalition representing generators of hazardous waste, and one was submitted by a trade association representing fuel and petrochemical manufacturers.

With respect to the proposed internet posting requirement, two anonymous commenters expressed their support, stating that it would improve transparency and environmental awareness of the potential environmental and health risks associated with exposure to hazardous waste, and potentially lead to reduced generation and improved management of hazardous waste. The remaining five commenters from industry expressed concern with the proposed internet posting requirement. These commenters stated that EPA underestimated the costs associated with posting information on company websites and were apprehensive about the burden of complying with a temporary requirement that would be in place for an unspecified amount of time. Two commenters suggested that the lag in time between when the confirmations of receipt and confirmations of recovery or disposal are required to be sent and when the documents would be posted on company websites would cause confusion and an incorrect perception by the general public of mismanagement. Two commenters also suggested that requiring industry to submit export and import documentation to EPA, rather than post on individual company websites, would provide better consistency to the regulated community and ensure greater compliance with export and import regulations. Finally, one commenter suggested that EPA develop its own website to post the documents to improve public access to the information. (See Section ''II.C. Changes to the Proposed Rule'' of this preamble for EPA's rationale for not finalizing the proposed internet posting requirement.)

EPA received only one comment on the proposed confidentiality determination. The commenter expressed concerns about the application of a confidentiality determination to aggregate data related to exports and imports of hazardous waste. EPA considers aggregate data to be a list of consolidated information about shipments organized by company. According to the commenter, the application of a confidentiality determination to aggregate data poses different concerns from those raised by application of confidentiality determinations to individual documents. The commenter was specifically concerned about the potential for competitive harm from public release of customer lists and issues related to national security if aggregate data about shipments were available to individuals with the intent to do harm. Because of the substantial effort required to compile a customer list from individual export and import documents, the commenter did not have similar concerns with respect to the release of individual hazardous waste export and import documents. (See response to comments document and Section ''II.D. Rationale for Final Rule'' of this preamble for details on EPA's response to these comments.)

C. Changes to the Proposed Rule

After considering all the submitted comments, EPA is finalizing, as proposed, the application of confidentiality determinations to documents related to the export, import and transit of hazardous waste and export of excluded CRTs. We provide our rationale in the following section. EPA is not finalizing the proposed internet posting requirement that exporters and receiving facilities of hazardous waste from foreign sources upload confirmations of receipt and confirmations of recovery or disposal on their websites. This internet posting requirement was intended to be in effect on a temporary basis while EPA develops its Waste Import Export Tracking System (WIETS) to be able to receive electronic submittals of the documents. Recognizing that the internet posting requirement would be superseded when exporters and receiving facilities are required to submit confirmations electronically, EPA has decided to avoid the potential confusion as described by some commenters, that may result from requiring internet posting of documents on a temporary basis on company websites and from the time lag between the receipt and posting of confirmations of receipt and confirmations of recovery or disposal.

D. Rationale for the Final Rule

This final rule applies confidentiality determinations such that EPA will no longer accept future CBI claims for individual documents and/or aggregate data related to the export, import, and transit of hazardous waste and export of excluded CRTs. EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation which will result in cost-savings and greater efficiency for EPA and the regulated community. Moreover, as described in the proposed rulemaking, EPA will no longer publish the annual **Federal Register** notice requesting comment from third party affected businesses (other than original submitters), as defined in 40 CFR 2.201(d), on their need to assert confidentiality claims for documents submitted to EPA related to hazardous waste exports and imports as well as data compiled from such documents, prior to EPA considering such documents releasable upon public request. The **Federal Register** notice covers documents related to the export, import and transit of RCRA hazardous waste, including those hazardous wastes managed under the special management standards in 40 CFR part 266 (*e.g.,* spent lead acid batteries) and 40 CFR part 273 (*e.g.,* universal waste batteries, universal waste mercury lamps), and related to the export of CRTs under 40 CFR part 261, made during the previous calendar year. The annual **Federal Register** notices have not addressed CBI claims likely to be made by the original submitters, since RCRA regulations at 40 CFR 260.2(b) already address the CBI requirements for original submitters.

Our rationale for applying confidentiality determinations to these documents is summarized in the following paragraphs.

As discussed in the proposed rulemaking, application of confidentiality determinations is consistent with the non-CBI treatment of hazardous waste manifests at the Federal and state level. Manifests contain similar information as that required by the documents related to the export, import and transit of hazardous waste and export of conditionally excluded CRTs within the scope of this action. On February 7, 2014, EPA published the Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifests final rule (79 FR 7518) which made a categorical determination for individual RCRA hazardous waste manifest records and aggregate data. In that action, EPA concluded that information contained in individual manifested records and aggregate data are essentially public information and therefore is not eligible under Federal law for treatment as CBI. The effect of this decision was that EPA made a categorical determination that it will not accept any CBI claims that might be asserted in connection with processing, using, or retaining individual paper or electronic manifests or aggregate data (see 40 CFR 260.2(c)(1)). The decision in that action is consistent with how manifests are treated in many states that have policies that do not recognize CBI claims for manifests as individual documents or as aggregate data. Because the information contained in RCRA hazardous waste manifests is largely similar to the information contained in hazardous waste export and import documents,

such as information about the waste being shipped (waste codes, type, quantity) and contact information for the generator, transporter, and destination or receiving facility, EPA concludes that application of confidentiality determinations in this action is consistent with the categorical determination that electronic manifests are not CBI.

Furthermore, EPA believes that any CBI claim that might be asserted with respect to the hazardous waste documents within the scope of this action would be extremely difficult to sustain under the substantive CBI criteria set forth in the Agency's CBI regulations (40 CFR part 2, subpart B). For example, to make a CBI claim, a business must satisfactorily show that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures. The documents related to the export, import, and transit of hazardous waste and export of excluded CRTs submitted to EPA are also shared with several commercial entities while they are being processed and used. As a result, a business concerned with protecting its commercial information would find it exceedingly difficult to protect its records from disclosure by all the other persons who come into contact with the documents.

Moreover, to substantiate a CBI claim, a business must also show that the information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding). Since the documents are shared with several commercial entities throughout the chain of custody of a hazardous waste shipment, they are easily accessible to other parties without the business's explicit consent.

For these reasons, EPA believes that any CBI claim that might be asserted with respect to hazardous waste export and import documents would be difficult to sustain under the substantive CBI criteria (40 CFR part 2, subpart B).

EPA has also established precedent in determining that the information contained in certain hazardous waste export documents is not entitled to confidential treatment. To date, our records indicate that EPA has received four assertions of confidentiality for documents within the scope of this action and for which EPA has made a CBI determination: One from Horizon Environment, Inc. in 2004, two from Johnson Controls Battery Group, Inc. in 2010 and 2011, and one from Waste Technologies Industries in 1994. In three of the four cases, the Agency determined that the information claimed as confidential was not entitled to confidential treatment.

In the confidentiality claims presented by Horizon Environment, Inc. and Johnson Controls Battery Group, Inc., both companies asserted confidentiality for certain hazardous waste export documents that were responsive to Freedom of Information Act (FOIA) requests to EPA. The FOIA, 5 U.S.C. 552(a), section 3007(b) of RCRA, and EPA regulations implementing the FOIA and RCRA section 3007(b) generally mandate the disclosure to the public of information and records in the possession of government agencies. However, there are nine categories of information that may be exempt from disclosure, and one such category of information (Exemption 4) is for ''trade secrets and commercial information obtained from a person and privileged or confidential'' (see 5 U.S.C. 552(b)(4)). Under these statutes and regulations, ''business information'' means information which pertains to the interests of a business, was acquired or developed by the business, and which is possessed by EPA in a recorded form (see 40 CFR 2.201(c)). Such business information may be claimed by an ''affected business'' to be entitled to treatment as CBI if the business information is a ''trade secret'' or other type of proprietary information which produces business or competitive advantages for the business, such that the business has a legally protected right to limit the use of the information or its disclosure to others. See § 2.201(e).

In order for information to meet the requirements of Exemption 4, EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential (commonly referred to as ''Confidential Business Information'' (CBI)). Horizon Environment's claims related to export notices, and Johnson Controls Battery Group's claims related to annual reports. Both companies claimed the information to be confidential, but did not claim that the information was privileged. Information that is required to be submitted to the Government is confidential if its ''disclosure would be likely either (1) to impair the Government' s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.''' Critical Mass, 975 F.2d at 878 (quoting *National Parks and Conservation Association* v. *Morton,* 498 F.2d 765, 770 (DC Cir. 1974)) (footnote omitted). In these cases, the Agency had the authority to require the submission of the information and exercised it. Therefore, EPA concluded that the information was a required submission and was not voluntary.

EPA also found that the information the companies claimed as confidential did not meet EPA's CBI criteria. As set forth in EPA's regulations at 40 CFR 2.208, required business information is entitled to confidential treatment if: The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position. After careful consideration of the arguments submitted by both companies, EPA concluded that neither claim explained specifically how disclosure of the information in the submissions would likely cause substantial competitive harm to the companies, and therefore did not support the claim of competitive harm. Accordingly, EPA concluded that release of this was not likely to cause substantial harm to the companies' competitive positions.

As a result of these analyses, EPA found that the information the companies claimed as confidential was not within the scope of Exemption 4 of the FOIA.

For the fourth confidentiality claim submitted by Waste Technologies Industries in 1994, EPA determined that the identities and addresses of the foreign generators listed in its import notification letters were entitled to confidential treatment under EPA's criteria (40 CFR 2.208). Since that time, EPA promulgated the Electronic Manifest final rule in which it was determined that manifests and the data contained therein are not CBI (79 FR 7518). Because the contact information of foreign generators is a required data element on manifests, this information is no longer treated as confidential. EPA found the record pertaining to this case after the proposed rule was published.

Based on EPA's analysis and decision in three of the four confidentiality claims asserted by companies for their hazardous waste export notices and annual reports, EPA expects to similarly conclude that these and the other documents within the scope of this rulemaking are not entitled to confidential treatment. As for the fourth decision in the Waste Technologies Industries' claim, EPA's more recent determination that manifests are no longer CBI supersedes the decision to withhold the information as confidential in 1994.

Finally, EPA has never received a claim of confidentiality from a third-party business with respect to hazardous waste export and import documentation. As described previously, EPA issues a **Federal Register** notice each year requesting comment from affected businesses (other than original submitters), as defined in 40 CFR 2.201(d), on their need to assert confidentiality claims for documents submitted to EPA related to hazardous waste exports and imports as well as data compiled from such documents, prior to EPA considering such documents releasable upon public request. To date, EPA has never received a comment from any business not an original submitter as a result of the annual **Federal Register** notice.

EPA received one comment in response to our request for input about applying confidentiality determinations to individual documents and aggregate data related to hazardous waste export and import shipments. In its comment, a trade association for the hazardous waste treatment industry expressed concern about the ability of competitors to gain an unfair advantage from access to aggregate export and import data. The commenter also indicated that access to aggregate data could pose national security concerns if sensitive shipment information were available to parties with malicious intent. The commenter stated that aggregate shipment data are a more efficient means to gain access to customer lists and export and import patterns compared to individual documents, which would require significant cost and labor to compile. However, as stated previously, at the Federal level and in many states, CBI claims are not accepted with respect to individual or aggregate manifest data. The main difference between the manifest and the export and import documents is that the manifest provides information on domestic management of hazardous waste shipments, while the export and import documents provide information related to both the domestic and the international part of those shipments. Because the information contained in hazardous waste export and import documents is so similar to that contained in manifests, EPA believes that it is appropriate to treat the domestic and international shipping documents the same.

Nonetheless, while EPA is not accepting CBI claims for either individual documents or aggregate data related to exports and imports, EPA recognizes that the information in its possession may not be ready for general release to the public because it is not yet ''final.'' As with manifests, hazardous waste exporters, importers, receiving facilities and brokers acting on their behalf need sufficient time to address discrepancies or exceptions related to hazardous waste shipments and to verify and correct data recorded on their documents. Until such time as these corrections can be made and data can be verified and finalized, the data in these documents, just as in manifests, will be considered ''in process.'' To that end, unless otherwise required by Federal law, EPA is not considering such documents to be final until March 1 of the year after which the shipments occur. EPA believes this timeframe is responsive to the concerns about competitive harm and national security risk with respect to access to aggregate data. EPA believes that this relatively long timeframe also makes it more likely that the shipment will have been received and the waste recovered or disposed by the time the documents are considered final.

Furthermore, in response to the national security concerns raised by commenters on the proposed rule and on the e-manifest user fee proposed rule (81 FR 49072, July 26, 2016), EPA has consulted with the Department of Homeland Security (DHS) to determine whether public access to certain shipment information in the e-Manifest system poses a significant chemical security risk and if so, the action the Agency should take to mitigate that risk. Because the export and import data are similar to the data collected on manifests, EPA will apply mitigating measures to manage export and import data in a manner consistent with those implemented by the e-Manifest system.

III. Costs and Benefits of the Final Rule

A. Cost Impacts

The Agency conducted an economic assessment for the proposed rule to this action which evaluated costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. The costs incurred by the regulated community under the proposed rule were associated with the proposed internet posting requirement only. Because EPA is not finalizing the proposed internet posting requirement, there are no costs associated with this action and the economic assessment conducted for the proposed rule no longer applies. Rather, the final rule reduces burden and results in cost-savings.

B. Benefits

There are a number of qualitative benefits associated with this final rule. By providing a consistent approach to addressing confidentiality claims with respect to the documents within the scope of this rulemaking, this action will result in cost-savings and greater efficiency to both the regulated community and EPA. The Agency will not incur the costs associated with developing and publishing the annual **Federal Register** notice requesting comment from affected businesses (other than original submitters), as defined in 40 CFR 2.201(d), on their need to assert confidentiality claims for documents submitted to EPA related to hazardous waste exports and imports. Industry cost-savings result from the avoided costs associated with reading and responding to the **Federal Register** notice. Furthermore, this action will achieve greater transparency by excluding export and import documents from CBI claims.

IV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the Federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271. Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by

the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Because of the Federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This approach of having Federal, rather than State, administering of the import/export functions promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries.

Although States do not receive authorization to administer the Federal government's import/export functions in 40 CFR part 262, subpart H, or the import/export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e)).

This final rule contains amendments to 40 CFR 260.2 such that no claim of business confidentiality may be asserted by any person with respect to information from cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) and hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, 265.71, and 267.71.

The States that have previously adopted 40 CFR part 262, subparts E, F and H, 40 CFR part 263, 40 CFR part 264, 40 CFR part 265, and any other import/export related regulations, and that will be adopting the revisions in the Hazardous Waste Export-Import Revisions Final Rule (81 FR 85696) must adopt the revisions to those provisions in this final rule. But only States that have previously adopted the optional CRT conditional exclusion in 40 CFR 261.39 are required to adopt the revisions related to that exclusion in this final rule.

When a State adopts the import/export provisions in this rule, they must not replace Federal or international references or terms with State references or terms.

The provisions of this rule will take effect in all States on the effective date of the rule, since these export and import requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

V. Statutory and Executive Order Reviews

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

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

This final rule is a non-significant regulatory action because it does not have a significant economic impact nor does it raise novel legal or policy issues. The Office of Management and Budget (OMB) waived review.

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

This action is considered an Executive Order 13771 deregulatory action. This final rule provides burden reduction by providing a consistent approach to addressing confidentiality claims with respect to the documents within the scope of this rulemaking. As a result, this action will result in cost-savings and greater efficiency for industry and EPA. EPA will no longer expend resources to publish an annual **Federal Register** notice related to confidential business information and industry will avoid the costs and burden associated with reading and responding to the annual **Federal Register** notice.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of this action are hazardous waste exporters, importers, receiving facilities and brokers acting on their behalf. There are no costs associated with this action; rather, the final rule results in cost-savings. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Thus, it is not subject to Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

F. Executive Order 13132: Federalism

This action does not have federalism implications because the state and local governments do not administer the export and import requirements under RCRA. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No exporters, importers or transporters affected by this action are known to be owned by Tribal governments or located within or adjacent to Tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because this action only applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs).

L. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 260

Environmental protection, Cathode ray tubes (CRTs), Confidential business information, Exports, Hazardous waste, Imports, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Cathode ray tubes (CRTs), Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Confidential business information, Exports, Hazardous waste, Imports, Reporting and recordkeeping requirements.

Dated: December 11, 2017.

E. Scott Pruitt,

Administrator.

For the reasons stated in the preamble, EPA amends 40 CFR parts 260, 261, and 262 as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

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

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

■ 2. Amend § 260.2 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Except as provided under paragraphs (c) and (d) of this section, any person who submits information to EPA in accordance with parts 260 through 266 and 268 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in part 2, subpart B, of this chapter.

* * * * *

(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 §§ 261.39(a)(5) and 261.41(a) of this chapter, and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, 265.71, and 267.71 of this chapter, 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 §§ 261.39(a)(5) and 261.41(a) of this chapter, and any hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, 265.71, and 267.71 of this chapter 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.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 4. Amend § 261.39 by revising paragraph (a)(5)(iv) to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

* * * * *

(a) * * *

(5) * * *

(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.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 5. The authority citation for part 262 continues to read as follows:

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

■ 6. Amend § 262.83 by revising paragraphs (b)(5) and (f)(9) to read as follows:

§ 262.83 Exports of hazardous waste.

* * * * *

(b) * * *

(5) For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, EPA will coordinate with the Department of State to provide the complete notification to country of import and any countries of transit. In all other cases, EPA will provide the notification directly to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraphs (b)(1)(i) through (xiii) of this section.

* * * * *

(f) * * *

(9) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of

contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity).

* * * * *

■ 7. Amend § 262.84 by revising paragraphs (b)(4) and (f)(8) to read as follows:

§ 262.84 Imports of hazardous waste.

* * * * *

(b) * * *

(4) A notification is complete when EPA determines the notification satisfies the requirements of paragraphs (b)(1)(i) through (xiii) of this section.

* * * * *

(f) * * *

(8) Upon request by EPA, importers or disposal or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity).

* * * * *

[FR Doc. 2017–27525 Filed 12–22–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–9972–38–Region 3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the C&D Recycling Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final Notice of Deletion of the C&D Recycling Superfund Site (Site), located in Foster Township, Pennsylvania, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the Commonwealth of Pennsylvania (Commonwealth), through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude EPA from taking future actions at the Site under Superfund.

DATES: This direct final deletion is effective February 26, 2018 unless EPA receives adverse comments by January 25, 2018. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1987–0002 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregory Voigt, Remedial Project Manager, U.S. Environmental Protection Agency, Region III, Mail Code 3HS21, 1650 Arch Street, Philadelphia, PA 19013, (215) 814–5737, email: *voigt.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the C&D Recycling Superfund Site, from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published