US EPA ARCHIVE DOCUMENT

The EPA Administrator, Gina McCarthy, signed the following notice on June 18, 2014, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDS website (http://www.gpo.gov/fdsys/search/home.action) and on Regulations.gov (http://www.regulations.gov) in Docket No. EPA-HQ-RCRA-2011-1014. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA-HQ-RCRA-2011-1014; FRL – 9911-84-OSWER]

RIN 2050–AG68

Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is revising certain export provisions of the cathode ray tube (CRT) final rule published on July 28, 2006. The revisions will allow the Agency to better track exports of CRTs for reuse and recycling in order to ensure safe management of these materials.

DATES: This final rule is effective on [**Insert date six months after publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-RCRA-2011-1014. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, such as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the RCRA Docket, EPA/DC, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Ave. N.W., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the RCRA Docket is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact Amanda Kohler, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. N.W., Washington, DC 20460, (703) 347-8975, kohler.amanda@epa.gov.

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

This rule affects all persons who export used CRTs for reuse or recycling. This action does not affect households or conditionally exempt small quantity generators.

I. Statutory Authority

Today's rule is promulgated under the authority of sections 2002(a), 3001, 3002, 3004, 3006, and 3007 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6922, 6924, 6926, 6927, and 6938.

II. List of Abbreviations and Acronyms

CEQ	White House Council on Environmental Quality
CFR	Code of Federal Regulations
CRT	Cathode Ray Tube
EPA	Environmental Protection Agency
GSA	General Services Administration

HSWA	Hazardous and Solid Waste Amendments
ICR	Information Collection Request
NTTAA	National Technology Transfer and Advancement Act
OECD	Organization for Economic Cooperation and Development
OMB	Office of Management and Budget
RCRA	Resource Conservation and Recovery Act
UMRA	Unfunded Mandates Reform Act

III. What is the Intent of this Rule?

Today's rule revises the export provisions that apply to persons who export used CRTs for reuse or recycling. The existing regulations were first promulgated on July 28, 2006 (71 FR 42928). Since promulgation of these regulations, the Agency has realized the necessity of obtaining additional information on the export of these materials to better ensure their proper management. This rule is intended to accomplish that goal.

IV. What is the Scope of this Rule?

Today's rule affects only the export provisions of the CRT rule and does not affect any regulations applicable to the domestic management of used CRTs. Today's rule also does not affect unused CRTs. In today's rule, EPA is (1) adding a definition of "CRT exporter" to the regulations; (2) requiring annual reports from exporters of used CRTs exported for recycling; (3) revising the notification that must be submitted when used CRTs are exported for recycling; (4) revising the notification that must be submitted when used CRTs are exported for reuse; and (5) requiring that normal business records maintained by exporters of used CRTs for reuse be translated into English upon request. These changes are described in section VI of the preamble.

V. Background

A. *Reuse and Recycling of Used Cathode Ray Tubes*

In June 2002, EPA proposed to amend its hazardous waste regulations under RCRA to streamline the management standards for used CRTs in an effort to encourage reuse and recycling of these materials rather than landfilling or possible incineration (67 FR 40508, June 12, 2002). In that proposal, EPA described how used CRTs can be reused and recycled.

1. Reuse

Many used computers are resold or donated so that they can be used again, either as is or after minor repairs. The Agency encourages this option as a responsible way to manage these materials, because preventing or delaying their discard conserves resources. This option extends the lives of valuable products and delays their introduction into the waste management system. Reuse also allows schools, non-profit organizations, and individual families to use equipment that they otherwise could not afford. Many markets for the reuse of computers are located abroad, particularly in countries where few may be able to purchase state-of-the-art new equipment (67 FR 40510).

Organizations that handle used computers vary in their practices. In some cases, organizations take donations of used computer equipment. These organizations may test the equipment, and, if necessary, rewire it and replace various parts before sending them off for reuse. In other cases, the entities that collect the used CRTs send them to another organization with more expertise for evaluation and possible repair and reuse. CRTs that cannot be used after such minor repairs may be sent to recycling or disposal (67 FR 40510).

In its 2006 final rule, EPA reaffirmed that materials used and taken out of service by one person are not wastes when the next owner uses them for their intended purpose. EPA also stated that used CRTs undergoing repairs (such as rewiring or replacing defective parts) before resale

or distribution are not being reclaimed and are considered to be products in use rather than solid wastes (71 FR 42929).

2. Recycling

If reuse or repair is not a practical option, CRTs can be sent for recycling, which typically consists of disassembly for the purpose of recovering valuable materials from the CRTs, especially glass. When processing begins, the CRT display unit is dismantled, and the bare CRT is separated from all other parts (usually glass, plastic, or metal). Next, the vacuum is released by either drilling or punching through the anode, a small metal button in the funnel, or removing the electron gun portion of the tube. The different glass portions of the CRT (panel, funnel, and frit line) are then separated and classified according to chemical composition, especially by the amount of lead contained. All glass is then cleaned and sorted and cleaned cullet (*i.e.*, processed glass) is typically shipped off-site to a CRT glass manufacturer or to a lead smelter (67 FR 40510).

B. *2006 CRT Rule*

The Agency promulgated the CRT rule on July 28, 2006 (71 FR 42928). In that rule, EPA amended its regulations under RCRA to streamline the management standards for used CRTs in an effort to encourage recycling and reuse of these materials rather than landfilling or possible incineration. The scope of the rule encompassed both used, intact CRTs and used, broken CRTs (*i.e.*, glass that has been removed from its housing or casing with its vacuum released). Specifically, under 40 CFR 261.4(a)(22), these materials are excluded from the definition of solid waste provided certain conditions are met, including that all used CRTs (*i.e.*, intact or broken) sent for reuse or recycling meet the speculative accumulation condition at § 261.1(c)(8). In addition, used, broken CRTs and CRT glass processors are subject to the

packaging, labeling, and management standards under § 261.39. Persons who send CRTs for disposal are not eligible for the conditional exclusion at § 261.4(a)(22), and may be required to handle their CRTs as hazardous waste from the point of generation, including the requirement to file a hazardous waste export notice under 40 CFR part 262 and the requirement to send the CRTs to a RCRA designated facility.

In addition to these domestic regulations, the CRT rule also established conditions at § 261.39(a)(5) for used, broken CRTs and at § 261.40 for used, intact CRTs exported for recycling. In order for these CRTs to be excluded from the definition of solid waste, the exporter must meet specific conditions. In particular, exporters of used CRTs for recycling must notify EPA of an intended shipment 60 days before the initial shipment occurs. Notifications may cover exports extending over a 12-month or lesser period. The notification must include contact information about the exporter, the recycler, and an alternate recycler, as well as a description of the manner in which the CRTs will be recycled, the frequency and rate of export, the means of transport, the total quantity of CRTs to be shipped, and information about which transit countries the shipments will pass through.

When EPA receives this information, it forwards it to the receiving country and any transit countries for review. When the receiving country consents in writing to receive the CRTs, EPA forwards an Acknowledgement of Consent to Export CRTs to the exporter. The exporter may not ship the CRTs until it receives the Acknowledgement of Consent to Export CRTs. If the receiving country does not consent or withdraws a prior consent, EPA will notify the exporter in writing, and the exporter must not allow any shipments or further shipments to proceed. Exporters must keep copies of notifications and Acknowledgements of Consent to Export CRTs for three years following receipt of the consent. Consent is not required from transit countries,

but EPA notifies the exporter of any responses from these countries. Under § 261.39(c), processed glass (*i.e.*, glass that has been sorted or otherwise managed pursuant to the definition of "CRT processing" in § 260.10) sent to a CRT glass manufacturer or to a lead smelter is subject only to the speculative accumulation condition at § 261.1(c)(8) and exporters of such materials are not subject to the export notice condition of § 261.39(a)(5).

With respect to used, intact CRTs that are exported for reuse, § 261.41 currently requires exporters to submit a one-time notification to EPA with contact information and a statement that they are exporting CRTs for reuse. They must keep copies of normal business records demonstrating that the CRTs in each shipment will be reused. Records must be retained for three years from the date of export. Examples of normal business records include contracts, invoices, shipping documents, and other documents that identify the planned disposition of the materials.

C. *National Strategy for Electronics Stewardship*[1]

In proclaiming November 15, 2010, as America Recycles Day, President Obama stated that Americans must increase our capacity to recycle our used electronics responsibly. Increasing domestic recycling efforts can create green jobs, lead to more productive reuse of valuable materials, and support a vibrant American recycling and refurbishing industry. If done properly, we can increase our domestic recycling efforts, reduce harm from exports of electronic waste (e-waste) being handled unsafely in developing countries, strengthen domestic and international markets for viable and functional used electronic products, and protect health and environmental threats at home and abroad.

To seize these opportunities and address the problems caused by discarded used electronics, the White House Council on Environmental Quality (CEQ), acting under Executive

[1] Much of the discussion below comes directly from the *National Strategy for Electronics Stewardship,* Interagency Task Force on Electronics Stewardship, July 20, 2011.

Order 13514 and on previous executive orders, established the Interagency Task Force on Electronics Stewardship, co-chaired by EPA and the General Services Administration (GSA), as well as CEQ.[2,3]

On behalf of the Task Force, EPA solicited public comment from stakeholders through a notice published in the *Federal Register* (76 FR 11243–44; March 1, 2011). About 130 unique sets of comments were received in response to the notice, as well as 2,050 letters from a mail-in campaign. Also on behalf of the Task Force, CEQ held three stakeholder listening sessions in March 2011 with state and local government agencies, non-governmental organizations, and industry, respectively. Comments provided through both of these methods were evaluated by the Task Force and considered in developing the strategy.

On July 20, 2011, the Task Force articulated its goals and recommendations in its report titled *National Strategy for Electronics Stewardship*. The National Strategy provides four overarching goals, the action items under each goal, and the projects that will implement each action item. One goal of the National Strategy is to reduce harm from U.S. exports of e-waste and improve the safe handling of used electronics in developing countries. To achieve this goal, one action the Task Force recommended was for EPA to propose regulatory changes to improve compliance with the existing regulations regarding exports of CRTs that are destined for reuse and recycling.

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[2] The following agencies and departments contributed to the National Strategy and participated in drafting the recommendations: CEQ, EPA, GSA, Office of Management and Budget, Office of the U.S. Trade Representative, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Labor, Department of Justice, Department of State, Department of Veterans Affairs, Federal Communications Commission, U.S. Customs and Border Protection, and the U.S. Postal Service.

[3] Executive Order (E.O.) 13514, Federal Leadership in Environmental, Energy, and Economic Performance (October 5, 2009). Previous executive orders include E.O. 12873, Federal Acquisition, Recycling, and Waste Prevention (October 20, 1995), E.O. 13423, Strengthening Federal Environmental, Energy, and Transportation Management (January 24, 2007), and E.O. 13534, National Export Initiative (March 11, 2010).

The National Strategy states that, despite decreased production of CRTs, many are still being exported for recycling or reuse and some CRTs that are exported for reuse are actually disassembled and recycled under unsafe conditions. Therefore, EPA committed to proposing changes to the CRT rule to better track exports of CRTs for reuse and recycling. These proposed regulatory changes would clarify who is subject to the rule, which would improve compliance throughout the regulated community. Additionally, EPA would gather additional information on shipments of CRTs that are sent for reuse.

Thus, in March 2012, EPA proposed revisions to the export provisions of the CRT exclusion in order to better track exports of CRTs and ensure safe management abroad (77 FR 15336, March 15, 2012). Today's rule makes final the revisions, mostly as proposed.

VI. Final Revisions to Export Provisions and Response to Comments

EPA is finalizing the following revisions to the export provisions of the conditional exclusion from the definition of solid waste for used CRTs (§ 261.4(a)(22)).

A. *Definition of "CRT Exporter"*

In March 2012, EPA proposed to add a definition of "CRT exporter" to § 260.10 to eliminate any potential confusion over who is responsible for fulfilling the CRT exporter duties, including submitting the export notices required under § 261.39(a)(5) (for used, broken CRTs exported for recycling), § 261.40 (for used, intact CRTs exported for recycling) and § 261.41 (for used, intact CRTs exported for reuse). The Agency proposed a definition of "CRT exporter" to mean "any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export."

As discussed in the March 2012 proposed rule, there may be several persons involved in the generation, collection, management, and eventual export of CRTs for recycling or reuse. Thus, EPA has concluded that defining "CRT exporter" is important to properly assign responsibility for the CRT exporter duties and to enable effective compliance monitoring of the export provisions of the rule. Therefore, EPA is finalizing the definition of "CRT exporter" mostly as proposed.[4]

The CRT exporter and any intermediary arranging for the export must be based in the United States, because foreign-based entities add to the possibility of confusion over fulfilling the export responsibilities and it is more difficult to establish EPA jurisdiction over such persons. Additionally, EPA notes that "person," which is used in today's definition of CRT exporter, is defined in § 260.10 to mean an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

If a person exports used CRTs for recycling without fulfilling the export notice provisions of the CRT rule, the receiving country would be unaware that these materials were entering the country and would be unable to provide consent. Additionally, EPA would be unable to respond to information requests from foreign countries regarding the export of CRTs abroad. This would hinder the receiving country's ability to determine whether the imported used CRTs are being properly managed. Intermediaries who participate in arranging for the CRT exports, as well as the actual entities who initiated the CRT export, may be held jointly and severally liable under RCRA for exporting hazardous waste in violation of the hazardous waste

[4] EPA is finalizing the definition of CRT exporter as proposed with a minor editorial change to add the words "or its" in between "the United States" and "territories."

export requirements if they fail to fulfill the notice condition, among other conditions, of the CRT rule.

Response to Comments

Comment: While one commenter did not oppose EPA's proposed definition of CRT exporter, two commenters argued that the definition of "CRT exporter" was unclear and that it may be too broad and encompass entities that lack direct knowledge about the CRT export. Specifically, these commenters took issue with the phrasing "any intermediary" and "any person in the United States who initiates a transaction to send used CRTs outside the United States territories." One commenter argued that the definition could include generators and collectors of CRTs who have no involvement in the decision or the arrangements to export. The other commenter argued that only the entity with direct control over the actual CRT export should bear primary responsibility for the CRT export notification. This commenter stated that clarification is especially important given EPA's stated intention to hold all parties jointly and severally liable for failing to comply with the exporter conditions.

Response: EPA disagrees with the commenters that argued the definition of "CRT exporter" was too broad and may encompass entities that do not have knowledge of the export, including generators of the CRTs. As noted previously, the trade of used electronics can take place along a chain of businesses that collect, refurbish, dismantle, recycle, and reprocess used electronic products and their components. When used CRTs are exported for recycling or reuse, there may be several persons involved from the time that a decision is made to export these materials up to the time that the actual export occurs. EPA has concluded that the language of the definition appropriately defines those entities who are responsible for fulfilling the exporter

duties, including "any person… who initiates a transaction" to export used CRTs or "any intermediary…arranging for such export." EPA does not agree that this would include entities that have no knowledge of the export since presumably these entities would neither be "initiating a transaction" nor "arranging for such export."

EPA modeled today's definition of "CRT exporter" on the definition of "primary exporter" of hazardous waste in § 262.51. Thus, EPA believes the reference to "any intermediary" is important to maintain consistent accountability throughout the RCRA export regulations.

As an example of how the definition would apply, a state may contract with a recycling facility to collect and recycle used electronics, including used CRTs. The recycling facility makes the decision regarding which CRTs can be reused, refurbished, or recycled. The recycling facility also makes the decision whether to reuse or recycle the CRTs domestically or whether to export the used CRTs, sometimes through a broker.

In this case, the generators of the CRTs, as well as the state that contracted with the recycling facility, are not involved in the decision-making to export certain CRTs and are not initiating a transaction to export, or arranging for export. Thus, these entities would not be considered a "CRT exporter" and are not responsible for fulfilling the CRT exporter duties.

On the other hand, because the recycling facility is making the determination regarding whether and which CRTs will be reused, refurbished, or recycled domestically or internationally, then the recycling facility is making the decision to export certain CRTs and is thus initiating a transaction to export. Therefore, the recycling facility is considered a CRT exporter and is responsible for the CRT exporter duties. Furthermore, if the recycling facility used a broker to manage the export, both the recycling facility (which initiated the export) and the broker (who

arranged for the export) would be considered a CRT exporter and thus responsible for the CRT exporter duties.

Another example of how the definition would apply includes an electronic recycler that has collected CRTs and is storing them on site. In this case, the electronic recycler determines how the CRTs will ultimately be managed, either via reuse, recycling, or disposal. The electronic recycler also initiates the transaction to export by partnering with a broker to find foreign entities that can reuse or recycle the CRTs abroad—that is, the broker acts as an intermediary and makes arrangements for the export of used CRTs by soliciting and evaluating bids from foreign entities and other handling arrangements (e.g., contracts) with foreign entities. In addition, the electronic recycler makes arrangements for the export of used CRTs by reviewing or receiving information from the broker and packaging and preparing the used CRTs for transport across international boundaries. Therefore, both the electronic recycler and the broker are CRT exporters.

To avoid duplicative submissions, the Agency expects only one person to perform the exporter duties under §§ 261.39(a)(5) and 261.41, thus persons should assign these exporter responsibilities among themselves. However, all persons are jointly and severally liable for failing to comply with the exporter conditions. In other words, EPA has the authority to enforce against all persons associated with the export who meet the definition of "CRT exporter."

Comment: One commenter argued that EPA should expand the definition of "CRT exporter" to include all generators of CRTs. This commenter believed that it would be far too easy for all sellers to the eventual export market to claim that they are not exporters and to avoid responsibility.

Response: EPA disagrees with the commenter that argued the definition of "CRT exporter" should be expanded to include all entities along the electronic recycling chain,

regardless of whether these entities are engaged in export activities, such as initiating a transaction to, or arranging for, export of CRTs.

In many cases, generators of CRTs do not possess the expertise to determine whether certain CRTs can and may be reused, refurbished, or recycled—whether domestically or internationally. Many generators contract out collection and management of used CRTs to a recycling facility, whose business includes making these determinations. Thus, EPA does not believe that generators should automatically meet the definition of "CRT exporter" because, in many cases, the generator would not be making the decision to export the used CRTs and moreover would lack specific knowledge of the exporting operations (e.g., foreign destination facility, quantity of used CRTs to be exported) needed to submit export notices.

However, generators of used CRTs that do make the decision to export certain CRTs and thus initiate, or arrange for, export of used CRTs, would meet the definition of "CRT exporter" and thus would be responsible for fulfilling the CRT exporter duties. (As noted previously, if more than one person is a CRT exporter, then only one person must perform the exporter duties under §§ 261.39(a)(5) and 261.41, however, all CRT exporters are liable if the exporter duties are not fulfilled.)

B. *Annual Reports for Used CRTs Sent for Recycling*

In March 2012, EPA proposed to require annual reports from exporters of used CRTs sent for recycling. In general, these reports would provide EPA with more accurate information on the total quantity of CRTs actually exported for recycling during the calendar year, and would also help determine whether CRTs exported for recycling are handled as commodities and not discarded. Additionally, EPA would be able to analyze shipments from specific exporters by comparing actual shipments in the annual report against proposed shipments in the export notice

to ensure that the shipments occurred under the terms approved by the receiving country. Finally, these reports would enable EPA to provide receiving countries with information that may assist them in determining the quantity of CRTs that were received in a particular country for recycling.

For the above reasons, EPA is finalizing at § 261.39(a)(5)(x) the proposed condition that the CRT exporter submit annual reports for used CRTs exported for recycling. Under today's rule, the exporter must provide, no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (*i.e.*, the facility or facilities where the recycling occurs) of all used CRTs exported for recycling during the previous calendar year.[5] Such reports must also include the name, EPA ID number (if applicable), mailing and site address of the CRT exporter, the calendar year covered by the report, and a certification signed by the exporter that states "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Annual reports must be submitted to the same EPA office that currently receives the export notices—that is, EPA's Office of Enforcement and Compliance Assurance. In addition, CRT exporters are required to keep copies of each annual report for a period of at least three years from the due date of the report.

[5] As stated above, multiple entities may be considered the "CRT exporter" and thus are responsible for ensuring annual reports are submitted. To avoid duplicative submissions, the Agency expects only one person to perform the exporter duties under §§ 261.39(a)(5) and 261.41, thus persons should assign these exporter responsibilities among themselves.

Response to Comments

Comment: One commenter argued that the proposed yearly reporting condition was not going to provide case-by-case information and thus was not likely to be useful for receiving prior informed consent as required by the Basel Convention. This commenter believes that the receiving country and transit countries should be giving consent on a case-by-case basis, rather than on a 12-month or lesser basis (as is currently allowed under the export provisions of the CRT rule), unless those countries stipulate that yearly consents are appropriate.

Response: EPA has concluded that notice and consent based on a 12-month or lesser period, coupled with today's condition to submit annual reports for the CRTs actually exported over the previous 12-month or lesser period, provides sufficient information to adequately monitor the export of used CRTs in order to ensure proper management of these materials abroad. Specifically, EPA would be able to analyze specific shipments from exporters by comparing actual shipments in the annual report against the proposed shipments in the export notice to ensure that the shipments occurred under the terms approved by the receiving country. Requiring notice and consent on a per shipment basis, as this commenter suggests, would not provide any additional protection, but would increase the burden for CRT exporters and EPA, as well as receiving and transit countries. Furthermore, EPA notes that the receiving country always has the option of specifying consent for a lesser period, or on a per shipment basis, if it chooses to do so. Finally, we note that while the United States is a signatory to the Basel Convention, the United States is not a party to the Basel Convention.

C. *Revision to the Notification Required for Used CRTs Sent for Recycling*

In March 2012, EPA proposed a change to the notice required for CRTs exported for recycling. The current notice at § 261.39(a)(5)(i)(F) requires the exporter to state the name and address of the recycler and any alternate recycler. EPA had proposed to replace this language with a condition that the exporter state the name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

As we explained in the proposal, used CRTs may be exported to more than one destination facility in a foreign country. For example, used CRTs may first be sent to a foreign facility responsible for importing the CRTs and then may be subsequently sent to another foreign facility responsible for recycling the CRTs. Requiring the proposed additional information will allow EPA to provide the receiving country with the most accurate information available about any interim destination and the ultimate destination of the CRTs when they reach that country. This further enables the receiving country to ensure proper management of the used CRTs in that country. Because this additional information will further ensure that used CRTs exported for recycling are managed safely, we are finalizing the proposed change in today's rule.

Response to Comments

Comment: One commenter argued against the proposed change and said that EPA should require notification from one exporter to one consignee, not alternate recyclers, so as to be consistent with the Basel Convention.

Response: EPA disagrees with this comment because it would limit the information needed to determine the ultimate destination of the CRTs in the receiving country, and, thus, not provide the additional assurance that such CRTs are managed safely. We would also note that

listing both interim and final destination facilities in the export notice is consistent with the Basel Convention, as the instructions for the Basel notification document direct notifiers to list the destination facility in Block 10 and, if that facility is doing only an interim R12 (exchange of wastes for submission to any of the recovery operations numbered R1-R10) or R13 (accumulation of material intended for any operation in this list) operation, to list the subsequent recycling facility in an annex.[6] Furthermore, the receiving country has the option of limiting its consent to only one of the listed destination facilities if they do not consider the interim destination or the alternate recycler to be appropriate destinations. Finally, we note that while the United States is a signatory to the Basel Convention, the United States is not a party to the Basel Convention.

D. *Revisions to the Notification Required for Used, Intact CRTs Exported for Reuse*

In March 2012, EPA proposed revisions to the notification requirements for CRTs exported for reuse codified at § 261.41. Specifically, EPA proposed to replace the one-time notice for used, intact CRTs exported for reuse with a condition that the notice (1) be submitted to cover exports for reuse expected over a 12-month or lesser period; and (2) contain additional information, similar to the notification required for CRTs exported for recycling. Additionally, EPA requested comment regarding whether the proposed notice should be sent to the Regional Administrator (as is the case in the existing § 261.41) or to EPA Headquarters, where notices for CRTs exported for recycling are currently sent.

Currently, the notification for CRTs exported for reuse contains minimal information: name, address, and EPA ID (if applicable), the name and phone number of a contact person for

[6] See instruction item 21, p.11, "Revised notification and movement documents for the control of transboundary movement of hazardous wastes and instructions for completing these documents," approved by the Basel Conference of Parties, December 2006, available online at http://www.basel.int/Procedures/NotificationMovementDocuments/tabid/1327/Default.aspx.

the exporter, and a statement that the notifier plans to export used, intact CRTs for reuse. The current notification provides no information regarding where the used, intact CRTs are being exported for reuse, which hinders EPA's ability to share information with the receiving country if there is an issue with the export, which, in turn, inhibits the receiving country's ability to ensure safe management of the CRTs. Furthermore, the one-time nature of the notice provides no assurance that the information collected over time will accurately reflect entities that are exporting CRTs for reuse, which greatly hinders use of the data for compliance monitoring and reporting purposes.

Because the Agency has determined that the currently required information in the notification does not provide sufficient information to allow EPA to adequately monitor compliance and ensure that used, intact CRTs are reused according to the exclusion and not discarded, the Agency is finalizing the proposed condition to expand the notification for CRTs exported for reuse and to require submittals to cover exports over a 12-month or lesser period. Additionally, EPA is requiring that the notice be sent to the same EPA office that receives notices for CRTs exported for recycling (EPA's Office of Enforcement and Compliance Assurance), which will improve efficiency and tracking of all notices for CRTs exported for recycling and reuse.

This additional information will enable better reporting by EPA in response to information requests from receiving countries and other interested parties regarding exports of used CRTs for reuse. This information will, in turn, enable effective compliance monitoring by EPA and those countries receiving such exports, which decreases the risk of potential mismanagement of the materials. Therefore, exporters of used, intact CRTs sent for reuse must send a notification to EPA that would cover export activities extending over a 12-month or lesser

period. The written notification, signed by the exporter, must contain the following information listed in § 261.41:

- The name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter of the used, intact CRTs;[7]
- The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;
- The estimated total quantity of used, intact CRTs specified in kilograms;
- All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;
- A description of the means by which each shipment of the used, intact CRTs will be transported (e.g., mode of transportation vehicle, such as air, highway, rail, water, etc.), as well as the type(s) of container (drums, boxes, tanks, etc.);
- The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;
- A description of the manner in which the used, intact CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact CRTs; and

[7] As stated above, multiple entities may be considered the "CRT exporter" and thus are responsible for ensuring notices are submitted. To avoid duplicative submissions, the Agency expects only one person to perform the exporter duties under §§ 261.39(a)(5) and 261.41, thus persons should assign these exporter responsibilities among themselves. In the case of multiple entities that may be considered the "CRT exporter," the notice should only contain the name, address, telephone number, and EPA ID number for the individual or company that these entities have mutually assigned to be the exporter of record.

- A certification signed by the CRT exporter that states "I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

CRT exporters who export used, intact CRTs for reuse must comply with the revised notification requirements at § 261.41 as of the effective date of the rule, regardless of whether or not they have already submitted a one-time notification under the previous requirements.

Response to Comments

Comment: One commenter supported the proposed changes to the notification for used, intact CRTs sent for reuse.

Response: The Agency agrees with the commenter.

Comment: Two commenters opposed the proposed changes arguing that used, intact CRTs intended for reuse are not being discarded and thus are not solid and hazardous wastes subject to EPA jurisdiction. These commenters believe that EPA does not have authority to impose the additional notification conditions on used, intact CRTs exported for reuse as these are products, not solid wastes. Additionally, these commenters argued that EPA should enforce

against bad actors and not impose further regulation on companies that are complying with the RCRA regulations.

Response: EPA disagrees with these commenters who argued that the revisions to the notification exceed EPA's authority under RCRA. In fact, EPA has concluded that our authority to request such information is inherent in our authority to determine whether a material is discarded.

The Agency notes that used, intact CRTs exported for reuse can be identical in appearance to those exported for recycling. In addition, information in the record, both for this rulemaking and for the 2006 CRT rulemaking, shows that exported electronics for alleged reuse may not in fact be handled as valuable commodities in foreign countries.[8] Consequently, EPA has determined that the information required in today's notification is necessary to help ensure that the used, intact CRTs are actually reused abroad, and are not recycled (or disposed).

We consider the specific information required in today's notification to be the minimum information needed to enable credible evaluation of the status of hazardous secondary materials under section 3007 of RCRA and to ensure proper management of these materials. EPA further believes that RCRA section 3007 allows us to gather information about any material when we have reason to believe that it may be a solid waste and possibly a hazardous waste within the meaning of RCRA section 1004(5). Section 2002 also gives EPA authority to issue regulations necessary to carry out the purposes of RCRA.

The intent of this notification is to provide basic information to EPA about who will be exporting used, intact CRTs for reuse. The specific information included in the notification will

[8] "Exporting Harm-The High-Tech Trashing of Asia," Basel Action Network and the Silicon Valley Toxics Coalition, February 25, 2002 (referenced by commenter on the 2002 CRT proposed rule);"Following the Trail of Toxic E-Waste." CBS 60 Minutes. November 9, 2008; Carroll Chris, "High-Tech Trash," National Geographic Magazine. January 2008.

enable regulatory agencies to monitor compliance adequately and to ensure used, intact CRTs are reused and not discarded. The information will enable better reporting by EPA in response to information requests from receiving countries and other interested parties regarding exports of used, intact CRTs for reuse. This information will, in turn, enable effective compliance monitoring by EPA and in those countries which receive such CRTs for reuse, which decreases the risk of potential mismanagement of the materials.

Comment: One commenter indicated that the CRT exporter may not know certain information required in the notification. For example, this commenter believed that CRT exporters may not know information about the transit countries and the length of time spent in each country because the transportation process is under control of the transporter. Additionally, this commenter believed that the "name and address of the ultimate destination facility or facilities where the CRTs will be reused and the estimated quantity of CRTs sent to each facility" would be difficult for the CRT exporter to provide because the destination facility may be a distribution or sales entity, which sells the CRTs into the local market, but does not itself use them. Thus, the commenter argued that it is not practical for the exporter to identify all of the potential customers who might purchase and use the CRTs.

Response: Regarding the comment on transit countries, EPA understands that some uncertainty is inherent in a notification that estimates used, intact CRTs exported for reuse over a 12-month or lesser period. Though the CRT exporter may not know exact information about transportation activities that have yet to occur, including the time spent in each transit country, the Agency believes it is important that the CRT exporter provide this information to the best of its ability, in an effort to give the transit country (and EPA) information regarding such shipments. The Agency expects that the CRT exporter would have at least general knowledge

with regard to anticipated shipment and arrival dates which would allow the exporter to estimate such information. However, CRT exporters can work with transporters to compile such information and develop reasonable estimates needed to complete the notification.

Regarding the ultimate destination facility, EPA agrees with the commenter that it is not practical for the exporter to identify all of the potential customers who might purchase and reuse the CRTs and, in fact, EPA is not looking for the CRT exporter to identify all potential customers in the export notification. Rather, when requiring the "ultimate destination facility or facilities where the CRTs will be reused," EPA means for CRT exporters to identify the facility or facilities that will be refurbishing the CRTs or receiving the CRTs to be distributed or sold for reuse. To clarify this issue, EPA has modified the language of the requirement to require "the name and address of the ultimate destination facility or facilities where the CRTs will be reused, *refurbished, distributed or sold for reuse*…."

<u>*Comment*</u>: One commenter argued that the proposed certification language in the notification for used, intact CRTs exported for reuse (*i.e.*, "the CRTs described in this notice are fully functioning or capable of being functional after refurbishment") is too broad. Specifically, this commenter argued that nearly any CRT could be exported under the standard "capable of being functional after refurbishment."

<u>*Response*</u>: EPA agrees with this commenter that the proposed certification language could be clearer regarding the standard for used, intact CRTs exported for reuse. Therefore, EPA has amended the proposed certification language to read "that the CRTs described in this notice *are intact* and fully functioning or capable of being functional after refurbishment *and that the used CRTs will be reused or refurbished and reused*…." EPA believes that the addition of "are intact" makes it clear that broken CRTs would not meet this standard and thus could not be

exported for reuse. EPA also notes that CRT exporters, including exporters that do not have physical access to the CRTs, such as a broker or intermediary, are responsible for ensuring that the used CRTs are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused.

Additionally, EPA affirms that persons notifying that they are exporting used, intact CRTs for reuse, but whose CRTs are subsequently not reused, but recycled or disposed, may be subject to enforcement action under RCRA section 3008(a) for violations of the hazardous waste requirements occurring from the time the hazardous secondary materials are generated through the time they are ultimately disposed or recycled. The Agency affirms that § 261.2(f) applies to claims that hazardous secondary materials are not solid waste or are conditionally exempt from regulation. Respondents in enforcement actions should be prepared to demonstrate that there is a known market (for reuse of the used, intact CRTs) and that they are meeting the terms of the exclusion.

Comment: One commenter agreed that notifications for CRTs exported for reuse should be sent to the same EPA office which receives notifications for CRTs exported for recycling.

Response: EPA agrees with this comment and thus, the final rule requires all notifications to export CRTs, whether for reuse or recycling, must be sent to EPA's Office of Enforcement and Compliance Assurance.

E. *Revision to the Normal Business Records Provision for Used CRTs Exported for Reuse*

Under § 261.41(b), persons who export CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of CRTs that are exported will be reused. The documentation must be retained for a period of at least three years from the date the CRTs were exported. In the March 2012 proposal, EPA requested comment regarding

whether to require persons who export used, intact CRTs for reuse to provide a third-party translation of the documents into English, if the documents are written in a language other than English and if EPA requests such a translation.

EPA believes that requiring CRT exporters to provide an English translation of normal business records upon request by EPA is inherent in the demonstration that each shipment of used, intact CRTs will be reused. English translation will also assist with compliance monitoring of this provision. Therefore, EPA is amending the condition at § 261.41(b) to read: "CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA."

Response to Comments

Comment: One commenter supported requiring persons who export used, intact CRTs for reuse to provide third-party translation of documents into English.

Response: EPA agrees with this commenter and thus has finalized such a condition in today's rule at § 261.41(b).

VII. Response to Other Requests for Comment in the March 2012 Proposed Rule

EPA also requested comment on several other issues in the March 2012 proposed rule, including (1) whether to require exporters of CRTs for reuse to include with all shipments a copy

of the notification submitted pursuant to § 261.41; (2) whether to require specific types of documents to be retained by exporters of used, intact CRTs for reuse, including contracts, invoices, and/or shipping documents; (3) whether to require persons who export CRTs for reuse to provide contact information on an alternative destination facility for used, intact CRTs that are damaged in transit, or whether to require such persons to send the damaged CRTs back to the CRT exporter; (4) whether to require persons who export used, intact CRTs for reuse to submit annual reports like those proposed for persons who export CRTs for recycling; and (5) whether "bare" CRTs (used, intact CRTs that are removed from the monitor with the vacuum still intact, even though the plastic housing or casing has been broken and removed) are likely to be exported for recycling rather than for reuse and whether the regulation needs to be modified to reflect this situation.

Response to Comments

Comment: Whether the actual notification should accompany shipments of CRTs exported for reuse, one commenter argued that under the Basel Convention, all shipments of used CRTs exported for recycling and reuse (unless tested as fully functional) must be accompanied by a movement document.

Response: Although EPA has considered whether this would be helpful to officials of U.S. Customs who would be examining a shipment, EPA is not finalizing this condition because we do not believe it would serve much purpose, especially since notices for exports of used CRTs for reuse involve no consent or terms of consent by the importing country, and thus, we do not believe an accompanying notice is necessary for protection of human health and the

environment. We would also note that while the United States is a signatory to the Basel Convention, the United States is not a party to the Basel Convention.

Comment: Whether to require specific types of documents to be retained by exporters of used, intact CRTs for reuse, one commenter argued that documents for CRTs exported for reuse should be retained for three years and include all invoices with brokers and shippers, as well as all bills of lading, including shipping container numbers.

Response: EPA has decided not to require the CRT exporter to retain specific types of documents because the Agency expects that the normal business records for used, intact CRTs sent for reuse, which the CRT exporter is required to maintain for three years under § 261.41(b), would likely contain the appropriate information for meeting the condition. Examples of normal business records include contracts, invoices, and bills of lading.

Comment: Whether to require persons who export CRTs for reuse to provide contact information on an alternative destination facility for used, intact CRTs that are damaged in transit, or whether to require such persons to send the damaged CRTs back to the CRT exporter, one commenter argued that EPA should require that broken equipment be returned to the sender.

Response: EPA has decided not to finalize specific regulatory conditions for used, intact CRTs that become damaged in transit. CRTs that are exported for reuse and subsequently become damaged in transit to the extent that the importing facility in the receiving country determines that the CRTs cannot be reused would typically be returned to the CRT exporter. To the extent that CRT export shipments for reuse will regularly and predictably include a percentage that ultimately need to be recycled, the original notice for reuse would not cover any subsequent shipping of damaged CRTs to a recycling facility in that country. Unless the damaged CRTs are sent back to the exporter for management in the U.S., the exporter would

need to submit a notice to EPA to export a specified amount of used CRTs for recycling at the recycling destination facility in the destination country in order to obtain consent from the country of import prior to sending any of the unusable CRTs from the reuse/refurbishment site to that recycling destination facility.

Comment: Whether to require persons who export used, intact CRTs for reuse to submit annual reports like those proposed for persons who export CRTs for recycling, one commenter argued that annual reports for CRTs exported for reuse were not necessary if the reporting was conducted in accordance with the Basel Convention.

Response: EPA has decided not to finalize a requirement that annual reports be submitted by CRT exporters who export CRTs for reuse. The export provisions for used, intact CRTs exported for reuse are quite different from the export provisions for used CRTs exported for recycling. Specifically, used CRTs exported for recycling must comply with the notification and consent procedures. In this case, the annual report is needed to ensure that CRTs were exported according to the terms approved by the receiving country. However, used, intact CRTs exported for reuse must submit a notification only and do not need consent of the receiving country. Thus, the Agency does not believe that the submission of such an annual report for CRTs exported for reuse is needed and would impose burden on the CRT exporter. We would also note that while the United States is a signatory to the Basel Convention, the United States is not a party to the Basel Convention.

Comment: Whether "bare" CRTs are likely to be exported for recycling rather than reuse and whether the regulation needs to be modified to reflect this situation, one commenter indicated that if EPA were to make any rule changes, the change should be flexible to allow for a recycler to determine the end use of the "bare" CRT and not be bound by one or the other.

Response: EPA is not making any regulatory changes pertaining to the issue of "bare" CRTs. Upon further consideration, EPA continues to believe that "bare" CRTs (meaning intact CRTs that are removed from the monitor while the vacuum is still intact) are more product-like than waste-like, that is, bare CRTs more closely resemble functional CRTs as opposed to broken CRTs or CRTs that must be recycled. Therefore, if "bare" CRTs are exported for reuse, they would not be considered subject to the export conditions of § 261.39(a)(5) (export provisions for CRTs exported for recycling), but rather would be subject to the export requirements of § 261.41 (export provisions for CRTs exported for reuse).

VIII. State Authorization

A. *Applicability of Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA Subtitle C hazardous waste program within the state. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains enforcement authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, 3017, and 7003. The standards and requirements for state authorizations 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. EPA did not issue permits for any facilities in that state, since the state was now 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 requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

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. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[9] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see § 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 promotes national coordination, uniformity, and the expeditious transmission of information between the United States and foreign countries. Although states would not receive authorization to administer the federal government's export functions in today's rule, state programs are still required to adopt provisions in today's rule that

[9] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes state programs.

are more stringent than existing federal requirements to maintain their equivalency with the federal program. Today's final rule contains amendments to §§ 261.39 and 261.41 that are more stringent. Therefore, states that have adopted these provisions, as well as states that have added CRTs to their universal waste programs under 40 CFR part 273, are required to adopt these amendments. In addition, EPA strongly encourages states to incorporate all import- and export-related requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a state has already incorporated 40 CFR part 262, subparts E and H, the import/export manifest and Organization for Economic Cooperation and Development (OECD) movement document related requirements in § 263.10(d), the import manifest and OECD movement document submittal requirements in §§ 264.12(a)(2), 264.71, 265.12(a)(2), and 265.71, or the management provisions for spent lead-acid batteries in 40 CFR part 266, subpart G. When a state adopts the export provisions in this rule, care should be taken not to replace federal or international references with state terms.

IX. Administrative Requirements for this Rulemaking

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the "Economic Impacts Assessment for Revisions to the Export Provisions of the Cathode Ray Tube Final Rule." A copy of the analysis is available in the docket for this action. Annual costs to CRT exporters and EPA for the reporting and

recordkeeping requirements are estimated to range from $9,777 to $17,362 per year. Additionally, CRT exporters will incur a one-time cost of $42,904 in the first year following promulgation of the rule to familiarize themselves with the new CRT rule requirements.

B. *Paperwork Reduction Act*

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them. An information collection request (ICR) document prepared by EPA has been assigned EPA ICR number 2455.02 and OMB number 2050-0208.

EPA is finalizing revisions to the notifications under §§ 261.39 and 261.41 that must be submitted to EPA when CRTs are exported for reuse or recycling. The purpose of these revisions is to address certain implementation concerns with the current export provisions of the CRT rule.

Under today's rule, EPA is requiring in the notification for CRTs exported for recycling that the exporter state the name and address of the recycler or recyclers and the estimated quantity of CRTs to be sent to each facility, as well as the names of any alternate recyclers.

Additionally, EPA is requiring notifications for used, intact CRTs exported for reuse to be submitted to cover a 12-month or lesser period. EPA is also requiring additional items of information in the notice, including contact information about the exporter and the destination facility, the frequency or rate at which the CRTs would be exported, the estimated quantity of CRTs expected to be exported, transport information, and a description of the manner in which the used, intact CRTs will be reused in the receiving country. Furthermore, EPA is requiring the exporter to sign a certification statement that the CRTs are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and

reused. EPA believes that this expanded notice will help the Agency determine whether the exported CRTs have been handled as products that are actually reused in the receiving country.

Finally, EPA is also finalizing a requirement that exporters of CRTs that are exported for recycling must submit an annual report to EPA that documents the actual quantity of CRTs in kilograms exported during the previous calendar year. This information will help ensure that the shipments occurred under the terms approved by the receiving country and enables EPA to provide receiving countries with information that may help them to determine the quantity of CRTs that were received in a particular country for recycling.

EPA has carefully considered the burden imposed upon the regulated community by the information collection requirements in today's rule. EPA is confident that the recordkeeping and reporting activities required of respondents under today's rule are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum information collection requirements in today's rule are not met, neither the facilities nor EPA can ensure that CRTs are managed in compliance with the regulations.

EPA estimates the total annual respondent burden for the new paperwork requirements in the rule ranges from 247 to 278 hours, and the annual respondent cost for the new paperwork requirements is approximately $22,235 to $28,492. There are no capital or operations and maintenance costs expected for this collection. The estimated annual hourly burden ranges from 0.15 to 3.52 hours per response for the 152 respondents (depending on the type of notice and whether the respondent is an exporter of CRTs for reuse or recycling). The estimated total annual burden to EPA for administering the rule (e.g., received, review, and process information required under the final rule) ranges from 32 to 53 hours, with a cost of approximately $1,844 to $3,172. Burden is defined at 5 CFR 1320.3(b).

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

C. *Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are individual CRT exporters. We have determined that approximately 152 CRT exporters will experience an impact of less than 0.1 percent of annual sales as a result of annual compliance costs of the rule.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has minimized the additional information considered necessary in order to reduce the impact of this rule on small entities.

D. *Unfunded Mandates Reform Act (UMRA)*

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The total costs of this rule for CRT exporters and EPA are estimated to range from $9,777 to $17,362. Because these direct costs are well below the $100 million annual direct cost threshold, this final rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA does not authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations because of the federal government's special role in matters of foreign policy.

E. *Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Specifically, this final rule does not have federalism implications because state and local governments do not administer the import/export requirements under RCRA. Thus, Executive Order 13132 does not apply to this action.

F. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). No tribal governments are known to own or operate businesses that may be affected by this rule. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children residing in the United States. This final rule is intended to improve regulatory efficiency and increase accountability among all parties associated with the export of used CRTs whether sent for recycling or reuse, and does not directly affect the level of protection provided to human health or the environment in the United States.

H. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide

Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment in the United States. Rather, this final rule is intended to improve regulatory efficiency and increase accountability among all parties associated with the export of used CRTs, whether for recycling or reuse.

K. *Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective **[insert date six months after publication in the Federal Register]**.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: 6/18/14

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, Parts 260 and 261 of title 40, Chapter I of the Code of Federal Regulations are amended as follows:

PART 260 – HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

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

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

Subpart B – Definitions

2. Section 260.10 is amended by adding in alphabetical order the definition of "CRT exporter" to read as follows:

§ 260.10 Definitions.

* * * * *

CRT exporter means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

* * * * *

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 6838.

Subpart A – General

4. Section 261.39 is amended by revising paragraph (a)(5)(i)(F) and adding paragraphs (a)(5)(x) and (a)(5)(xi) to read as follows:

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

(a) * * *

(5) * * *

(i) * * *

(F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

* * * * *

(x) CRT exporters must file with EPA no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (*i.e.*, the facility or facilities where the recycling occurs) of all used CRTs exported during the previous calendar year. Such reports must also include the following:

(A) The name, EPA ID number (if applicable), and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(xi) Annual reports must be submitted to the office specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report.

* * * * * *

5. Section 261.41 is revised to read as follows:

§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) CRT exporters who export used, intact CRTs for reuse must send a notification to EPA. This notification may cover export activities extending over a twelve (12) month or lesser period.

(1) The notification must be in writing, signed by the exporter, and include the following information:

(i) Name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter of the used, intact CRTs;

(ii) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;

(iii) The estimated total quantity of used, intact CRTs specified in kilograms;

(iv) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;

(v) A description of the means by which each shipment of the used, intact CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;

(vii) A description of the manner in which the used, intact CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact CRTs; and

(viii) A certification signed by the CRT exporter that states:

> "I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(2) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency,

William Jefferson Clinton Building, Room 6144, 1200 Pennsylvania Ave. N.W., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(b) CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA.