

to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

**DATES:** EPA's approval is effective May 30, 2012 for the State of Florida's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on April 30, 2012 for the State of Florida's other authorized programs.

**FOR FURTHER INFORMATION CONTACT:** Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566-1697, [huffer.evi@epa.gov](mailto:huffer.evi@epa.gov), U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, or Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566-1175, [seeh.karen@epa.gov](mailto:seeh.karen@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the State, Tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the State, Tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document

receiving systems that meet the applicable subpart D requirements.

On February 22, 2011, the Florida Department of Environmental Protection (FDEP) submitted an application titled "e-Reporting System Electronic Document Receiving System" for revisions/modifications of its EPA-authorized programs under title 40 CFR. EPA reviewed FDEP's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Florida's request to modify/revise its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 51, 60, 70, 141, 144, 146, 257-258, 262-265, 268, and 270-271 is being published in the **Federal Register**:

Part 52—Approval and Promulgation of State Implementation Plans;

Part 61—National Emission Standards for Hazardous Air Pollutants, Subpart M—National Emission Standard for Asbestos;

Part 70—State Operating Permit Programs;

Part 142—National Primary Drinking Water Regulations Implementation;

Part 147—State, Tribal, and EPA-Administered Underground Injection Control Programs; and

Part 272—Approved State Hazardous Waste Management Programs.

FDEP was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Florida's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

- (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;
- (2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;
- (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or

other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Florida's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: April 16, 2012.

**Andrew Battin,**

*Director, Office of Information Collection.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2012-0331; FRL-9666-9]

### Inquiry To Learn Whether Businesses Assert Business Confidentiality Claims Regarding Waste Import and Export

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

**ACTION:** Notice; request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) receives from time to time Freedom of Information Act (FOIA) requests for documentation received or issued by EPA or data contained in EPA database systems pertaining to the export and import of Resource Conservation and Recovery Act (RCRA) hazardous waste from/to the United States, the export of cathode ray tubes (CRTs) and spent lead acid batteries (SLABs) from the United States, and the export and import of RCRA universal waste from/to the United States. These documents and data may identify or reference multiple parties, and describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. The purpose of this notice is to inform "affected businesses" about the documents or data sought by these types of FOIA requests in order to provide the businesses with the opportunity to assert claims that any of the information sought that pertains to

them is entitled to treatment as confidential business information (CBI), and to send comments to EPA supporting their claims for such treatment. Certain businesses, however, do not meet the definition of "affected business," and are not covered by today's notice. They consist of any business that actually submitted to EPA any document at issue pursuant to applicable RCRA regulatory requirements and did not assert a CBI claim as to information that pertains to that business in connection with the document at the time of its submission; they have waived their right to do so at a later time. Nevertheless, other businesses identified or referenced in the documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

**DATES:** Comments must be received on or before May 30, 2012. The period for submission of comments may be extended if, before the comments are due, you make a request for an extension of the comment period and it is approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under the FOIA is pending.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2012-0331, by one of the following methods:

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

- *Email:* [kreisler.eva@epa.gov](mailto:kreisler.eva@epa.gov).

- *Address:* Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OECA-2012-0331. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. Instructions about how to submit comments claimed as CBI are given later in this notice.

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

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the docket for this notice is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-8186; email address: [kreisler.eva@epa.gov](mailto:kreisler.eva@epa.gov).

**SUPPLEMENTARY INFORMATION:** Today's notice relates to any documents or data

in the following areas: (1) Export of Resource Conservation and Recovery Act (RCRA) hazardous waste, during calendar year 2011 or before, under 40 CFR part 262, subparts E and H; (2) import of RCRA hazardous waste, during calendar year 2011 or before, under 40 CFR part 262, subparts F and H; (3) transit of RCRA hazardous waste, during calendar year 2011 or before, under 40 CFR part 262, subpart H, through the United States and foreign countries; (4) export of cathode ray tubes, during calendar year 2011 or before, under 40 CFR part 261, subpart E; (5) exports of non-crushed spent lead acid batteries with intact casings, during calendar year 2011 or before, under 40 CFR part 266 subpart G; (6) export and import of RCRA universal waste, during calendar year 2011 or before, under 40 CFR part 273, subparts B, C, D, and F; (7) submissions from transporters, during calendar year 2011 or before, 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 which occurred during calendar year 2011 or before, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1) and import consent documentation under 40 CFR 264.71(a)(3) and 265.71(a)(3).

## I. General Information

EPA has previously published notices similar to this one in the **Federal Register**, the latest one being at 76 FR 362, January 4, 2011 that address issues similar to those raised by today's notice. The Agency did not receive any comments on the previous notices. Since the publication of the January 3, 2012 notice, the Agency has continued to receive FOIA requests for documents and data contained in EPA's database related to hazardous waste exports and imports.

## II. Issues Covered by This Notice

Specifically, EPA receives FOIA requests from time to time for documentation or data related to hazardous waste exports and imports that may identify or reference multiple parties, and that describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. This notice informs "affected businesses,"<sup>1</sup> which could include, among others, "transporters"<sup>2</sup> and "consignees,"<sup>3</sup> of

<sup>1</sup> The term "affected business" is defined at 40 CFR 2.201(d), and is set forth in this notice, below.

<sup>2</sup> The term "transporter" is defined at 40 CFR 260.10.

<sup>3</sup> The term "consignee" is defined, for different purposes, at 40 CFR 262.51 and 262.81(c).

the requests for information in EPA database systems and/or contained in one or more of the following documents: (1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste, during calendar year 2011 or before, under 40 CFR part 262, subparts E and H, including but not limited to the “notification of intent to export,”<sup>4</sup> “manifests,”<sup>5</sup> “annual reports,”<sup>6</sup> “EPA acknowledgements of consent,”<sup>7</sup> “any subsequent communication withdrawing a prior consent or objection,”<sup>8</sup> “responses that neither consent nor object,” “exception reports,”<sup>9</sup> “transit notifications,”<sup>10</sup> and “renotifications;”<sup>11</sup> (2) documents related to the import of hazardous waste, during calendar year 2011 or before, under 40 CFR part 262, subparts F and H, including but not limited to notifications of intent to import hazardous waste into the U.S. from foreign countries; (3) documents related to the transit of hazardous waste, during calendar year 2011 or before, 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.; (4) documents related to the export of cathode ray tubes (CRTs), during calendar year 2011 or before, under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs; (5) documents related to the export of non-crushed spent lead acid batteries (SLABs) with intact casings, during calendar year 2011 or before, under 40 CFR part 266 subpart G, including but not limited to notifications of intent to export SLABs; (6) 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 which occurred during calendar year 2011 or before, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1) and import

consent documentation under 40 CFR 264.71(a)(3) and 265.71(a)(3), and (7) documents related to the export and import of RCRA “universal waste”<sup>12</sup> under 40 CFR part 273, subparts B, C, D, and F.

Certain businesses, however, do not meet the definition of “affected business,” and are not covered by today’s notice. They consist of any business that actually submitted information responsive to a FOIA request, under the authority of 40 CFR parts 260 through 266 and 268, and did not assert a claim of business confidentiality covering any of that information at the time of submission. As set forth in the RCRA regulations at 40 CFR 260.2(b), “if no such [business confidentiality] claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.” Thus, for purposes of this notice and as a general matter under 40 CFR 260.2(b), a business that submitted to EPA the documents at issue, pursuant to applicable regulatory requirements, and that failed to assert a claim as to information that pertains to it at the time of submission, cannot later make a business confidentiality claim.<sup>13</sup> Nevertheless, other businesses identified or referenced in the same documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

In addition, EPA may develop its own documents and organize into its database systems information that was originally contained in documents from submitting businesses relating to exports and imports of hazardous waste. If a submitting business fails to assert a CBI claim for the documents it submits to EPA at the time of submission, not only does it waive its right to claim CBI for those documents, but it also waives its right to claim CBI for information in EPA’s documents or databases that is based on or derived from the documents that were originally submitted by that business.<sup>14</sup>

In accordance with 40 CFR 2.204(c) and (e), this notice inquires whether any affected business asserts a claim that any of the requested information constitutes CBI, and affords such business an opportunity to comment to EPA on the issue. This notice also informs affected businesses that, if a claim is made, EPA would determine under 40 CFR part 2, subpart B, whether any of the requested information is entitled to business confidentiality treatment.

### 1. Affected Businesses

EPA’s FOIA regulations at 40 CFR 2.204(c)(1) require an EPA office that is responsible for responding to a FOIA request for the release of business information (“EPA office”) “to determine which businesses, if any, are affected businesses \* \* \*.” “Affected business” is defined at 40 CFR 2.201(d) as, “\* \* \* with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed.”

### 2. The Purposes of This Notice

This notice encompasses two distinct steps in the process of communication with affected businesses prior to EPA’s making a final determination concerning the business confidentiality of the information at issue: the preliminary inquiry and the notice of opportunity to comment.

#### a. Inquiry To Learn Whether Affected Businesses (Other Than Those Businesses That Previously Asserted a CBI Claim) Assert Claims Covering Any of the Requested Information

Section 2.204(c)(2)(i) provides, in relevant part:

If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA office shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information.

#### b. Notice of Opportunity To Submit Comments

Sections 2.204(d)(1)(i) and 2.204(e)(1) of Title 40 of the Code of Federal Regulations require that written notice be provided to businesses that have made claims of business confidentiality for any of the information at issue,

<sup>4</sup> The term “notification of intent to export” is described at 40 CFR 262.53.

<sup>5</sup> The term “manifest” is defined at 40 CFR 260.10.

<sup>6</sup> The term “annual reports” is described at 40 CFR 262.56.

<sup>7</sup> The term “EPA acknowledgement of consent” is defined at 40 CFR 262.51.

<sup>8</sup> The requirement to forward to the exporter “any subsequent communication withdrawing a prior consent or objection” is found at 42 U.S.C. 6938(e).

<sup>9</sup> The term “exception reports” is described at 40 CFR 262.55.

<sup>10</sup> The term “transit notifications” is described at 40 CFR 262.53(e).

<sup>11</sup> The term “renotifications” is described at 40 CFR 262.53(c).

<sup>12</sup> The term “universal waste” is defined at 40 CFR 273.9.

<sup>13</sup> However, businesses having submitted information to EPA relating to the export and import of RCRA universal waste are not subject to 40 CFR 260.2(b) since they submitted information in accordance with 40 CFR part 273, and not parts 260 through 266 and 268, as set forth in 40 CFR 260.2(b). They are therefore affected businesses that could make a claim of CBI at the time of submission or in response to this notice.

<sup>14</sup> With the exception, noted above, of the submission of information relating to the export and import of RCRA universal waste.

stating that EPA is determining under 40 CFR part 2, subpart B, whether the information is entitled to business confidential treatment, and affording each business an opportunity to comment as to the reasons why it believes that the information deserves business confidential treatment.

### 3. *The Use of Publication in the Federal Register*

Section 2.204(e)(1) of Title 40 of the Code of Federal Regulations requires that this type of notice be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. EPA, however, has determined that in the present circumstances the use of a **Federal Register** notice is the only practical and efficient way to contact affected businesses and to furnish the notice of opportunity to submit comments. The Agency's decision to follow this course was made in recognition of the administrative difficulty and impracticality of directly contacting potentially thousands of individual businesses.

### 4. *Submission of Your Response in the English Language*

All responses to this notice must be in the English language.

### 5. *The Effect of Failure To Respond to This Notice*

In accordance with 40 CFR 2.204(e)(1) and 2.205(d)(1), EPA will construe your failure to furnish timely comments in response to this notice as a waiver of your business's claim(s) of business confidentiality for any information in the types of documents identified in this notice.

### 6. *What To Include in Your Comments*

If you believe that any of the information contained in the types of documents which are described in this notice and which are currently, or may become, subject to FOIA requests, is entitled to business confidential treatment, please specify which portions of the information you consider business confidential. Information not specifically identified as subject to a business confidentiality claim may be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as business confidential,

e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for business confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as business confidential be protected for the time period specified in your answer to question no. 1?

3. What measures have you taken to protect the information claimed as business confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered business confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available data bases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the business confidentiality of the information? If so, please attach a copy of the determination.

6. For each category of information claimed as business confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, please explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your business confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as business confidential, you must mark the response "BUSINESS CONFIDENTIAL" or with a similar designation, and must bracket all text so claimed. Information so designated will

be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR part 2, subpart B. If you fail to claim the information as business confidential, it may be made available to the requestor without further notice to you.

### III. **What should I consider as I prepare my comments for EPA?**

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or email. Please submit this information by mail to the address identified in the **ADDRESSES** section of today's notice for inclusion in the non-public CBI docket. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2, subpart B. In addition to the submission of one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

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

- Identify the notice by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Dated: April 20, 2012.

**Susan E. Bromm,**

*Director, Office of Federal Activities.*

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