

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ENVIRONMENTAL TECHNOLOGY  
COUNCIL,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY,

Respondent.

Case No. 19-1215

**PETITION FOR REVIEW**

The Environmental Technology Council hereby petitions this Court, pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6976(a), the Administrative Procedure Act, 5 U.S.C. § 702, and Federal Rule of Appellate Procedure 15, to review and set aside a fee schedule issued by the U.S. Environmental Protection Agency on July 22, 2019, entitled “e-Manifest User Fees FY2020/FY2021.” Petitioner attaches the fee schedule and related email notice issued by the Agency as Exhibit A to this petition. Jurisdiction and venue are proper in this Court under 42 U.S.C. § 6976(a), and the petition is timely filed within 90 days of the issuance of the fee schedule.

Dated: October 17, 2019

Respectfully submitted,

/s/ Hyland Hunt

Hyland Hunt

Ruthanne M. Deutsch

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/s/ David R. Case

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and this Court's Rule 26.1, Petitioner Environmental Technology Council states as follows:

The Environmental Technology Council (ETC) is a national trade association of commercial firms that provide technologies and services for recycling, treatment, and secure disposal of industrial and hazardous wastes. The ETC is organized and existing as a non-profit corporation under the laws of the State of Delaware. The ETC does not have any parent companies or any publicly-held companies that have a 10% or greater ownership interest.

Dated: October 17, 2019

Respectfully submitted,

/s/ Hyland Hunt

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2019, I caused a true and correct copy of the Petition for Review, Exhibit A thereto, and Corporate Disclosure Statement to be served on the following by certified mail, return receipt requested:

Hon. Andrew Wheeler, Administrator  
Office of the Administrator, Mail Code 1101A  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Hon. William Barr  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Correspondence Control Unit  
Office of General Counsel (2311)  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

/s/ Hyland Hunt

Hyland Hunt

## **ATTACHMENT A**

**From:** [Donnelly, Stephen](#)  
**To:** [e-ManifestDev mailing List](#)  
**Subject:** [e-manifestdev] Announcing New e-Manifest User Fees Effective October 1, 2019, through September 30, 2021  
**Date:** Tuesday, July 23, 2019 5:10:55 PM

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## **Announcing New e-Manifest User Fees Effective October 1, 2019, through September 30, 2021**

The Hazardous Waste Electronic Manifest Establishment Act authorized EPA to implement a national electronic manifest system and required that the costs of developing and operating e-Manifest be recovered from user fees. In its 2018 User Fee final rule, EPA established a methodology by which the Agency would set user fees every two fiscal years. For FY2020/2021, the user fees are changing due to various factors, including changes in projected manifest usage rates as well as program costs during this period. These new user fees will be in effect from October 1, 2019, through September 30, 2021. For more information, including the new user fees for FY2020/2021, please visit EPA's e-Manifest website [here](#).

Steve Donnelly  
OLEM | ORCR | PIID | ICAB | [e-Manifest](#)  
w: [703-308-7294](tel:703-308-7294) | m: [703-328-2753](tel:703-328-2753)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

NOW THE  
OFFICE OF LAND AND  
EMERGENCY MANAGEMENT

JUL 22 2019

**MEMORANDUM**

**SUBJECT:** e-Manifest User Fees FY2020/FY2021

**FROM:** Barnes Johnson, Director  
Office of Resource Conservation and Recovery

A handwritten signature in blue ink that reads "Barnes Johnson".

**TO:** Peter C. Wright, Assistant Administrator  
Office of Land and Emergency Management

**Purpose**

The purpose of this memorandum is to explain how the Office of Resource Conservation and Recovery (ORCR) is setting new user fees for the e-Manifest Program, effective October 1, 2019, through September 30, 2021. Specifically, this memorandum describes how the new user fees were derived based on EPA's (or the Agency's) user fee methodology, which was established through rulemaking, and provides updated estimates of program costs and projected manifest usage rates for this period.

Per 40 CFR 264/265.1313(a), EPA must revise the user fees for e-Manifest at two-year intervals by utilizing the applicable fee calculation formula in 40 CFR 264/265.1312 and the most recent program cost and manifest usage numbers. The fee schedules are to be published to users through the e-Manifest program website by July 1 of each odd numbered calendar year to cover the two fiscal years beginning on October 1 of that year and ending on September 30 of the next odd numbered year.

**Applicable Statutory and Regulatory Provisions**

Section 2(c) of the e-Manifest Act states "the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing the data from any paper manifest submitted to the system after the date on which the system enters operation."

In its January 2018 user fee final rulemaking, EPA established the methodology the Agency will use to determine and revise user fees applicable to the electronic and paper manifests submitted to e-Manifest

(83 FR 420, January 3, 2018). Specifically, EPA finalized a Marginal Cost Differentiated Fee model (40 CFR 264/265.1312(a)), which focused on the marginal labor cost of processing each manifest type (fully electronic, paper by mail, paper by image file, or paper by data and image file) as the key contributing cost item, but which allocated all other system setup and non-labor operating costs equally across all manifests.<sup>1</sup>

*e-Manifest User Fee Formula in 40 CFR 264/265.1312(a)<sup>2</sup>*

$$Fee_i = \left( \frac{\text{System Setup Cost}}{\text{Years} \times N_t} \right) + \left( \text{Marginal Cost}_i + \frac{\text{O\&M Cost}}{N_t} \right) \times (1 + \text{Indirect Cost Factor})$$

*System Setup Cost = Procurement Cost + EPA Program Cost*

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

Specifically, the Marginal Cost Differentiated Fee model identifies three major cost categories: System Setup Costs, Operations and Maintenance (O&M) Costs, and Indirect Costs. The formula then breaks down system-related costs (i.e., System Setup and O&M) into two key sub-categories, System Procurement Costs and EPA Program Costs. These sub-categories are helpful to distinguish the IT system acquisition and contracting costs from the other EPA Program Costs that the Agency incurs in planning, developing, operating, and managing the e-Manifest program, including the program's IT system and regulatory components. The EPA Program Costs extend as well to the costs of conducting outreach, as well as establishing and operating the e-Manifest Advisory Board. Indirect costs are the intramural and extramural costs that are incurred by EPA in operating the system, but which are not captured in the EPA Program Costs and marginal labor cost subcategories. These costs include the cost of participation by administrative EPA offices outside of the Office of Resource Conservation and Recovery and the participation of upper management level personnel from the EPA offices that provide support to e-Manifest.

Additionally, EPA finalized in rulemaking that the Agency will refresh the fee formula with the most recent e-Manifest program costs and manifest usage rates every two years. EPA also finalized an inflation adjuster and revenue recovery adjuster in 40 CFR 264/265.1313(b) and 264/265.1313(c), respectively, based on the public comments received during the rulemaking and the necessity of full cost recovery and stable revenues. The inflation adjuster operates to adjust fees between the first and second

<sup>1</sup> At the same time, EPA also finalized the Highly Differentiated Fee model (40 CFR 264/265.1312(b)(1)), which also focused on the marginal labor cost of processing each manifest by type, but was more particular in tracking operation and maintenance costs and manifest numbers by their type, and in allocating the non-labor costs of operating the paper manifest processing center to only the paper manifest types (i.e., mailed paper, image only, and image plus data) rather than having all manifest types share in these costs. In the January 2018 user fee final rule, the Agency stated it could pivot to this model, if electronic manifest usage has not reached a 75% adoption rate after four years of system implementation. EPA stated it will evaluate the circumstances of the electronic manifest adoption rate as the four-year anniversary approaches and will publish a document indicating whether the 75% adoption rate has been realized; any facts or circumstances that might explain why the goal was met or not met; and whether the Agency will either state that the fee pivot will go into effect on a certain date or whether EPA will refer the matter to the Advisory Board. (83 FR 430)

<sup>2</sup> Fee<sub>i</sub> represents the per manifest fee for each manifest submission type "i" and N<sub>t</sub> refers to the total number of manifests completed in a year.

year of a fee cycle. The revenue recovery adjuster for imprecise manifest numbers will operate between fee cycles to adjust fees in the new cycle to account for revenue losses during the previous cycle (83 FR 432-433).

### **Current User Fees for FY2018/2019**

This section describes ORCR's methodology for setting the current FY2018/2019 user fees effective June 30, 2018, through September 30, 2019.

ORCR announced the current e-Manifest user fees ahead of the June 30, 2018, system launch. At the time, actual data on manifest usage were unavailable because, prior to e-Manifest, there was no national collection of manifests. Thus, ORCR relied on manifest usage estimates from industry and other data collected through the Regulatory Impact Assessment (RIA) development process. Overall, ORCR projected it would collect approximately three million manifests a year. Specifically, the projected manifest usage for each type of submission included:

<b><i>Manifest submission type</i></b>	<b><i>Projected FY19 manifest usage</i></b>
Mailed paper	240,000
Image	509,999
Image + data	2,219,998
Electronic/hybrid	30,000
Total	2,999,997

Using these projected manifest usage rates, ORCR added in the marginal labor cost of processing each manifest as provided by the Paper Processing Center (PPC).

<b><i>Manifest submission type</i></b>	<b><i>Projected FY19 manifest usage</i></b>	<b><i>Marginal labor costs of manifest</i></b>
Mailed paper	240,000	\$9.41
Image	509,999	\$4.03
Image + data	2,219,998	\$4.03
Electronic/hybrid	30,000	\$3.36

Other factors in the fee formula included:

- \$17,500,000 for setup costs paid back over five years
- \$2,800,000 O&M costs
- 0.3322 indirect rate

Using all this information, the user fee model produced the following results:

<b>Manifest submission type</b>	<b>Projected FY19 manifest usage</b>	<b>User fee model results</b>
Mailed paper	240,000	\$11.82
Image	509,999	\$6.44
Image + data	2,219,998	\$6.44
Electronic/hybrid	30,000	\$5.77

After reviewing the raw output from the user fee model, ORCR decided to further differentiate costs for electronic manifests from paper manifests to provide greater incentive for adopting electronic manifests. The Office of General Counsel (OGC) confirmed that distributing the electronic manifest submission costs across other submission types to ensure that fees are inversely proportional to their desirability is consistent with the regulatory goals of e-Manifest, particularly the goal of fostering submission of electronic manifests.

Therefore, the current user fees effective June 30, 2018, through September 30, 2019, are as follows:

<b>Manifest submission type</b>	<b>FY18/19 final user fees</b>
Mailed paper	\$15.00
Image	\$10.00
Image + data	\$6.50
Electronic/hybrid	\$5.00

### **User Fees for FY2020/2021**

ORCR must announce user fees for the next two-year cycle, which will be effective from October 1, 2019, through September 30, 2021. Notably, ORCR is now able to set projections for calculating user fees based on actual data collected during system implementation, including actual manifest usage rates and cost information over an eight-month period. This section describes ORCR's methodology for setting the new user fees.

Specifically, ORCR has observed significant differences between its projected manifest usage rates for FY2018/2019 and actual manifest usage observed since the June 30, 2018, system launch. Whereas, prior to system launch, ORCR had estimated it would collect nearly three million manifests a year, actual manifests collected are on pace to be closer to two million manifests a year:

<b>Manifest submission type</b>	<b>Original projected FY19 manifest usage</b>	<b>Revised FY19 projections based on actuals</b>	<b>Approximated difference between projections</b>
Mailed paper	240,000	130,000	-110,000
Image	509,999	390,000	-120,000
Image + data	2,219,998	1,590,000	-630,000
Electronic/hybrid	30,000	10,000	-20,000
Total	2,999,997	2,120,000	-880,000

If user fees remained unchanged, the revenue shortfall would continue to grow as follows:

	<b>Original projections for FY19</b>	<b>Revised FY19 projections based on actuals</b>	<b>FY20 projections based on actual manifest usage and FY18/19 fees</b>	<b>FY21 projections based on actual manifest usage and FY18/19 fees</b>
Manifest usage estimates	2,999,997	2,120,000	1,760,000	1,760,000
Revenue estimates	\$20,600,000	\$16,100,000	\$11,920,000	\$11,150,000

Because of the projected revenue shortfall, the program had to do the following:

- Slow down the Paper Processing Center (PPC), which created a manifest backlog. Specifically,
  - Delayed full-scale paper processing until February 2019<sup>3</sup>
  - Prioritized data entry of mailed paper manifests over image only manifests for two reasons. Unlike the other manifest submission types, (1) regulators do not have access to images or data for mailed paper manifests until they are processed by the PPC; and (2) EPA cannot charge user fees for mailed manifests until they are entered by the PPC.
  - Suspended QA/QC of image + data manifests<sup>4</sup>; and
- Renegotiate the PPC contract terms for FY2020/2021.

For the PPC contract, EPA renegotiated the original FY2018-2020 PPC contract service fee structure because the contract was based on EPA paying a fixed amount for the PPC to process up to four million manifests over a 12-month period (median number of manifests per year from the Government throughput estimate). Because actual manifest usage is closer to two million manifests, EPA had not collected enough revenue to properly fund the contract to process the manifests received. The result of the renegotiation produced the following updated marginal labor costs for processing each manifest by the PPC:

<b>Manifest submission type</b>	<b>Marginal labor costs of manifest<sup>5</sup></b>
Mailed paper	\$12.11
Image	\$5.95
Image + data	\$8.33
Electronic/hybrid	\$3.50

Additionally, ORCR expects a reduction in manifest usage volume during FY2020 and FY2021 based on changes in state regulation of state wastes requiring a manifest. Specifically, Illinois has informed the program that they will no longer be requiring state-only waste to be shipped on a hazardous waste

<sup>3</sup> Contributing to this delay, and amplifying the manifest backlog, was the fact that the PPC was prohibited from processing manifests during the 2018–19 United States federal government lapse in funding.

<sup>4</sup> A sample of uploaded data plus image manifests had a 14% failure rate for having the correct tracking information.

<sup>5</sup> The PPC's greater marginal labor cost for image + data submissions compared to image only submissions is due to how the contract is structured in terms of sharing total costs across all manifest submission types.

manifest. There are also indications that several other states are evaluating whether to make similar changes to their programs. Therefore, for FY2020 and FY2021, we are estimating a 17% reduction from the number of manifests received in FY2019.<sup>6</sup>

Further, we anticipate that there will be a greater shift from mailed paper towards the other three submission types, including electronic submission of the paper manifest and the electronic manifest. This is in part due to greater awareness and familiarity of the regulated community with the system; incentive to move towards less expensive submission options; and the fact that on June 30, 2021, EPA will no longer accept paper manifests submitted via mail.

<b>Manifest submission type</b>	<b>Revised FY19 projections based on actuals</b>	<b>FY20 projections (17% reduction from FY19)</b>	<b>FY21 projections (shift away from mailed paper manifests)</b>
Mailed paper	130,000	110,000	0
Image	390,000	320,000	430,000
Image + data	1,590,000	1,320,000	1,056,000
Electronic/hybrid	10,000	10,000	274,000
<b>Total</b>	<b>2,120,000</b>	<b>1,760,000</b>	<b>1,760,000</b>

Other factors in the fee formula included:

- \$17,500,000 for setup costs paid back over five years
- \$6,800,000 average O&M costs
- 0.3322 indirect rate

The increase in O&M costs (see Attachment A – Detailed e-Manifest Program Costs) from \$2.8M in calculating FY2018/2019 fees to \$6.8M in calculating FY2020/2021 fees is primarily due to the following three expense items, which were not included in calculating FY2018/2019 fees:

- \$2.4M for addressing 2018/2019 manifest backlog
- \$2.0M annually for CDX system development with General Services Administration, developing key functionality for the following users
  - Industry
    - Ability for transporters and brokers to create manifests and participate in the fully electronic manifest workflow
    - Ability for industry to pull data out of the system
    - Updates and enhancements to the user interface based on increased generator and transporter participation
    - In-transit shipping changes
    - Notifications

<sup>6</sup> The program is estimating an additional 17% annual reduction in manifests with state hazardous waste. Beginning this summer, Illinois is no longer requiring their state-regulated hazardous waste to go on the federal form. Manifests containing Illinois state-regulated manifests represent ~5-7% of manifests received. Further, we anticipate that in the succeeding two years, additional states will remove their requirement for their state-specific waste to go on the federal form and no states will be adding the requirement to put their state-regulated waste on the federal form.

- Enhancements to receiving facility data submission and signature functionality
  - States
    - Additional reports to support regulatory and enforcement programs
    - Corrections to the manifest
- \$500K annually for Cross Media Electronic Reporting Rule and other IT development demands
  - Work associated with accepting 3<sup>rd</sup> party application/device electronic signature
- \$870K annually for increased personnel costs associated with the responsibility of overseeing and administering what was a roughly \$3M annually appropriated development program to what is now a live system based on fee revenues estimated over \$26.6M. This additional FTE support is to address user and administrative needs related to implementation of e-Manifest. Areas include:
  - Program financial management support
  - Contracting and paper processing implementation support
  - IT development – reporting and database support
  - Industry implementation – electronic signature support
  - State implementation – policy and program outreach and support

Using this information, the user fee model produced the following results:

<b><i>Manifest submission type</i></b>	<b><i>User fee model results for FY20/21</i></b>
Mailed paper	\$19.24
Image	\$13.08
Image + data	\$15.46
Electronic/hybrid	\$10.64

After reviewing the raw output from the user fee model, ORCR decided to adjust the fees for the reasons listed below. OGC again confirmed that distributing the electronic manifest submission costs across other submission types is consistent with the regulatory goals of e-Manifest, particularly the goal of fostering submission of electronic manifests.

Specifically, ORCR made the following adjustments to the user fee model results:

- Increased user fee for mailed paper manifests based on feedback from e-Manifest Advisory Board to provide strong disincentives for paper manifests. Additionally, this will further discourage mailed paper manifests ahead of the June 30, 2021, ultimate termination date for mailed paper manifests.
- Corrected aberration related to image plus data manifests appearing as a higher user fee than image only manifests. This result is a function of the how the PPC contract is structured and the corresponding inputs of marginal labor cost into the user fee model. It does not reflect the differences in processing time between these two types of manifest submissions, which was the intent of the user fee model.

- Decreased user fee for electronic manifests to provide greater incentive for adopting electronic manifests, thereby reducing total costs related to processing paper. (ORCR also set the final user fee for electronic manifests keeping in mind that electronic manifests when widely adopted will, in the future, need to support full system costs.)

Therefore, the current user fees effective October 1, 2019, through September 30, 2021, are as follows:

<i><b>Manifest submission type</b></i>	<i><b>FY18/19 User Fees</b></i>	<i><b>User fee model results for FY20/21</b></i>	<i><b>FY20/21 final user fees</b></i>	<i><b>FY20/21 projected manifest usage</b></i>	<i><b>Estimated Revenue for FY20/21</b></i>
Mailed paper	\$15.00	\$19.24	\$25.00	55,000	\$ 1,375,000
Image	\$10.00	\$13.08	\$20.00	375,000	\$ 7,500,000
Image + data	\$6.50	\$15.46	\$14.00	1,188,000	\$16,632,000
Electronic/hybrid	\$5.00	\$10.64	\$8.00	142,000	\$ 1,136,000
<b>Total</b>				1,760,000	<b>\$26,600,000</b>

For reference, ORCR estimates program expenses to be \$27.6M for FY2020 and \$25.2M in FY2021 (average FY2020/2021 annual expenses = \$26.4M) and thus these user fees are projected to cover program expenses during this period. Additionally, given that the estimated revenue for FY2020/2021 is based on projections (not actuals) of total manifest usage, as well as usage by manifest type, ORCR finds that the difference of + \$0.2M between annual estimated revenue (\$26.6M) and program expenses (\$26.4M) to fall within an acceptable margin of error.<sup>7</sup>

Attachment

cc: Barry Breen  
Steven Cook  
Nigel Simon  
Jennifer Wilbur

<sup>7</sup> Section (c)(B)(i)(II) of the e-Manifest Act directs the Administrator to “minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.” Section (c)(B)(ii) provides for an exception during initial period of operation that the “requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed \$2,000,000, during the 3-year period beginning on the date on which the system enters operation.”

**Attachment A – Detailed e-Manifest Program Costs****eManifest Program Costs**

	FY18/19 Baseline	FY 2019 (act)	FY 2020	FY 2021	Notes
Number of manifests	2,999,997	2,120,000	1,760,000	1,760,000	
<b>EPA Operational and Maintenance Costs (O&amp;M)</b>					
<b>EPA Operational Costs</b>					
Salary	\$1,500,000	\$1,232,400	\$2,080,000	\$2,121,600	5 additional FTE
EPA Travel	\$15,000	\$18,000	\$15,000	\$15,300	Based on FY 2018 spending
General expenses (BOC 36)	\$20,000	\$7,159	\$30,000	\$30,600	
Working Capital Fund	\$200,000	\$234,714	\$171,000	\$171,000	\$150k base plus \$7 ker per additional FTE; not subject to indirect rate.
<b>TOTAL EPA Operational Costs</b>	<b>\$1,735,000</b>	<b>\$1,492,273</b>	<b>\$2,296,000</b>	<b>\$2,338,500</b>	
<b>Maintenance Costs (non PPC)</b>					
Amazon cloud hosting with DOI	\$350,000	\$150,000	\$350,000	\$357,000	
CDX system development with GSA	\$350,000	\$1,480,000	\$2,000,000	\$2,040,000	All improvements to the system.
CROMERR IT development	\$0	\$0	\$500,000	\$510,000	To encourage electronic adoption.
Federal Advisory Committee	\$90,000	\$66,000	\$180,000	\$90,000	This includes contracting and travel costs.
CDX Lexis Nexis and data cost share	\$90,000	\$67,398	\$90,000	\$91,800	
Other program management costs	\$200,000	\$197,000	\$200,000	\$204,000	This includes the CDX help desk (\$69), ITS-BISS technical support (\$60).
<b>TOTAL Maintenance Costs</b>	<b>\$1,080,000</b>	<b>\$1,960,398</b>	<b>\$3,320,000</b>	<b>\$3,292,800</b>	
<b>Address FY18/19 Backlog</b>			<b>\$2,412,500</b>		
<b>Total EPA O&amp;M Costs</b>	<b>\$2,800,000</b>	<b>\$3,452,671</b>	<b>\$8,000,000</b>	<b>\$5,600,000</b>	
<b>Paper Processing Center Costs</b>	<b>\$17,800,000</b>	<b>\$12,170,450</b>	<b>\$15,343,668</b>	<b>\$15,343,668</b>	Re-negotiated PPC contract costs in green
<b>eManifest initial system setup cost recovery</b>	<b>\$3,500,000</b>	<b>\$3,500,000</b>	<b>\$3,500,000</b>	<b>\$3,500,000</b>	
<b>Agency Indirect cost recovery</b>	<b>\$930,160</b>	<b>\$476,879</b>	<b>\$800,000.00</b>	<b>\$800,000.00</b>	
<b>TOTAL Program Expenses</b>	<b>\$20,600,000</b>	<b>\$19,600,000</b>	<b>\$27,600,000</b>	<b>\$25,200,000</b>	<i>Costs regardless of the # of manifests received.</i>