

Electronic Hazardous Waste Manifests Rules Issued

By

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The U.S. Environmental Protection Agency (EPA) on February 7, 2014, issued a final rule under the Resource Conservation and Recovery Act (RCRA) that authorizes the use of electronic hazardous waste manifests. The final rule will have immediate implications for virtually all domestic manufacturers of hazardous waste. This column explains why.

Background

The quest for an electronic waste manifest began in 2001, largely to address and eliminate the inefficiencies associated with the use of a paper manifest. The approach suggested in 2001 was determined not to be feasible, however, and in 2004, EPA convened a two-day stakeholder meeting in Washington, D.C. to discuss how best to proceed. The meeting concluded with a consensus position that a centralized, national electronic manifest system (e-Manifest System) was preferred over a decentralized system.

In 2006, EPA issued a Notice of Data Availability (NODA) and announced the preferred “centralized” option, funded by service fees that would be paid by waste handlers who opt to use electronic manifests. A second NODA was issued in 2008.

In September 2012, Congress enacted the Hazardous Waste Electronic Manifest Establishment Act (the Act), which was signed into law on October 5, 2012. The Act expressly requires EPA to issue a final rule authorizing the use of electronic hazardous waste manifests and, importantly, provides EPA with explicit statutory authority needed to implement the electronic manifest in a self-sustaining manner. The February final rule is the rule mandated by the Act.

The Act provides EPA with certain new authorities. Section 2(g)(1)(A), for example, directs EPA to promulgate final regulations authorizing the use of electronic manifests within one year of enactment (*i.e.*, by October 5, 2013), which EPA did. Section 2(b) directs EPA to establish an e-Manifest system that may be used by any user within three years from the date of enactment of the Act (*i.e.*, by October 5, 2015). Section 2(c) of the Act authorizes EPA to impose and collect reasonable “service fees” necessary to pay the costs of implementing the system. Section 2(d)(2)(A) of the Act authorizes the Secretary of the Treasury, upon request by the Administrator of EPA, to transfer to EPA such amounts from the fund that Congress has appropriated to EPA to pay the costs incurred in developing, operating, maintaining, and upgrading the system.

The Final Rule

The requirements announced in the final rule clarify that electronic manifest documents obtained from EPA’s national e-Manifest system and completed in accordance with the final rule, are the legal equivalent of the paper manifest forms (EPA Forms 8700-22 and

8700-22A) that are currently authorized for use in tracking hazardous waste shipments. Upon completion of the system, the electronic manifest documents authorized by the final rule will be available to manifest users as an alternative to the paper manifest forms to comply with federal and state requirements regarding the use of the hazardous waste manifest. Users who elect to opt out of the electronic submittal to the system may continue to use the paper manifest to track their shipments during transportation, which then will be submitted by the designated facility for inclusion in the e-Manifest system.

The final regulation further clarifies those electronic signature methods that EPA recommends for executing electronic manifests in the first generation of the national system. The rule also clarifies that the final electronic manifest requirements promulgated will be implemented in all states on the same effective date for the national e-Manifest system. Authorized states must adopt program revisions equivalent to and consistent with federal requirements. EPA will implement these electronic manifest regulations unless and until the states are fully authorized to implement them in lieu of EPA.

Although the final rule is, in EPA's description, "a key step" in the use of electronic manifests, EPA has much regulatory work ahead of it. This includes establishing the overall e-Manifest system, fee structure, and compliance dates. The final rule is effective August 6, 2014.

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