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## EMCX Center of Expertise Information - Fact Sheet

Fact Sheet 14-02

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### Electronic Manifests, Final Rule

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#### ***Purpose of this Fact Sheet***

This summarizes the final rule regarding use of the electronic manifest for shipping hazardous waste. The 07 Feb 2014 rule entitled, “Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifests”, was published in 79 Federal Register 7518. The effective date of the rule is 06 Aug 2014. However, implementation is delayed until such time as the e-Manifest system is ready for operation and a fee structure has been established. A subsequent Federal Register notice will announce when the national e-Manifest system becomes operational and the fee structure is in place to fund the system.

This Fact Sheet highlights major aspects of the rule. It does not provide a comprehensive list of all requirements. For details, consult the 07 Feb 2014 Federal Register.

#### ***Summary of the Final Rule***

The Hazardous Waste Electronic Manifest Establishment Act, Public Law 112–195, directed the Environmental Protection Agency (EPA):

- to establish an electronic manifest system by 5 October 2015;
- to impose and collect reasonable fees to pay for the system; and
- to provide annual audits by the EPA Office of Inspector General regarding the reasonableness of fees, level of system use, and success of the system for improving efficiency of waste tracking.

This final rule establishes the legal and policy framework for the national e-Manifest system. The e-Manifest system will be a centralized system operated by EPA. Once the national e-Manifest system is available, use of electronic manifests will be the expected means for tracking hazardous waste shipments. However, users will be able to opt out of using the electronic manifest and continue to use the paper form if they so choose. In fact, a generator can only prepare an e-manifest if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the e-Manifest system. Otherwise, a paper manifest must be used. None-the-less, information from the paper manifest will still be captured within the e-Manifest system because the “designated” treatment, storage, and disposal facility (TSDF) receiving the hazardous waste will be required to submit information from the paper manifest to EPA for processing into the e-Manifest system. Thus fees will be established for users of both the e-manifest and the paper manifest. The fee schedule is yet to be established, but is

expected to include fees for generators, transporters, and TSDFs. Fees will be published as an appendix to 40 CFR 262.

### Key Points

- The centralized, e-Manifest system is a national system and will be implemented in all states at the same time regardless of state authorization status. The implementation date will be announced in a subsequent Federal Register notice.
- The rule pertains to manifests only and does not provide for electronic versions of any other RCRA-related forms such as land disposal restriction notifications.
- Electronic manifests that are obtained, completed and transmitted as required under this rule and used in lieu of EPA forms 8700-22 (the Uniform Hazardous Waste Manifest) and 8700-22A (the Continuation Sheet) are the legal equivalent of paper manifest forms bearing handwritten signatures and satisfy for all purposes any requirement to obtain, complete, sign, provide, use or retain a manifest.
  - Any requirement to sign a manifest certification by hand or to obtain a handwritten signature is satisfied by signing with or obtaining a valid and enforceable electronic signature.
  - Any requirement to give another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the e-Manifest system.
  - Any requirement to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the users account on the national e-Manifest system, provided the copies are readily available for viewing and production if requested by EPA or the State.
- Regulations protect against liability for the inability to produce an electronic manifest for inspection if it can be demonstrated that the inability is exclusively due to technical difficulty with the EPA system for which the other entity has no responsibility.
- Persons can participate in the e-Manifest system through use of their own equipment or by accessing it from equipment provided by a participating party as described in the regulation.
- Department of Transportation Hazardous Materials Regulations still require shipping papers to accompany hazardous materials shipped by highway. Thus, generators will need to print and provide a hard copy of the e-manifest to the transporter. This copy will be used for providing ink signatures when electronic signature methods are undergoing pilot or demonstration tests to demonstrate legal dependability of the e-signature.
- If the e-manifest has been originated and signed by the initial transporter and then becomes unavailable for any reason, then the transporter in possession of the waste must reproduce sufficient copies of the printed manifest or obtain and complete another paper manifest. Each copy must include a notation in the "Special Handling and Additional Description" (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the e-Manifest system and shall include the manifest tracking number of the e-manifest and a brief

explanation of why the e-manifest was not available for completing the tracking of the shipment electronically.

- TSDFs are responsible for submitting paper copies of manifests to the e-Manifest system for data entry and processing within 30 days of delivery to the TSDF.
- Confidential Business Information (CBI) cannot be claimed for information on electronic manifests. Manifest information will become publically accessible 90 days after delivery to the designated facility. The 90-day period allows for corrections and verification of waste shipment information prior to considering the manifest complete and final.
- Regarding electronic signatures, the Final Rule is technology neutral and does not codify specific electronic signature methods. Therefore methods can change as needed. Instead, the rule specifies that the electronic signature methods used shall be legally valid and enforceable. For the first generation of e-signatures, EPA recommends the PIN/password electronic signature method. EPA also expects to deploy a digitized handwritten signature method on an interim basis (with some paper ink signature requirements still applicable) pending studies to validate forensic reliability of this signature method.

#### State Regulated Hazardous Waste

The e-manifest will be used for state regulated hazardous wastes as well as Federally regulated hazardous wastes. It is discussed within the preamble as follows:

- The e-Manifest system is available to track “state only” hazardous waste shipments when either the generator state or the destination state (or both states) imposes a requirement under state law to use the hazardous waste manifest to track an off-site shipment of a waste, and all the waste handlers named on the manifest elect to use the e-Manifest system. A receiving facility in a state that does not require the manifest may receive a waste shipment subject to the manifest under the generator state’s law. In such a case, the new authority of section 2(h) of the e-Manifest Act requires the receiving facility to complete the facility portion of the applicable manifest, to sign and date the facility certification, and to submit to the e-Manifest system a final copy of the manifest for data processing.
- The e-Manifest system will also be available to track shipments of certain types of RCRA hazardous waste which are federally exempt from the manifest requirements (e.g., universal waste under 40 CFR part 273, and small quantity generator (SQG) wastes subject to reclamation agreements under 40 CFR 262.20(e)) but subject to the manifest requirements because of more stringent state laws.

#### **Conclusion**

EPA finalized the electronic manifest rule and is it effective as of 06 August 2014. Even though the e-Manifest system is not yet operational, it is not too soon to prepare for this major transition in the way hazardous wastes are tracked. Persons responsible for manifesting hazardous waste need to become familiar with the requirements of this rule in order to ensure a smooth transition to the new electronic manifesting system.

***Technical Assistance***

For questions regarding this Fact Sheet, contact the USACE Environmental and Munitions Center of Expertise at (402) 697-2559/2560/2634.