



E-Manifest Final Rule

For over a decade, the US EPA, states, industry and related stakeholders have had a mutual interest in developing a national electronic manifest system that would facilitate the electronic transmission of the uniform manifest form and make the use of the uniform manifest much more cost-effective and convenient for users [\[source\]](#).

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The EPA has been working on a hazardous waste electronic manifest program (“e-Manifests”) for quite a while. An initial rule was published in the February 7, 2014 Federal Register (79 FR 7518-7563). E-manifests are designed to ultimately replace today’s paper-based system. Additional “final” rules will follow.

Before we go any further, please note that this final rule has no impact on the current paper manifesting process. There are no deadlines to worry about at this time. This rule primarily establishes the regulatory framework necessary to implement the e-Manifest program. However, there are still some interesting tidbits contained in the document that we will discuss below. We will also provide comments related to other correspondence and meetings that Heritage has been monitoring.

Fees in Limbo

Of course, the main thing all of us want to know is how much it will cost? Well, you won't find that in this final rule. EPA will definitely fund the program with user fees, but we have not yet seen any details on a fee structure. It is also important to note that every hazardous waste manifest user will be paying into the program, whether you use an e-Manifest or stay with paper.

Centralized System

Stakeholders offered plenty of input to the EPA that they did not want an e-Manifest system run by private contractors, individual states, or TSD facilities. So, all the data will be processed through the Central Data Exchange (CDX) or something very similar.

We recognize that many customers rely on their disposal/TSD facilities to configure manifest data. That said, we are optimistic that the EPA will provide appropriate access and tools to enable the most important parties (generator, transporter, TSD facility, and perhaps consultant) to share and interact with the manifest data in a timely manner.

Either Electronic or Paper is Okay

As briefly mentioned above, you will still be able to use a paper manifest if you want to. However, there is a very good chance that paper manifest users will be charged a higher fee than the e-Manifest users.

If you use an e-Manifest, everyone in the management chain (generator, transporter, facility) has to participate electronically or you default back to paper. The stakeholders that participated in the rule development decided that it would be too difficult to operate in a mixed mode of digital and paper at different points in the process.

Two other points on paper; whether electronic or not, a paper version of the manifest will still need to be available in the transporter’s vehicle for DOT emergency response purposes. Also, paper users’ manifests will ultimately be digitized and stored in EPA’s manifest data warehouse.

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E-Signature Controversy

The final rule contains quite a bit of discussion regarding how an e-Manifest will be signed. Early proposals were modeled after EPA's CROMERR (Cross Media Electronic Reporting Regulation, October 13, 2005). Stakeholders voiced many concerns that this signature method was very cumbersome and not designed for situations that would potentially require multiple signatures for multiple manifests in a single day's time. Stakeholders felt that this type of requirement would prevent many generators from adopting the e-Manifest program.

The EPA was influenced by these comments, and has determined that two digital signature methods will be determined to be CROMERR-compliant:

A digitized signature pad where you write your name with a stylus; and

A witnessed PIN entered by a keypad.

There are technical requirements associated with each method, but we believe that the proposed methods will be able to accommodate manifest processes in a relatively smooth manner.

Data is Not as Much "Yours" as Before

The current record retention time for the paper manifest is three years. After that you can destroy them if you choose to. Also, if you happen to be in a state that does not require you to mail in a copy of your manifest, then the parties that actually had your manifests were limited to you (as generator), your transporters, and the TSD facility you shipped to.

The only piece of this final rule with a meaningful date involves confidentiality rights to manifest data. The EPA has officially determined that manifest data can't be claimed as confidential, and this has an effective date of August 6, 2014.

This loss of protection also means that when the e-Manifest system is up and running, anyone will be able review your manifest data. The EPA did make one slight concession to this general data release. Your data will not be publicly available until 90 days after TSD facility receipt. This grace period is to accommodate manifest corrections that sometimes occur during the shipment and data review process.

No More Mail (i.e., Manifest Distribution)

The new e-Manifest will fulfill your recordkeeping obligations for the manifest itself as well as your distribution requirements. Unfortunately, you will still be living with at least some paper because of all the other administrative issues related to manifests that EPA is pushing to later implementation phases.

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Other Issues to Note

You will still have to separately file your Biennial/Annual Hazardous Waste Reports. While most of us wanted these reports to go away, there are still a few pieces of data that do not overlap between the two programs (e.g., form and source codes).

Manifest Attachments/Supplements – A Land Disposal Restrictions (LDR) Notice still needs to be associated to your manifest, some generators attach items such Safety Data Sheets (SDSs) for DOT emergency response purposes, etc. In meetings EPA stated that there would be capability to add attachments to the manifest data records.

State hazardous waste and non-hazardous waste – EPA committed to allowing the e-Manifest to be used for all the things it is today, including non-federally regulated state hazardous waste. Heritage is a little more uncertain regarding wastes that aren't state or federally hazardous. For example, even if the system accommodates these materials as advertised, we think generators may prefer to keep this optional data out of the system.

For further information about the new ruling visit the EPA webpage on the subject at: <http://www.epa.gov/osw/hazard/transportation/manifest/e-man.htm>

Or their Frequently Asked Questions here: <http://www.epa.gov/osw/hazard/transportation/manifest/e-man-faqs.htm>

About the Author

Terry Ferrill has been in the environmental and hazardous waste business at Heritage for nearly 30 years. Mr. Ferrill has held positions within Heritage as a consultant, business analyst, and hazardous waste facility compliance manager. He currently works in Heritage's corporate compliance department, where he specializes in regulatory research to support internal business development and assist customers with thorny compliance issues.