

## ALERTS

### Environmental Law Alert - EPA Hazardous Waste E-Manifest Final Rule Released; Second EPA Rule Establishing Fees And Vendor Contracts Establishing System Details Yet To Come

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The Environmental Protection Agency (EPA) Administrator has signed a final rule that establishes new requirements governing the use of electronic manifests (or e-Manifests) as a means to track hazardous waste under RCRA. The rule has not yet been published in the Federal Register and will become effective 180 days after publication. However, the e-Manifest system will not be up and running until October 2015, at the earliest. The specific date will be announced in a separate Federal Register notice.

The final rule decides the following issues:

1. An electronic signature must be a legally valid and enforceable signature; and must be designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible.
2. Manifest information (including aggregated data) is not protected from disclosure as confidential business information. However, EPA will not make it available on-line until after 90 days, when it is considered to be a "complete and final document." This policy does not affect FOIA requests or State release of manifest information.
3. Generators can "opt-out" of the electronic system. Also, generators can only use the electronic system for waste shipments if they know that all persons handling the shipment also will use electronic manifests.
4. Even if the generator and transporter use paper manifests, the destination facility must provide the data from the paper manifest to the electronic system.
5. A paper copy of the e-Manifest must be printed out and accompany the waste, thereby meeting DOT shipping paper requirements.
6. The electronic manifest meets RCRA record retention requirements.
7. If the electronic signature method used is undergoing a pilot or demonstration test, all parties must put an ink signature on the DOT shipping paper and that paper must be retained by the destination facility for 3 years.
8. The e-Manifest system shall: (a) take effect in each state on the same date; (b) supersede any less stringent or inconsistent provision of a state program; and (c) be carried out by EPA in an authorized state except where the state has received final authorization for state program revisions implementing the electronic manifest requirements.

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## RELATED PRACTICE AREAS

The following issues will be addressed in an EPA contract with a vendor:

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1. The technical details of system design, operation, and security. EPA currently intends to host the e-Manifest system on its CDX portal or other system designated by the Administrator.
2. Approved electronic signature systems. The EPA rule-making preamble says that first generation electronic signatures will include both a pin/password and a digitized handwritten signature.

A copy of the final rule is available on EPA's website here:

[http://www.epa.gov/epawaste/hazard/transportation/manifest/pdf/eman\\_final\\_rule\\_011314.pdf](http://www.epa.gov/epawaste/hazard/transportation/manifest/pdf/eman_final_rule_011314.pdf)

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