

US EPA ARCHIVE DOCUMENT

Chapter II: Imports

40 CFR Part 262, Subpart F

This chapter outlines the requirements for importing hazardous waste into the United States. Multiple parties may be involved in importing waste from foreign generators. For example, a waste broker establishes a contract with a foreign generator to import hazardous waste for recycling. The waste shipment arrives at a port, where it is off-loaded. A hazardous waste transporter hauls the shipment from the port to a permitted storage facility, which then stores the waste until it is shipped to a designated recovery facility. Each of these handlers of imported hazardous waste is subject to the same RCRA regulations that apply to wastes generated domestically, such as the transporter requirements in Part 263, and the treatment, storage, and disposal facility requirements in Parts 264, 265, and 270. In addition to these general standards, these handlers must follow special procedures, outlined in Part 262, Subpart F, for waste generated by foreign sources. These regulatory procedures are outlined below.

A. REGULATORY REQUIREMENTS

When multiple parties are involved in the importing process, one party should accept the importer responsibilities on behalf of all the parties. These requirements include correctly identifying the waste, notifying EPA of the intent to import, initiating the manifest, and complying with recordkeeping and reporting requirements. The next section discusses the requirements for importing hazardous waste into the United States and how importing parties may determine who will fulfill these requirements.

Who is the Importer?

EPA has not defined the term importer, but uses the term broadly to include numerous parties (Memo, Shapiro to Dickhut; March 7, 1996). When multiple parties are involved in importing hazardous waste, those parties may all be subject to the generator and importer requirements in Part 262. In the example provided above, the transporter, the permitted storage facility, and the waste broker may all be considered importers under RCRA. In a June 25, 1985 memo (Skinner to Seraydarian), EPA clarified that where more than one person may be considered an **importer**, all of the parties, as contributors to the importation of hazardous waste, should be held jointly and severally liable for compliance with Part 262. The Agency, however, encourages one party (transporter, broker, or TSDFs) to assume and perform the importer duties on behalf of all the parties. The party that assumes the generator and importer requirements should be in the best position to oversee management of the waste (Memo, Shapiro to Dickhut; March 7, 1996 and Monthly Hotline Report Question; January 1995).

Hazardous Waste Identification

Because RCRA regulates hazardous waste only within the United States (Memo, Lowrance to Ross; January 28, 1993), it is the responsibility of the importer to accurately characterize shipments of hazardous waste at the point of import on a shipment-by-shipment basis (Memo, Petruska to Preheim; April 18, 1994). Chapter I provides further discussion of the hazardous waste identification process.

EPA Notification

A treatment, storage, or disposal facility receiving hazardous waste from abroad must notify EPA in writing at least four weeks prior to receiving the first shipment of waste (Memo, Gourley to Feldman; June 17, 1996). Any subsequent shipments of the same waste from the same foreign source do not require this notification (§§264/265.12(a)(1)).

Manifesting

The importer, rather than the foreign generator, initiates the manifest when the waste enters the United States. Importers follow the general manifesting requirements in §262.20(a), except that in the place of the generator's name, address and EPA identification number, they must include the name and address of the foreign generator and the importer's name, address, and EPA identification number (§262.60 (b)). In addition, the importer (or importer's agent) and the initial transporter must sign the manifest in the space for the generator's signature (§262.60(b)(2)).

As discussed in Chapter I, not all hazardous wastes are subject to the manifesting requirements. Importers need not comply with the import requirements of Part 262, Subpart F if the hazardous waste shipment is not subject to manifesting.

Biennial Reports

The designation facility receiving an imported waste must file a **biennial report** by March 1 of each even numbered year covering activities from the previous calendar year. The report must include the name and address of the foreign generator (§§ 264/265.75).

B. FREQUENTLY ASKED QUESTIONS

Can hazardous waste importers take advantage of the generator provisions to accumulate imported wastes for 90 days without a RCRA storage permit?

Although importers must comply with applicable generator requirements in Part 262, including the special requirements of Part 262, Subpart F, importers cannot accumulate hazardous waste for more than ten days without a RCRA storage permit. The 90 day generator accumulation time is not applicable to imports of hazardous waste, which are already in transportation (Monthly Hotline Report Question; August 1992). The hazardous waste may be stored during the normal course of transportation to the designated facility at a transfer facility for 10 days or less, provided that the hazardous waste is packaged in accordance with DOT packaging regulations (§263.12).

Can a foreign broker sign a hazardous waste manifest?

Foreign brokers can sign the manifest if they meet certain requirements. The regulations for imports of hazardous waste allow the importer or the importer's agent to sign the generator certification statement on the manifest in place of the generator (§262.60(b)(2)). The only requirement for an agent signing the manifest is that the agent must be somehow legally affiliated with the EPA identification number used on the manifest. The broker could sign the manifest certification only if the broker's company has an EPA identification number (requiring a U.S. address) or the broker is legally related to the importer (e.g., a subsidiary). A broker signing as an agent because of a legal relation to the importer must place the U.S. address and U.S. EPA identification number of the importer on the manifest. (Monthly Hotline Report Question; March 1995).

Are imports from U.S. territories subject to importing requirements?

Shipments of hazardous waste from U.S. territories, such as the island of Midway, are not subject to import regulations because they are not imported from a foreign country (Monthly Hotline Report Question; January 1998). On the other hand, if a waste is imported from a U.S. military base located in another country, import regulations may apply. This situation requires a site-specific determination and depends on factors such as whether the base is owned or leased.

Who is responsible for counting imports of hazardous waste?

It is the responsibility of a hazardous waste importer to carry out all normal generator requirements. In addition to complying with Part 262, the importer must count the

imported waste towards the monthly quantity total used in determining his generator status.

Does the importer have to give a copy of the manifest to the U.S. Customs official?

Importers are not required to provide a copy of the manifest to a U.S. Customs official. The EPA and U.S. Customs have a Memorandum of Understanding that the transporter or importer is not required to submit a manifest to U.S. Customs (Memo, Lowrance to Devaney; July 15, 1993).

C. CHAPTER II: LIST OF REFERENCES

Reference	Topic	Description
9/21/1999 Cotsworth to Citizen FB 14370	General Imports	Unless an international agreement prohibits the movement of hazardous waste between the United States and another country, such trade may occur; the United States is not prohibited by agreement from accepting waste from Taiwan; hazardous waste imported into the United States is immediately subject to the full body of applicable RCRA regulations
1/1998 Monthly Report Question FB 14170	Import regulations do not apply to shipments from U.S. territories	Shipments of hazardous waste from the island of Midway to the contiguous United States are not subject to the import regulations; the island of Midway is a territory of the United States and is not a foreign country
3/7/1996 Shapiro to Dickhut FB 11953	Multiple parties may meet the definition of importer	Transporter block on manifest is used to identify companies that transport waste; brokers, transporters, or TSDF may be importer subject to generator requirements; one party should assume generator responsibilities; procedures for handling rejected shipments of hazardous waste exported to Canada
3/1995 Monthly Report Question FB 13739	Importer may sign manifest if legally affiliated with ID	Agent signing manifest must be legally affiliated with EPA ID number on manifest; foreign broker can sign manifest if they have EPA ID number (requiring U.S. address) or are legally related to importer (e.g., a subsidiary)
1/1995 Monthly Report Question FB 13725	Multiple parties may meet the definition of importer	Multiple parties may be considered importers (TSDF, broker, etc.); when more than one importer exists, they may decide among themselves who will act as importer and whose ID number will be used; all parties are liable for compliance with RCRA regulations
4/18/1994 Petruska to Preheim FB 11832	Importer responsible for hazardous waste identification	Generator retains burden of proof when claiming imported material is not solid waste or is conditionally exempt from regulation; importer must make hazardous waste determination on a shipment by shipment basis
3/22/1994 Shapiro to Ouellete	Importer is considered generator	RCRA Subtitle C regulations can only apply to U.S. parties; U.S. importer, importer's agent, and transporter may all be generators; all generators are jointly and

Reference	Topic	Description
FB 11820		severally liable for compliance with generator requirements; rail shipments of hazardous waste need not be accompanied by manifest; generator of waste transported solely by rail forwards copies of manifest directly to designated facility
7/15/1993 Lowrance to Devaney, HQ FB 11757	Imports and manifest	Memorandum of Understanding (MOU) between EPA and U.S. Customs; importers or transporters are under no obligation to submit manifests to U.S. Customs at border
8/1992 Monthly Report Question FB 13554	Imports of waste are in transit and may not be accumulated under §262.34	Importers cannot accumulate hazardous waste under 262.34 when hazardous waste first enters the United States, even though must comply with certain other generator requirements
6/25/1985 Skinner to Seraydarian FB 11085	Multiple parties may be considered an importer	Importer is generator; transporter and U.S. facility arranging import are importers, cogenerators; joint and several liability for generators and cogenerators; imported hazardous waste (HW) must be manifested; imported HW subject to all applicable manifest requirements even if importer and TSDF are same