

US EPA ARCHIVE DOCUMENT

Chapter III: Exports

40 CFR Part 262, Subpart E

EPA based the export regulations in Part 262, Subpart E on two bilateral agreements that the United States established with Canada and Mexico. The 1986 "Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste" specifies terms and procedures for transboundary movements between the United States and Canada. Similarly, the 1986 "Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances" establishes procedures for hazardous waste shipments between the United States and Mexico. These bilateral agreements established procedures for importing and exporting waste between governments. The agreements themselves have no binding affect on U.S. importers and exporters. However, pursuant to these bilateral agreements, EPA promulgated standards in Part 262, Subpart E that regulate U.S. exporters of hazardous waste.

Exports of hazardous waste, like imports, may be handled or managed by several different parties, each having distinct requirements under RCRA. For example, a large quantity generator (LQG) may wish to send waste to a foreign destination for metal recovery. The generator establishes contracts with a waste broker to oversee shipments of the waste and with a transporter to deliver the waste to the foreign recovery facility. In order for this process to occur, the primary exporter must follow a specific step-by-step process.

A. REGULATORY REQUIREMENTS

This chapter outlines the regulatory requirements surrounding hazardous waste exports. (An overview of these requirements is addressed in a December 10, 1991 memo from Bussard to Whalen.) Prior to exporting hazardous waste, the primary exporter must notify EPA of their intent to export. The **primary exporter** (PE) is defined as "any person who is required to initiate the manifest for a shipment of hazardous waste in accordance with Part 262 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which hazardous waste will be sent (§262.51)."

Notification of Intent to Export

Sixty days prior to exporting a waste to a foreign facility, the PE must send a notification of intent to export to the Office of Enforcement and Compliance Assurance (OECA). The notification must be in writing, signed by the primary exporter, and must include information such as a description of the waste, estimates of the quantity and frequency of waste being shipped, and name of the foreign destination facility (§262.53).

Following this notification by the PE, the EPA will notify the competent authority of the receiving country and any transit countries of the shipment (Memo, Cotsworth to Citizen; April 13, 2000). Once the competent authority of the receiving country consents to the shipment, the EPA will forward an **Acknowledgement of Consent (AC)** to the primary exporter and the waste shipment may commence. Waste cannot be shipped if the receiving country does not consent to the shipment (Memo, Lowrance to Mink; February 18, 1993). The PE must ensure that the shipment is handled in accordance with the receiving country's terms of consent (Memo, Maid to Bodner; June 15, 1987).

Special Manifest Requirements

When exporting hazardous waste, the PE must comply with special manifesting requirements found in §262.54. The PE must attach a copy of the AC to the manifest when initiating the shipment of waste, except when the waste is shipped by rail. When shipping waste by rail, the PE may attach the AC to the shipping paper rather than the manifest. An additional copy of the manifest must be given to the transporter, who delivers it to the U.S. Customs official at the point where the waste exits the United States. In addition, the primary exporter must require the **consignee** to confirm in writing the delivery of the waste to the foreign destination facility (Memo, Bussard to Winwood; August 9, 1994).

Reporting Requirements

Primary exporters may be subject to various reporting requirements depending on their yearly export activities. These reports include exception reports (§262.55), annual reports (§262.56), and biennial reports.

Primary exporters must file an **exception report** if either of the following two events occur:

- The PE does not receive a copy of the manifest signed by the transporter within 45 days of the initial acceptance of the shipment by the transporter
- The PE does not receive written confirmation of the receipt of the shipment by the consignee within 90 days of the initial acceptance of the shipment by the transporter.

When filling out this report, the exporter should follow the guidelines for domestic exceptions reporting (§262.42) to the extent that these guidelines are applicable.

By March 1 of each year, the primary exporter has to file an **annual report** with the Administrator summarizing the types, quantities, frequency, and ultimate destination of all wastes exported during the previous year. Because there are relatively few primary exporters, the EPA has not developed a standard reporting form for the annual report.

In addition to annual reporting, primary exporters who are also LQGs or TSDFs are also required to fill out the **Biennial Report**. EPA policy currently requires that exporters that meet the Biennial Report applicability criteria (i.e., large quantity generators and TSDFs) include export information on their Report. However, EPA is in the process of changing this requirement due to the fact that the information is contained on the facility's Annual Report.

Recordkeeping Requirements

Primary exporters must keep copies of each notification of intent to export, AC, confirmation of delivery from the consignee, Annual Reports, and Biennial Reports for at least three years (§262.57).

B. FREQUENTLY ASKED QUESTIONS

Notification of Intent to Export

Is a 60-day notification to EPA required before each shipment of hazardous waste?

The 60-day approval waiting period applies only to the first shipment of hazardous waste (Memo, Porter to Watkins; June 19, 1987). This notification may cover export activities over a twelve month period (§262.53(a)).

Is it necessary to comply with the export notification requirements if shipments of hazardous waste must be transported through a foreign country to a U.S. territory or another State?

If a waste is transported to a United States territory or State via another country, the export requirements do not apply because the designated facility is not in a foreign country. If the waste simply passes through a foreign country, RCRA does not require that transit countries be notified (Monthly Hotline Report Question; March 1995). However, the PE should be aware of and comply with any requirements imposed by the transit countries' laws.

Which regulations are applicable to shipments of hazardous waste to another country's territory or commonwealth?

If a waste is being exported to another country's territory or commonwealth, the U.S. exporter must determine if any international agreements made by the parent country are binding for the commonwealth or territory and must follow the U.S. regulations accordingly.

What happens if the consignee designated on the notification of intent to export changes?

If the consignee designated on the intent to export notification changes the exporter may have to use a modified notification or complete a new notification altogether even if an alternate facility was originally listed. This depends on the policies and procedures of the country to which the waste is being exported.

Can a broker who is acting as an intermediary arranging for export hold the Acknowledgement of Consent if he is not the generator identified on the manifest?

The manifest and the AC serve different purposes. The manifest is required to track the hazardous waste from "cradle to grave." As such, it is important to identify the generator of the hazardous waste. On the other hand, the intent of the AC is to ensure that the importing country is aware of a proposed transboundary movement of waste and consent to that movement, therefore the primary exporter who receives the AC from the EPA may include "any intermediary arranging for the export" (§262.51) (Memo, Cotsworth to Prior; February 16, 2000).

Exception Reports

What happens if a hazardous waste shipment is exported and subsequently returned to the United States?

If a waste shipment is returned to the United States, the exporter should contact the implementing agency about the time-frame during which he should file an Exception Report.

Annual Reports

Is an Annual Report required for exporters that do not ship any hazardous waste during a calendar year?

The Annual Report only needs to be submitted if hazardous waste was exported during the previous year.

At what time is a waste considered exported for the purposes of filling out the annual report?

A waste is "exported" when it leaves the United States, not when the manifest is initiated. For example, if an exporter signs a manifest in 1997 for a waste to be exported, but the waste does not leave the country until 1998, the shipment would be reported on the 1998 annual report which is due on March 1, 1999.

Other Requirements

Are exporters of hazardous waste subject to land disposal restrictions (LDR)?

The requirements of Part 268 are applicable to all hazardous wastes (§268.1(b)) unless specifically provided otherwise in Part 261 or Part 268. Neither Part 261 nor Part 268 generically exclude exported hazardous wastes from the LDR requirements. Therefore, the LDR notification requirements are applicable. However, this is not meant to imply that the treatment standards must be met prior to disposal in another country (Memo, Lowrance to Levy; April 23, 1991).

If I receive a hazardous waste from the generator, can I store that waste prior to shipping it to a foreign destination facility without getting a RCRA storage permit?

If the waste is stored prior to being exported, the facility needs to get an EPA ID number and a storage permit, unless it qualifies as a transfer facility (Monthly Hotline Report Question; June 1984).

C. CHAPTER III: LIST OF REFERENCES

Reference	Topic	Description
4/13/2000 Cotsworth to Citizen FB 14434	Export and consent to shipment	EPA must receive consent of government of importing country before export of hazardous waste can occur; since U.S. is not currently a party to Basel Convention, there must be a bilateral agreement between U.S. and importing country that is consistent with requirement of Convention; U.S. has agreements with OECD and Mexico governing recycling and with Canada for both recycling and disposal; EPA has strong enforcement program in area of hazardous waste exports
2/16/2000 Cotsworth to Prior FB 14421	Export and Acknowledgment of Consent	It is acceptable for persons who hold Acknowledgment of Consent to be different from generator identified on manifest; intent of Acknowledgment of Consent is to ensure that importing country is aware of proposed transboundary movement and has consented to such movement
9/96 Monthly Report Question FB 14015	Definition of primary exporter	Export standards apply only to primary exporters of waste; primary exporter is an exporter that requires manifest; SQGs with contractual reclamation agreements do not require manifest; SQGs shipping waste under reclamation agreement are not subject to export requirements because they are not primary exporter
3/7/1996 Shapiro to Dickhut FB 11953	Export and rejected shipments	Transporter block on manifest is used to identify companies that transport waste; transfer facilities need not be identified on manifest unless the owner of the transfer facility takes custody of the waste as a new transporter; 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 13738	Exports from Alaska and Transit Countries	Person who transports waste from Alaska to California via Canada does not need to follow export requirements because designated facility is not in foreign country; transit countries need not be notified

Reference	Topic	Description
8/9/1994 Bussard to Winwood FB 11863	Export and Acknowledgment of Consent	All imports and exports of hazardous waste arriving at a Customs port must be accompanied by a hazardous waste manifest; EPA Acknowledgment of Consent must accompany hazardous waste exports; under a Memorandum of Understanding (MOU) between EPA and U.S. Customs Service, Customs Service collects manifest from exporter and transmits it to EPA
2/18/1993 Lowrance to Mink FB 13594	Export notification	Exporters must notify and obtain consent from receiving country prior to shipping hazardous waste; generators are responsible for determining if wastes are subject to export regulations; wastes not subject to RCRA not be subject to export notice and consent provisions
9/14/1992 Bussard to Salinas FB 11696	Generator responsible for waste determination and export regulations	Generator must perform hazardous waste determination for waste that will be exported; all TSDFs handling hazardous waste that will be exported must have proper permits under RCRA Subtitle C
12/10/1991 Bussard to Whalen FB 11658	Export logistics	Overview of requirements related to hazardous waste export, including notification, involvement of U.S. State Department, Customs, receiving country consent, EPA Acknowledgement of Consent, transit country notification, and bilateral agreement requirements
4/23/1991 Lowance to Levy FB 11600	LDR notification and exports	Land Disposal Restrictions (LDR) apply to exported hazardous waste (HW), including notification, certification, and demonstration under 268.7(a); treatment standard need not be met prior to disposal in another country; regulatory status of secondary material to be reclaimed depends on type of material and if characteristic or listed HW
10/1987 Monthly Report Question FB 13052	LDR notification and exports	generators must send land disposal restrictions (LDR) notification and/or certification with each shipment of waste even if waste is to be exported (SUPERSEDED: See 62 FR 25997; 5/12/97-- one-time notification); waste analysis, recordkeeping, and notification requirements apply when generator handles restricted wastes regardless of whether waste will be land disposed
6/19/87 Porter to Watkins FB 12950	Exports and batteries	RCRA §3017 prohibits export of hazardous waste without prior notification to EPA; spent batteries (battery) sent to foreign country for recycling are exempt from export requirements if batteries are uncracked (SEE ALSO: Part 273); notification and consent can cover period of up to 12 months; 60-day waiting period for approval to export applies only to first shipment; bilateral agreements can take priority over written consent requirement

Reference	Topic	Description
6/15/1987 Maid to Bodner FB 12945	Export legal liability	Export of hazardous waste is prohibited unless 262 Subpart E requirements are met; U.S. and Mexico have bilateral agreement; legal liability for hazardous waste does not end when waste exits U.S.; exported wastes must be manifested and handled in accordance with receiving country's terms of consent
2/12/87 Porter to Helms FB 12856	Export logistics	Waste destined for recycling has same potential for harm as waste destined for treatment or disposal; only persons who reclaim lead-acid battery (batteries) are subject to regulation for storage prior to recycling (SEE ALSO: Part 273); RCRA §3017 mandated export regulations unless Administrator notified, receiving country consented, copy of consent attached to manifest, and shipment conforms to consent; EPA expects exporters will not typically exceed 90 day generator time limit
6/1984 Monthly Report Question FB 12247	Export and port facilities	Facility that receives hazardous waste in U.S. port prior to export needs EPA ID number; facility also needs storage permit unless it is transfer facility