

US EPA ARCHIVE DOCUMENT

Chapter IV: OECD Imports and Exports

Part 262, Subpart H

Part 262, Subpart H provides regulations for U.S. importers and exporters shipping hazardous waste within the OECD for recovery purposes. Similar to the regulations in Subparts E and F, Subpart H requires notification for hazardous waste shipments, tracking documents, and recordkeeping and reporting. These requirements insure that all parties involved in the transaction are notified that the shipment will occur and are cognizant of the type of wastes shipped.

The OECD Council agreement provides a tiered level of control for transboundary movements of hazardous waste. This agreement specifies three categories of waste: green, amber, and red. The green list includes wastes that pose the least hazard to human health and the environment and are subject to the same level of control as normal transboundary commercial shipments. Most RCRA hazardous wastes are amber and red list wastes, which are more hazardous and are subject to more stringent requirements. EPA incorporates the green, amber, and red lists of waste by reference in §262.89. Note that wastes designated on the green list that are hazardous under U.S. national procedures (i.e. are considered a hazardous waste and are subject to manifesting) are subject to amber controls under Part 262, Subpart H (§262.82(a)(1)(i)).

A. OECD IMPORT REQUIREMENTS

Specific procedures must be followed to import hazardous waste from an OECD country for recovery within the United States. Appendix D provides a sequential diagram of these procedures. The U.S. recovery facility must have a valid, written **contract** with the foreign notifier before any shipment can occur.

Contracts

U.S. recovery facilities that receive hazardous waste shipments from an OECD country must establish a **contract** with the foreign notifier. This contract must be a valid, written contract which specifies the responsibilities of the foreign notifier as well as the recovery facility (§262.85). The contract must specify the name and the EPA ID number (where available) of the generator of the waste, each person that will have physical custody of the waste, each person that will have legal control of the wastes, and the recovery facility. The contract must also designate the party or person that will assume responsibility for adequate management of the waste and if necessary, for alternate management of the waste. Transfrontier movements of waste are prohibited unless they occur under the terms of the contract (§262.85).

Notification

Four weeks prior to receiving hazardous waste from a foreign destination, the U.S. recovery facility (i.e. a treatment, storage, or disposal facility) must notify the EPA Regional Administrator in writing (§264.12(a)(1)). This requirement allows EPA to effectively oversee the transportation and management of hazardous waste imported to the United States (45 FR 33179; May 19, 1980). Notification of subsequent shipments from the same foreign source is not required.

In addition to receiving notice from the U.S. recovery facility, the competent foreign authority of the exporting country must notify EPA (§262.83). This notification allows EPA to review the type of waste that will be shipped and the parties involved. EPA may either provide consent to the foreign competent authority or refuse the shipment. The shipment may commence when EPA has provided consent to the foreign competent authority, and the competent authority issues an acknowledgment of consent to the foreign notifier. This acknowledgment of consent accompanies the waste shipment to the United States.

Tracking Document

Transboundary shipments of hazardous waste must be accompanied by a tracking document. The tracking document includes information on the date the shipment commenced, the name of the notifier, recovery facility, and all transporters, and a certification statement (§262.84). All U.S. parties that manage the hazardous waste shipment (transporters, consignee, and recovery facility owner) must sign this tracking document and ensure that it accompanies the shipment to the recovery facility. Within three working days of receiving the shipment, the recovery facility must send signed copies of the tracking document to the following parties:

- the foreign notifier
- the competent authority of the exporting country
- the competent authority of the transit countries (if any)
- EPA's Office of Enforcement and Compliance Assurance (OECA) (§262.84).

Manifest Requirements

U.S. importers must comply with the manifest requirements in Part 262, Subpart B and the special manifest requirements in Part 262, Subpart F. The importer must sign and initiate the manifest when the waste enters the United States. In place of the generator's name, the name of the foreign generator and the importer's name and address must be written on the manifest (§262.84(c)). The manifest must accompany the waste shipment and be signed by all transporters as well as the designated recovery facility.

B. OECD EXPORT REQUIREMENTS

Exports of hazardous waste from the United States for recovery within the OECD must occur under the same set of procedures as those for imports. Appendix E illustrates this sequential set of events. Before any waste transactions may take place, the U.S. notifier must establish a written **contract** with the foreign recovery facility. The notifier is the person domiciled in the United States who has possession or legal control of the waste and who proposes the transfrontier movement of the waste (§262.80(g)). This contract must specify the duties of both the notifier and the recovery facility. (See the OECD import section on contracts for additional information).

The notifier must then determine whether the waste they intend to export is listed on the green, amber, or red list of waste. Green-list wastes are subject only to the requirements for normal commercial shipments. (As noted before, wastes designated on the green list that are hazardous under U.S. national procedures are subject to amber list controls). The notification and consent procedures in Subpart H vary depending on the waste lists. The next section illustrates the notification requirements for exporting amber-list waste.

Notification: Amber List

Amber-list wastes may be **pre-approved** for import. When an importing country wishes to employ this process, it must inform the OECD Secretariat of the recovery facility's name and address, technologies employed, waste types to which the pre-approval applies, the time period covered, and specific revocations (§262.83(b)). No specific consent is required from the importing country when waste is to be sent to a facility pre-approved to accept that waste (61 FR 16301; April 12, 1996).

When the waste shipment is pre-approved, the U.S. notifier must notify EPA ten days in advance of the export. The notification must include the information outlined in §262.83(e) which includes:

- Notifier's name address, and other pertinent information

- Specific recovery facility information
- Intended transporter
- Countries involved in the waste shipment
- Dates of shipment and waste type being shipped
- Certification statement.

EPA verifies that the proposed recovery facility has received pre-approval and that the pre-approval is still valid. The shipment may commence after the foreign competent authorities of all concerned countries have been notified and the U.S. notifier has not received an objection from these countries.

When amber waste shipments are **not pre-approved**, the U.S. notifier must notify EPA 45 days in advance of the waste shipment. The notification must provide the same information listed earlier. EPA then notifies the competent authorities of the importing and transit countries. Once EPA receives an acknowledgment of receipt of notification from the importing country, the importing country has thirty days to provide written consent to the shipment. If no objection or written consent has been received in thirty days, the shipment may commence (i.e., tacit consent).

Notification: Red List

For red list waste shipments, U.S. notifiers must notify EPA 45 days in advance of the shipment. The notifier must include the same information that is submitted for amber-list shipments. Pre-approval may not be obtained for wastes designated on the red list. Export of red-list waste is prohibited unless the notifier receives **written** consent from the importing and any transit countries prior to commencement of the shipment (§262.83(c)).

Manifest

Notifiers must comply with the manifesting requirements (Part 262, Subpart B) and the special manifest provisions for primary exporters in §262.54. The special manifest provisions for primary exporters are:

- In place of the name, address, and EPA ID number of a domestic designated facility, the notifier should include the name and site address of the consignee. (The consignee is the ultimate treatment, storage, or disposal facility in the receiving country.)
- The notifier must include the point of departure from the United States in the Special Handling Instructions on the manifest
- The notifier must provide an extra copy of the manifest to the transporter to give to the U.S. Customs official at the point the waste leaves the United States.

In addition to initiating the manifest, the notifier must send a tracking document with the shipment.

Tracking Document

The tracking document must include all of the information required on the notification. As mentioned in the OECD import section, this document must also note the date the shipment commenced, information on the primary exporter (if different than the notifier), name and company information of all transporters, special precautions for transporters, and a certification statement (§262.84). All U.S. parties handling the waste shipment must sign the tracking document.

Reporting

Persons who meet the definition of primary exporter (the person who is required to initiate the manifest) must file an **annual report** with OECA by March 1 of each year (§262.87). This report summarizes the type, quantity, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year (§262.87(a)).

Primary exporters must file an **exception report** under the following circumstances:

- They have not received a signed copy of the tracking document from the transporter within 45 days from the date it was accepted by the transporter
- The notifier has not received written confirmation within ninety days from the recovery facility that the waste was received
- The waste is returned to the United States.

Recordkeeping

Primary exporters must maintain these records for three years:

- Each notification to export and all written consents obtained from the foreign competent authority
- A copy of each annual report
- A copy of any exception reports and a copy of each tracking document sent by the recovery facility to the notifier.

C. FREQUENTLY ASKED QUESTIONS

Where do I find the green, amber, and red lists of waste? Are these lists in the regulations?

The green, amber, and red lists of wastes, originally developed under the OECD Council Decision Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations, dictate the level of control placed on the importing and exporting of a particular waste under Part 262, Subpart H. The lists of wastes are incorporated by reference in Part 262, Subpart H, and may be obtained through the RCRA Docket (703-603-9230) using the Docket Identification Number: F-94-IEHF-FFFFF.

Who is the U.S. notifier?

The U.S. notifier is a person under the jurisdiction of the United States who has possession or legal control of the waste and who proposes the transfrontier movement of the waste for the purpose of recovery. EPA recognizes that in different situations, recovery facilities, consignees, recognized traders, and generators can act as notifiers.

Do U.S. importers and exporters follow Part 262, Subpart H when waste is shipped between the United States and Canada or Mexico?

Although Canada and Mexico are members of OECD, U.S. importers and exporters do not follow Subpart H when waste is shipped between the United States and Mexico or Canada. The United States has entered into separate bilateral agreements with Mexico and Canada that operate in lieu of the Subpart H requirements. U.S. importers and exporters should comply with Subpart F and Subpart E regulations, respectively, when dealing with facilities in Mexico or Canada (§262.58(b)).

Has EPA approved a specific export notification form for U.S. notifiers?

Exporters of waste destined for recovery within the OECD (listed in §262.58(a)(1)) are

required to notify the EPA of their intent to export. The Office of Management and Budget (OMB) has not approved a specific notification form. EPA recommends that exporters obtain these forms from the OECD destination facility and fill them out with the information required in §262.83(e).

D. CHAPTER IV: LIST OF REFERENCES

Reference	Topic	Description
3/00 Monthly Report Question	OECD overview and frequently asked questions	Organization for Economic Cooperation and Development (OECD) is international organization designed to foster economic growth, employment, and rising standard of living between member countries; green, amber, and red lists of wastes dictate level of control placed on importing and exporting a particular waste; importers and exporters must meet Part 262, Subpart H requirements when hazardous waste is shipped between U.S. and OECD countries for recovery operations; U.S. importers/exporters should comply with Subparts F and E when dealing with Mexico or Canada due to separate bilateral agreements; generator must comply with Subpart H if they act as a notifier; notifier is person who has possession or legal control of the waste when the transfrontier movement of the waste occurs