

US EPA ARCHIVE DOCUMENT

Question: How should hazardous waste handlers using the RCRA Uniform Hazardous Waste Manifest comply with the Department of Transportation's (DOT's) October 19, 2009 final regulation clarifying the requirements for entering certain emergency response service provider information on shipping papers?

Answer: EPA and DOT believe that hazardous waste handlers can comply with the October 19, 2009 regulation by entering this additional emergency response information in Item 14 of the Uniform Hazardous Waste Manifest, or as appropriate, after the specific hazardous waste descriptions listed in Item 9b.

Discussion:

A. Highlights of the October 19, 2009 Final Regulation.

On October 19, 2009, the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the DOT published a final rule to clarify the requirements governing certain emergency response information services that are provided by arrangement with hazardous materials offerors (shippers). See 74 FR 53413. The October 19, 2009 final rule amends the provisions of the hazardous materials regulations (HMRs) which currently require offerors of hazardous materials to provide written emergency response information about their shipments and more particularly, to list an emergency response telephone number that can be answered immediately and at all times by a person who is knowledgeable about the material being shipped and its hazards. See 49 C.F.R. § 172.604(a). Since hazardous wastes regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) are also hazardous materials subject to the HMRs, EPA's 40 C.F.R. Part 262 regulations addressing the Hazardous Waste Manifest were developed to implement the RCRA transportation requirements and to conform with the HMRs. In particular, the current manifest regulations and manifest form prescribed by EPA in 40 C.F.R. Part 262 require the emergency response telephone number for a hazardous waste shipment to be entered in Item 3 of the Hazardous Waste Manifest Form. See 40 C.F.R. § 262.20(a)(1) and Instructions for Item 3 (Emergency Response Phone Number) of Form 8700-22 in the Part 262 Appendix.

The October 19, 2009 DOT regulation was adopted to deal with the special circumstances under which an offeror contracts with and uses the services of an emergency response information provider (ERI provider) to comply with § 172.604 of the HMRs. This is permissible under the HMRs if the ERI provider has up-to-date information on the hazardous material and if the ERI provider is capable of and has accepted responsibility for providing detailed emergency response information applicable to the hazardous material. See 74 FR 53413 at 53414. According to the DOT, the use of ERI providers by offerors for compliance with the HMRs has increased, but it has also resulted in some problems, particularly when a shipment is handled by several entities before reaching its final destination. In such a case, a subsequent offeror may rely on and enter on a shipping paper the emergency response information (including the ERI provider phone number) provided by a previous offeror, but the previous offeror may not be identified on the shipping paper. Without the name of the offeror who made the original arrangements with the ERI provider, it may not be possible for the ERI provider to access and communicate the information specific to the material in the event of an incident. This could

result in a delay or even an improper response due to the lack of accurate and timely emergency response information. 74 FR 53413 at 53415.

To address this problem, the October 19, 2009 final rule announced several regulatory changes that were effective on November 18, 2009. First, the final rule amends 49 C.F.R. § 172.201(d) to state that if the telephone number of an emergency response information telephone number service provider is entered on a shipping paper, then the shipping paper must also identify the person (by name or contract number) who has the contractual agreement with the service provider. 74 FR 53413 at 53422. In addition, the final rule amends 49 C.F.R. § 172.604(b) to require that “the name of the person identified with the emergency response telephone number must be entered on the shipping paper immediately before, after, above, or below the emergency response telephone number unless the name is entered elsewhere on the shipping paper in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found.” Id. at 53423.

B. Compliance Using the Uniform Hazardous Waste Manifest.

With respect to the Hazardous Waste Manifest, EPA has adopted a Uniform Manifest format that went into effect nationally on September 5, 2006. The Uniform Manifest includes a specific data field denoted as Item 3 of the form for entering the emergency response telephone number for hazardous waste shipments. This was included on the Uniform Manifest format to harmonize the manifest requirements with the HMRs. When an emergency response phone number applies to all the waste descriptions listed in Item 9b of the manifest, then that emergency response phone number should be entered in Item 3. However, as the instructions to Item 3 indicate, in those instances where there is more than one emergency phone number applicable to the different wastes listed in Item 9b, then the emergency phone number specific to each waste should be entered after each waste’s description in Item 9b. See Appendix to Part 262, Item 3 instructions.

The HMRs provide that a Hazardous Waste Manifest may be used as the required hazardous materials shipping paper for hazardous waste shipments if the conditions set out in 49 C.F.R. § 172.205 are met. Section 172.205(b) requires that a shipper or generator prepare the manifest in accordance with EPA’s manifest regulations at 40 C.F.R. 262. In addition, § 172.205(h) provides that a hazardous waste manifest must contain all of the information required by Subpart C of Part 172. Since the new requirement of 49 C.F.R. § 172.201(d) is codified in Subpart C, a manifest must contain the identity of the person having a contractual agreement with an ERI provider in order for the manifest to contain all of the required Subpart C information.

Where a hazardous waste generator or offeror uses the phone number of an ERI provider to comply with the requirement to enter an emergency response phone number on the manifest, there are several ways that the offeror may complete the manifest to comply with the October 19, 2009 final DOT rule and the current manifest requirements.

First, if the generator/offeror is the original generator/offeror that contracted with the ERI provider, and the generator’s or offeror’s name is displayed in Item 5 (Generator’s Name and

Mailing Address) of the manifest, then no additional information need be included on the manifest to satisfy the requirements of the new DOT rule. Since the original generator/offeree entity that contracted with the ERI provider is already identified clearly in Item 5, this information does not need to be repeated elsewhere on the form.

Second, if a hazardous waste is re-shipped by a subsequent offeror, and this offeror chooses to complete a manifest that uses the phone number of the previous offeror's ERI provider to comply with the requirement to enter an emergency response phone number, then the subsequent offeror must include on the manifest the name or contract number of the original offeror. If the emergency response phone number applies to all the hazardous wastes described in Item 9b of the manifest, then the original offeror's name or contract number should be listed in Item 14 (Special Handling Instructions and Additional Information) with a clear indication that this is the offeror name or contract number associated with the phone number shown in Item 3. If there are different emergency response phone numbers associated with specific wastes described in Item 9b of the manifest, then the emergency response phone number and the original offeror name or contract number that corresponds with each specific waste should be clearly displayed after each waste's description in Item 9b. Continuation sheets (Form 8700-22A) may be used if additional space is required to list all the affected waste streams and their waste-specific emergency response phone number information.

Third, if the subsequent offeror contracts with its own ERI provider and lists the phone number of this ERI provider in Item 3, then no additional offeror or contract number information need be entered elsewhere on the manifest, as long as the name of the subsequent offeror is the offeror named in Item 5 of the manifest prepared by the subsequent offeror.

The current layout of the Uniform Manifest and space restrictions on the form do not permit a generator or offeror to enter the original offeror name or contract number immediately before, after, above, or below the emergency response phone numbers that are listed in Item 3 of the current manifest form. This appears to be the preferred location for entering this information under the October 19, 2009 final rule. However, in the case of the Uniform Hazardous Waste Manifest, EPA and DOT believe that if this information is supplied in the manner discussed above, then the requirements of the new DOT rule are met. The final rule states that the information may appear elsewhere on a shipping paper in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found. The procedures described here for entering this information on the hazardous waste manifest will ensure that this standard is met.

EPA does not now plan any specific revisions to the manifest form to address this issue. We believe that hazardous waste generators and offerors can comply with the new DOT rule in the manner discussed above, without the necessity of a change to the manifest form. The Uniform Manifest was substantially revised in 2006, and the Agency put in place a fairly exhaustive registration process for authorized printers based on the current national manifest format and standards. At such time as EPA finds it appropriate to revise the form and instructions to address this and other substantive changes to the HMRs, EPA will announce a rulemaking to address those changes and a process for re-registering printers to print any new format that may be adopted.