

US EPA ARCHIVE DOCUMENT

Revision Checklist 152 Summary

Rule Title:	Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision C(92)39 Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations
Checklist Title:	Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision
Reference:	61 <u>FR</u> 16290-16316
Promulgation Date:	April 12, 1996
Effective Date:	July 11, 1996
Cluster:	RCRA Cluster VI
Provision Type:	HSWA
Linkage:	Revision Checklist 31
Optional:	Yes

Summary: This rule identifies the wastes, under RCRA, that are subject to a graduated system (green, amber, red) of procedural and substantive controls when they move across national borders within the Organization for Economic Cooperation and Development (OECD) for recovery. This rule seeks to make the transactions fully transparent and to prevent or minimize the possibility of such wastes being abandoned or otherwise illegally handled. These requirements will apply only to U.S. exporters and importers of RCRA hazardous wastes destined for recovery in OECD countries (except for Canada and Mexico; waste shipments to and from these countries will continue to move under the current bilateral agreements and regulations). Those U.S. exporters and importers transacting hazardous waste movements outside the scope of this rule will remain subject to EPA's current waste export and import regulations at 40 CFR Part 262, Subparts E and F. This rule does not increase the scope of wastes subject to U.S. export and import controls; it does, however, modify the procedural controls governing their export and import when shipped for recovery among OECD countries. This rule will assist in harmonizing the new OECD requirements, reducing confusion to U.S. importers and exporters and increasing the efficiency of the process.

State Authorization: Like the export requirements at 40 CFR Part 262, Subpart E, the 40 CFR Part 262, Subpart H requirements will be administered by EPA and not the States because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the Constitution. However, EPA strongly encourages States to incorporate these requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated the 40 CFR Part 262, Subparts E and F provisions into its regulations. The enforcement of the 40 CFR Part 262, Subpart H provisions remains EPA's responsibility even when States incorporate these requirements into their regulations. However, EPA recognizes that States play a key role in providing EPA with information on whether U.S. facilities designated to receive hazardous waste imports are authorized to manage specific wastes and in ensuring facility compliance with all applicable environmental laws and regulations.

The requirements in this rule apply to only those wastes identified or listed under the Federal program that are subject to Federal manifesting requirements. Thus, State-only wastes would not be subject to the import/export regulations addressed by this rule. The last section in this summary provides guidance and examples for appropriately incorporating these new requirements into State regulations.

Revision Checklist 152 Summary (cont'd)

This rule was promulgated under HSWA authorities and is placed in RCRA Cluster VII as optional Revision Checklist 152. Because States may not receive authorization from EPA to control exports of hazardous waste subject to 40 CFR Part 262, Subpart H, States do not have to complete an Attorney General's statement addendum for this checklist. Additionally, changes are not needed in a State's program description or MOA. Instead, States who choose to incorporate the Revision Checklist 152 provisions into their regulations need only submit a completed checklist and provide a copy of the applicable State regulations.

Attorney General's Statement Entry: An Attorney General's Statement entry is not necessary.

Guidance on incorporating this rule into State regulations:

- All references to United States, U.S., U.S. national procedures, United Nations, U.N., U.N. classification number, Organization for Economic Cooperation and Development, OECD, Federal Register, EPA Acknowledgement of Consent, Environmental Protection Agency, EPA, and any other Federal Agencies or Offices within Federal Agencies should not be substituted with State terms.
- At 262.85(g), the Federal references to 40 CFR 2.203(b) and 260.2 should be retained.
- The following language, or a variation of this language, is used in several places in the Federal requirements addressed by this checklist:

"Any person who exports or imports hazardous waste subject to Federal manifest requirements of Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to State requirements analogous to 40 CFR Part 273..."

A State can incorporate this language directly in its regulations; however, the following modified language may be clearer to the regulated community, since the wastes in an authorized State are subject to the State's, rather than Federal, manifest requirements:

"Any person who exports or imports hazardous waste, except "State-only waste", subject to the manifesting requirements of **[insert State analog to 40 CFR Part 262]**, or subject to the universal waste management standards of **[insert State analog to 40 CFR Part 273]**..."

- States may request copies of the documents and notifications sent to EPA, as long as the request does not limit or in any way interfere with the documents and information which must be submitted to EPA.