

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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4 Solid and Hazardous Waste Commission/Hazardous Materials and
5 Waste Management Division
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8 6 CCR 1007-3
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11 HAZARDOUS WASTE
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13 Hazardous Waste Electronic Manifest System
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15
16 1) Section 260.10 is amended by revising the definition of “manifest” and adding in
17 alphabetical order the definitions of “electronic manifest”, “electronic manifest system”
18 and “user of the electronic manifest system” to read as follows:
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20
21 § 260.10 Definitions
22

23 * * * * *

24
25 “Electronic manifest (or e-Manifest)” means the electronic format of the hazardous waste manifest that
26 is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that
27 is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).
28

29 * * * * *

30 “Electronic Manifest System (or e-Manifest System)” means EPA's national information technology
31 system through which the electronic manifest may be obtained, completed, transmitted, and distributed to
32 users of the electronic manifest and to regulatory agencies.
33

34 * * * * *

35
36 **“Manifest”** means the shipping document EPA Form 8700 22 (including, if necessary, EPA Form 8700-
37 22A), or the electronic manifest, originated and signed ~~by the generator or offeror~~ in accordance with the
38 ~~instructions in the Appendix to Part 262 and the~~ applicable requirements of Parts 262 through 265 of
39 these regulations.
40

41 * * * * *

42 “User of the electronic manifest system” means a hazardous waste generator, a hazardous waste
43 transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility,
44 or any other person that:
45

46 (1) Is required to use a manifest to comply with:
47

48 (i) Any federal or state requirement to track the shipment, transportation, and receipt of
49 hazardous waste or other waste material that is shipped from the site of generation to an off-site
50 designated facility for treatment, storage, recycling, or disposal; or

51
52 (ii) Any federal or state requirement to track the shipment, transportation, and receipt of rejected
53 wastes or regulated container residues that are shipped from a designated facility to an
54 alternative facility, or returned to the generator; and

55
56 (2) Elects to use the national electronic manifest system to obtain, complete and transmit an
57 electronic manifest format supplied by the EPA electronic manifest system, or

58
59 (3) Elects to use the paper manifest form and submits to the national electronic manifest system for
60 data processing purposes a paper copy of the manifest (or data from such a paper copy), in
61 accordance with § 264.71(a)(2)(v) or § 265.71(a)(2)(v) of these regulations. These paper copies are
62 submitted for data exchange purposes only and are not the official copies of record for legal
63 purposes.

64
65
66 **2) Section 262.20 is amended by adding (a)(3) to read as follows:**
67

68 **§ 262.20 General requirements.**

69 (a)(1) A generator who transports, or offers for transport a hazardous waste for off site treatment, storage,
70 or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous
71 waste load, must prepare a Manifest (OMB Control number 2050 0039) on EPA form 8700 22 and, if
72 necessary, EPA form 8700 22A, according to the instructions included in the Appendix to Part 262 of
73 these regulations before transporting the waste off site.

74 (2) The revised manifest form and procedures in §§ 260.10, 261.7, 262.20, 262.21, 262.27, 262.32,
75 262.34, 262.54, 262.60, and the Appendix to Part 262 of these regulations, shall not apply until
76 September 5, 2006. The manifest form and procedures contained in §§ 260.10, 261.7, 262.20,
77 262.21, 262.32, 262.34, 262.54, 262.60, and the Appendix to Part 262 of these regulations at the time
78 of the May 2006 rulemaking hearing shall be applicable until September 5, 2006.

79 (3) Electronic manifest. In lieu of using the manifest form specified in paragraph (a)(1) of this section,
80 a person required to prepare a manifest under paragraph (a)(1) of this section may prepare and use
81 an electronic manifest, provided that the person:

82 (i) Complies with the requirements in § 262.24 for use of electronic manifests, and

83 (ii) Complies with the requirements of 40 CFR § 3.10 for the reporting of electronic documents to
84 EPA.

85
86 **3) Subpart B of Part 262 is amended by adding §§ 262.24 and 262.25 to read as follows:**
87

88 **§ 262.24 Use of the electronic manifest.**

89
90 (a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and
91 transmitted in accordance with § 262.20(a)(3), and used in accordance with this section in lieu of EPA
92 Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten

93 signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign,
94 provide, use, or retain a manifest.

95
96 (1) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to
97 obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable
98 electronic signature within the meaning of 40 CFR § 262.25.

99
100 (2) Any requirement in these regulations to give, provide, send, forward, or return to another person a
101 copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by
102 submission to the national electronic manifest system.

103
104 (3) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is
105 satisfied by retention of a signed electronic manifest in the generator's account on the national e-
106 Manifest system, provided that such copies are readily available for viewing and production if
107 requested by any EPA or authorized state inspector.

108
109 (4) No generator may be held liable for the inability to produce an electronic manifest for inspection
110 under this section if the generator can demonstrate that the inability to produce the electronic
111 manifest is due exclusively to a technical difficulty with the national electronic manifest system for
112 which the generator bears no responsibility.

113
114 (b) A generator may participate in the electronic manifest system either by accessing the electronic
115 manifest system from its own electronic equipment, or by accessing the national electronic manifest
116 system from portable equipment brought to the generator's site by the transporter who accepts the
117 hazardous waste shipment from the generator for off-site transportation.

118
119 (c) **Restriction on use of electronic manifests.** A generator may prepare an electronic manifest for the
120 tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the
121 time the manifest is originated that all waste handlers named on the manifest participate in the national
122 electronic manifest system.

123
124 (d) **Requirement for one printed copy.** To the extent the Hazardous Materials regulation on shipping
125 papers for carriage by public highway requires shippers of hazardous materials to supply a paper
126 document for compliance with 49 CFR § 177.817, a generator originating an electronic manifest must
127 also provide the initial transporter with one printed copy of the electronic manifest.

128
129 (e) **Special procedures when electronic manifest is unavailable.** If a generator has prepared an
130 electronic manifest for a hazardous waste shipment, but the national electronic manifest system becomes
131 unavailable for any reason prior to the time that the initial transporter has signed electronically to
132 acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and
133 complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in
134 accordance with the manifest instructions in the appendix to this part, and use these paper forms from
135 this point forward in accordance with the requirements of § 262.23.

136
137 (f) **Special procedures for electronic signature methods undergoing tests.** If a generator has
138 prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically
139 using an electronic signature method which is undergoing pilot or demonstration tests aimed at
140 demonstrating the practicality or legal dependability of the signature method, then the generator shall also
141 sign with an ink signature the generator/offeror certification on the printed copy of the manifest provided
142 under paragraph (d) of this section.

144 (g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user
145 fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-
146 time the current schedule of electronic manifest user fees, which shall be determined based on current
147 and projected system costs and level of use of the national electronic manifest system. The current
148 schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.

149
150
151 **§ 262.25 Electronic manifest signatures.**

152 Electronic signature methods for the e-Manifest system shall:

153
154
155 (a) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements
156 pertaining to electronic signatures; and

157
158 (b) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective
159 and practical as possible for the users of the manifest.

160
161
162 **4) Section 263.20 is amended by revising paragraph (a) to read as follows:**

163
164 **§ 263.20 The manifest system.**

165
166 (a)(1) **Manifest requirements.** A transporter may not accept hazardous waste from a generator unless
167 the transporter is also provided with a manifest signed in accordance with the provisions of § 262.23.

168
169 ~~(2) **Exports.** In the case of exports other than those subject to Subpart H of Part 262, a transporter~~
170 ~~may not accept such waste from a primary exporter or other person: (1) if he/she knows the shipment~~
171 ~~does not conform to the EPA Acknowledgment of Consent; and (2) unless, in addition to a manifest~~
172 ~~signed by the generator as provided in this section, the transporter shall also be provided with an EPA~~
173 ~~Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or~~
174 ~~shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the~~
175 ~~requirements of Subpart H of Part 262, a transporter may not accept hazardous waste without a~~
176 ~~tracking document that includes all information required by § 262.84. manifest signed by the generator~~
177 ~~in accordance with this section, as appropriate, and for exports occurring under the terms of a consent~~
178 ~~issued by EPA on or after December 31, 2016, a movement document that includes all information~~
179 ~~required by § 262.83(d).~~

180
181 (3) **Compliance Date for Form Revisions.** The revised manifest form and procedures in §§ 260.10,
182 261.7, 263.20, and 263.21 of these regulations ~~shall not apply until~~ had an effective date of
183 September 5, 2006. The manifest form and procedures contained in §§ 260.10, 261.7, 263.20, and
184 263.21 of these regulations at the time of the May 2006 rulemaking hearing ~~shall be~~ were applicable
185 until September 5, 2006.

186
187 **(4) Use of electronic manifest—legal equivalence to paper forms for participating transporters.**
188 Electronic manifests that are obtained, completed, and transmitted in accordance with § 262.20(a)(3)
189 of these regulations, and used in accordance with this section in lieu of EPA Forms 8700-22 and
190 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and
191 satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide,
192 give, use, or retain a manifest.

194 (i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to
195 obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable
196 electronic signature within the meaning of 40 CFR § 262.25.

197
198 (ii) Any requirement in these regulations to give, provide, send, forward, or return to another
199 person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to
200 the other person by submission to the national electronic manifest system.

201
202 (iii) Any requirement in these regulations for a manifest to accompany a hazardous waste
203 shipment is satisfied when a copy of an electronic manifest is accessible during transportation
204 and forwarded to the person or persons who are scheduled to receive delivery of the waste
205 shipment, except that to the extent that the Hazardous Materials regulation on shipping papers for
206 carriage by public highway requires transporters of hazardous materials to carry a paper
207 document to comply with 49 CFR § 177.817, a hazardous waste transporter must carry one
208 printed copy of the electronic manifest on the transport vehicle.

209
210 (iv) Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is
211 satisfied by the retention of an electronic manifest in the transporter's account on the national e-
212 Manifest system, provided that such copies are readily available for viewing and production if
213 requested by any EPA or authorized state inspector.

214
215 (v) No transporter may be held liable for the inability to produce an electronic manifest for
216 inspection under this section if that transporter can demonstrate that the inability to produce the
217 electronic manifest is exclusively due to a technical difficulty with the national electronic manifest
218 system for which the transporter bears no responsibility.

219
220 (5) A transporter may participate in the national electronic manifest system either by accessing the
221 national electronic manifest system from the transporter's own electronic equipment, or by accessing
222 the national electronic manifest system from the equipment provided by a participating generator, by
223 another transporter, or by a designated facility.

224
225 **(6) Special procedures when electronic manifest is not available.** If after a manifest has been
226 originated electronically and signed electronically by the initial transporter, and the national electronic
227 manifest system should become unavailable for any reason, then:

228
229 (i) The transporter in possession of the hazardous waste when the electronic manifest becomes
230 unavailable shall reproduce sufficient copies of the printed manifest that is carried on the
231 transport vehicle pursuant to paragraph (a)(4)(iii)(A) of this section, or obtain and complete
232 another paper manifest for this purpose. The transporter shall reproduce sufficient copies to
233 provide the transporter and all subsequent waste handlers with a copy for their files, plus two
234 additional copies that will be delivered to the designated facility with the hazardous waste.

235
236 (ii) On each printed copy, the transporter shall include a notation in the Special Handling and
237 Additional Description space (Item 14) that the paper manifest is a replacement manifest for a
238 manifest originated in the national electronic manifest system, shall include (if not pre-printed on
239 the replacement manifest) the manifest tracking number of the electronic manifest that is replaced
240 by the paper manifest, and shall also include a brief explanation why the electronic manifest was
241 not available for completing the tracking of the shipment electronically.

242
243 (iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste
244 must ensure that each paper copy is individually signed and that a legible handwritten signature
245 appears on each copy.

246
247 (iv) From the point at which the electronic manifest is no longer available for tracking the waste
248 shipment, the paper replacement manifest copies shall be carried, signed, retained as records,
249 and given to a subsequent transporter or to the designated facility, following the instructions,
250 procedures, and requirements that apply to the use of all other paper manifests.

251
252 (7) **Special procedures for electronic signature methods undergoing tests.** If a transporter using
253 an electronic manifest signs this manifest electronically using an electronic signature method which is
254 undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability
255 of the signature method, then the transporter shall sign the electronic manifest electronically and also
256 sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy
257 of the manifest that is carried on the vehicle in accordance with paragraph (a)(4)(iii)(A) of this section.
258 This printed copy bearing the generator's and transporter's ink signatures shall also be presented by
259 the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or
260 to indicate discrepancies. After the owner/operator of the designated facility has signed this printed
261 manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated
262 facility with the waste materials.

263
264 (8) **Imposition of user fee for electronic manifest use.** A transporter who is a user of the electronic
265 manifest may be assessed a user fee by EPA for the origination or processing of each electronic
266 manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest
267 user fees, which shall be determined based on current and projected system costs and level of use of
268 the national electronic manifest system. The current schedule of electronic manifest user fees shall
269 be published as an appendix to 40 CFR Part 262.

270
271 (b) Before transporting the hazardous waste, the transporter must sign and date the manifest
272 acknowledging acceptance of the hazardous waste from the generator. The transporter must return a
273 signed copy to the generator before leaving the generator's property.

274
275
276 **5) Subpart B of Part 263 is amended by adding § 263.25 to read as follows:**

277
278 **§ 263.25 Electronic manifest signatures.**

279
280 (a) Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25.

281
282 (b) [Reserved]

283
284
285 **6) Section 264.71 is amended by renumbering paragraph (a) as (a)(1); revising paragraph**
286 **(a)(2), and by adding paragraphs (f), (g), (h), (i), (j), and (k) to read as follows:**

287
288 **§ 264.71 Use of manifest system.**

289
290 (a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her
291 agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the
292 hazardous waste covered by the manifest was received, that the hazardous waste was received except
293 as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in
294 the manifest discrepancy space.

296 (2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator
297 or his/her agent must:

298 (i) Sign and date, by hand, each copy of the manifest;

300
301 (ii) Note any discrepancies (as defined in § 264.72(a)) in the manifest ~~(as defined in § 264.72(a))~~
302 on each copy of the manifest;

303
304 (iii) Immediately give the transporter at least one copy of the manifest;

305
306 (iv) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator; and

307
308 (v) Within 30 days of delivery, send the top copy (Page 1) of the manifest to the national e-
309 Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to
310 EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the
311 manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any
312 data or image files transmitted to EPA under this paragraph must be submitted in data file and
313 image file formats that are acceptable to EPA and that are supported by EPA's electronic
314 reporting requirements and by the electronic manifest system.

315
316 (vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

317
318 *****

319
320 (f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and
321 transmitted in accordance with § 262.20(a)(3) of these regulations, and used in accordance with this
322 section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing
323 handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain,
324 complete, sign, provide, use, or retain a manifest.

325
326 (1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or
327 manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or
328 obtaining a valid and enforceable electronic signature within the meaning of 40 CFR § 262.25.

329
330 (2) Any requirement in these regulations to give, provide, send, forward, or to return to another
331 person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the
332 other person.

333
334 (3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is
335 satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to
336 the person or persons who are scheduled to receive delivery of the waste shipment.

337
338 (4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each
339 manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the
340 national e-Manifest system, provided that such copies are readily available for viewing and production
341 if requested by any EPA or authorized state inspector.

342
343 (5) No owner or operator may be held liable for the inability to produce an electronic manifest for
344 inspection under this section if the owner or operator can demonstrate that the inability to produce the
345 electronic manifest is due exclusively to a technical difficulty with the national electronic manifest
346 system for which the owner or operator bears no responsibility.

348 (g) An owner or operator may participate in the national electronic manifest system either by accessing
349 the national electronic manifest system from the owner's or operator's electronic equipment, or by
350 accessing the national electronic manifest system from portable equipment brought to the owner's or
351 operator's site by the transporter who delivers the waste shipment to the facility.

352
353 (h) **Special procedures applicable to replacement manifests.** If a facility receives hazardous waste
354 that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the
355 following procedures apply to the delivery of the hazardous waste by the final transporter:

356
357 (1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign
358 and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility
359 Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the
360 paper replacement manifest,

361
362 (2) The owner or operator of the facility must give back to the final transporter one copy of the paper
363 replacement manifest,

364
365 (3) Within 30 days of delivery of the waste to the designated facility, the owner or operator of the
366 facility must send one signed and dated copy of the paper replacement manifest to the generator, and
367 send an additional signed and dated copy of the paper replacement manifest to the national
368 electronic manifest system, and

369
370 (4) The owner or operator of the facility must retain at the facility one copy of the paper replacement
371 manifest for at least three years from the date of delivery.

372
373 (i) **Special procedures applicable to electronic signature methods undergoing tests.** If an owner or
374 operator using an electronic manifest signs this manifest electronically using an electronic signature
375 method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal
376 dependability of the signature method, then the owner or operator shall also sign with an ink signature the
377 facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the
378 transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this
379 original copy among its records for at least 3 years from the date of delivery of the waste.

380
381 (j) **Imposition of user fee for electronic manifest use.** An owner or operator who is a user of the
382 national electronic manifest format may be assessed a user fee by EPA for the origination or processing
383 of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the
384 collection and processing of paper manifest copies that owners or operators must submit to the electronic
385 manifest system operator under § 264.71(a)(2)(v). EPA shall maintain and update from time-to-time the
386 current schedule of electronic manifest system user fees, which shall be determined based on current
387 and projected system costs and level of use of the national electronic manifest system. The current
388 schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.

389
390 (k) **Electronic manifest signatures.** Electronic manifest signatures shall meet the criteria described in 40
391 CFR § 262.25.

7) Section 265.71 is amended by renumbering paragraph (a) as (a)(1); revising paragraph (a)(2), and by adding paragraphs (f), (g), (h), (i), (j), and (k) to read as follows:

§ 265.71 Use of manifest system.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 265.72(a)) -in the manifest ~~(as defined in § 265.72(a))~~ on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator; and

(v) Within 30 days of delivery, send the top copy (Page 1) of the manifest to the national electronic manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to the electronic manifest system operator, the owner or operator may transmit to the system operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the national electronic manifest system.

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with § 262.20(a)(3) of these regulations, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR § 262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the hazardous waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the national electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the national electronic manifest system either by accessing the national electronic manifest system from the owner's or operator's electronic equipment, or by accessing the national electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) **Special procedures applicable to replacement manifests.** If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest,

(2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the hazardous waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the national e-Manifest system, and

(4) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) **Special procedures applicable to electronic signature methods undergoing tests.** If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) **Imposition of user fee for electronic manifest use.** An owner or operator who is a user of the national electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 265.71(a)(2)(v). EPA shall maintain and update from time-to-time the

current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the national electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.

(k) **Electronic manifest signatures.** (1) Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25.

8) Section 8.89 {Statement of Basis and Purpose for the Rulemaking Hearing of October 17, 2017} is added to Part 8 of the Regulations to read as follows:

**Statement of Basis and Purpose
Rulemaking Hearing of October 17, 2017**

8.89 Basis and Purpose.

These amendments to 6 CCR 1007-3, Parts 260, 262, 263, 264, and 265 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Hazardous Waste Electronic Manifest Rule

This rule amends existing regulations of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) regarding modification of the hazardous waste manifest system. These amendments correspond to the Environmental Protection Agency (EPA) rule that was published in the Federal Register on February 7, 2014 {79 FR 7518-7563}.

The use of paper manifest forms (EPA Forms 8700-22 and 8700-22A) is the currently authorized system used for tracking hazardous waste shipments. EPA's October 2014 rule established new requirements for authorizing the use of electronic manifests (or e-Manifests) as a means to track off-site shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste. The final rule also implemented certain provisions of the Hazardous Waste Electronic Manifest Establishment Act, Public Law 112-195, which directed EPA to establish a national electronic manifest system (or e-Manifest system), and to impose reasonable user service fees as a means to fund the development and operation of the e-Manifest system. The goal of the rule is to transition away from the use of paper manifests and move to a fully electronic process for tracking hazardous waste shipments.

This rule does not change existing requirements for manifesting hazardous waste shipments. It merely authorizes the use of electronic manifests at such time as the system to receive them is built and operational. Establishment of an electronic tracking system for hazardous waste shipments will allow tracking to be conducted in a more cost-effective manner, and result in reduced paperwork and processing burdens to the regulated community, as well as to the regulators. The e-Manifest systems should also provide more timely access to manifest data and shipment information, and improved quality to the data that is shared among users, regulators, and their data management systems.

States with authorized RCRA programs under 40 CFR Part 271 are required to adopt program revisions equivalent to and consistent with the federal requirements, but EPA will implement these electronic manifest regulations unless and until the states are fully authorized to implement them in lieu of EPA.

Although the federal rule became effective as a final agency action on August 6, 2014, the rule stipulated that implementation and compliance date for the regulations would be delayed until such time as the e-

Manifest system is shown to be ready for operation and the schedule of fees for manifest related services has been announced.

EPA's proposed rule regarding the e-Manifest User Fee Schedule was published in the Federal Register on July 26, 2016 (81 FR 49072-49110). EPA anticipates issuing the final e-Manifest user fee rule in late 2017 and deploying the e-Manifest information technology system in spring 2018.

Until EPA announces in a subsequent **Federal Register** document that the e-Manifest system is available for use, hazardous waste generators, transporters, and treatment, storage, and disposal facilities (TSDFs) must continue to comply with the current paper-based manifest system and use the existing paper manifest forms (i.e., EPA Forms 8700-22 and 8700-22A) for the off-site transportation of hazardous waste shipments.

This Basis and Purpose incorporates by reference the applicable portions of the preamble language for the EPA regulations as published in the Federal Register at 79 FR 7518-7563, February 7, 2014, and the preamble language for the amendment of § 263.20(a)(2) as published in the Federal Register at 81 FR 85696-85729, November 28, 2016.