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# *E-MANIFEST* USER FEES FINAL RULE & API PRESENTATION

MONTHLY WEBINAR SERIES

JANUARY 2018



# AGENDA

# *e-Manifest*

- Quick Update on e-Manifest
- e-Manifest User Fee Final Rule
  - Background
  - Key Issues Addressed in the Final Rule
  - Economics of the Rule
- API Presentation



# QUICK UPDATE ON E-MANIFEST

## *e-Manifest*

- **System Development**
  - Release 2 of e-Manifest to be completed in January. Release 2 functionality includes:
    - Ability to save, update and retrieve a manifest via website and through a system-to-system interface
    - Generators, transporters, and receiving facilities have the ability to sign manifests electronically
    - State user functionality in the web application
- **Advisory Board**
  - Anticipate within the next few days the release of the final Advisory Board recommendations/meeting minutes from the September 2017 Advisory Board public meeting
- **User Fee Final Rule**
  - Final rule completed in December 2017 and published today (83 FR 420); FAQs available on e-Manifest website
- **Communication/Implementation Activities**
  - Redesigned e-Manifest website ([www.epa.gov/e-manifest](http://www.epa.gov/e-manifest))
  - Regional/state meetings ongoing; upcoming industry conference in California in February
  - API technical workshops for industry in November; further API webinars in January

- 2012 e-Manifest Act required a fee-funded HW tracking system
  - National system to collect electronic and paper manifests
  - Conferred discretion on EPA to impose reasonable and necessary service fees
- Purposes of e-Manifest:
  - Reduce paperwork burdens of current manifest system,
  - Facilitate transition to use of electronic manifests, and
  - Establish one-stop, national hub for reporting all manifest data.
- Several fee and funding provisions in the Act:
  - System Fund (M3) in Treasury for fee deposits
  - Spending authority to extent of appropriations
  - Provisions for minimizing surplus and adjusting fees

## BACKGROUND

## *e-Manifest*

- 2012 Act required implementing regulations within one year
  - One Year Rule issued in February 2014
  - First rule established the legal and policy framework for e-Manifest
  - User Fees deferred to second rule
- Proposed User Fee Rule published on July 26, 2016
  - Proposed methodology for determining and revising fees
  - Proposed an informal fee schedule publication process
  - Relied on Circular A-25 and GAO's Federal User Fee Design Guide
  - Addressed several non-fee issues
- In response, EPA received 25 sets of public comments
- Final rule signed by the EPA Administrator on December 20, 2017
- Rule will be effective June 30, 2018, to coincide with e-Manifest system launch

## KEY ISSUES IN FINAL RULE

## *e-Manifest*

1. Which users and transactions will be subject to fees?
2. How and when will users pay their fees?
3. What formula and costs involved in determining fees?
4. How will fee revisions be handled?
5. How will fee schedules be published?
6. What sanctions for non-payment?
7. Should chemical security concern limit public access?
8. Should we phase out use of paper?
9. What other matters are addressed in the rule?
10. What are effects on state programs?

# 1. USERS AND TRANSACTIONS SUBJECT TO FEES

## *e-Manifest*

- Users: Rule distinguishes regulated users of manifests from data consumers
  - Only the ~400 commercial facilities that receive HW from off-site will pay fees
  - Consist of RCRA TSDFs and non-RCRA facilities receiving state-regulated wastes
  - Data consumers (general public, states) will not pay fees as incidental beneficiaries
- Transactions: Fees owed for the submission of final, signed copies of manifests to the system by receiving facilities.
  - EPA accepted comments objecting to fees for continuation sheets, for data corrections, for handling stray or irrelevant documents, or help desk encounters
  - Import manifests covered, but not export manifests (foreign consignee)
  - Fee also owed by facilities for submission of return shipment manifests to system
    - Shipments arise from rejections by facilities with return of wastes to generator
    - If rejected wastes forwarded to alternate facilities, alternate facility pays fee

## 2. HOW AND WHEN USERS WILL PAY FEES

## *e-Manifest*

- Receivers will be invoiced monthly for their previous month's manifest usage.
- Treasury's Pay.gov e-billing services will generate invoices.
- Facilities will log on to Pay.gov to pay invoices.
- Payment methods supported: credit card, debit card, ACH debit.
- In response to comments, there will not be an advance payment option.
- EPA will post payment instructions on the program website:

[www.epa.gov/e-manifest](http://www.epa.gov/e-manifest)



### 3. FORMULA AND COSTS INVOLVED WITH FEES

## *e-Manifest*

- The Rule's fee formula determines a "per manifest" fee by allocating costs to manifests in use
- Program costs used in formula:
  - System setup costs (costs incurred prior to start-up),
  - Operations and Maintenance costs (costs incurred after start-up), and
  - Indirect costs (overhead, non-lead offices' support, upper mgmt. support, etc.)
    - Determined as a % factor (33.22%) applied to our direct costs
- Rule provides a "differential fee formula" with differentiated fees based on the type of manifest
  - Marginal labor cost of data processing is key distinguishing feature
  - Rule imposes differential fee for four distinct types of manifest submissions:
    - Electronic manifests and three types from paper: mailed forms, image file upload, and data file upload
- Rule provides that fee formula will pivot to a more aggressive fee should we not attain goal of 75% electronic manifest usage after four years

### 3. FORMULA AND COSTS INVOLVED WITH FEES

## e-Manifest

For initial four years:

$$Fee_i = \left( \frac{\text{System Setup Cost}}{\text{Years} \times N_t} \right) + \left( \text{Marginal Cost}_i + \frac{\text{O\&M Cost}}{N_t} \right) \times (1 + \text{Indirect Cost Factor})$$

- *System Setup Cost = Procurement Cost + EPA Program Cost*
- *O&M Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services*

If fee pivots after four years:

$$Fee_i = \left( \frac{\text{System Setup Cost}}{\text{Years} \times N_t} \right) + \left( \text{Marginal Cost}_i + \frac{\text{O\&M}_i \text{ Cost}}{N_i} \right) \times (1 + \text{Indirect Cost Factor})$$

- $Fee_i$  represents the per manifest fee for each manifest submission type "i," and
- $N_t$  refers to the total number of manifests completed in a year,
- $N_i$  refers to number of manifests of type "i"

## 4. HOW FEE REVISIONS WILL BE HANDLED

## *e-Manifest*

- The final rule adopts much of the proposed rule's approach to fee trajectory:
  - We will publish fee schedules covering a two-year cycle
  - We will re-run the formula every two years with latest program cost and manifest numbers
  - We will publish the resulting fee schedules to [www.epa.gov/e-Manifest](http://www.epa.gov/e-Manifest)
- The fee formula methodology remains durable, so that we do not need to utilize notice-and-comment rulemaking in future fee proceedings
- The fee revisions process includes adjusters to address areas of revenue vulnerability:
  - Inflation adjuster, based on CPI-U, and
  - Revenue recapture adjuster for losses from inaccurate manifest use estimates
- The final rule does not include the proposed adjuster that would have recovered revenue from unpaid manifests

## 5. HOW FEE SCHEDULES WILL BE PUBLISHED

## *e-Manifest*

- For regular fee revisions, we will publish the revised schedules to the program's web site, with 90 days notice.
- For the initial two-year cycle that begins at system start-up:
  - Final Rule preamble includes table of estimated fees, based on best available cost data
- Initial fee schedule will not be determined fully until EPA's FY 2018 budget is set and all system contracts awarded.
  - Estimated schedule of initial fees in Final Rule preamble
  - Tentative fees updated on program website as budget and contracts determined
  - Final fee schedule published prior to system launch
- Current estimates of initial system fees:
  - Electronic (inc. hybrid): \$ 4.00
  - Data file upload: \$ 7.00
  - Image file upload: \$ 13.00
  - Mailed paper forms: \$ 20.00

## 6. SANCTIONS FOR NON-PAYMENT

## *e-Manifest*

- First tier of sanctions consists of financial penalties from federal claims collection statute.
  - Combined Value of Funds Rate (now 1%) when unpaid 30 days after invoice
  - Additional 6% penalty when unpaid 120 days after invoice
- Second tier sanction is a civil enforcement penalty or order
  - Tied to violation of requirement for all manifests to be perfected by receiving facilities
  - “Perfected” means that facilities submit all manifests and pay their fees
  - EPA will exercise its enforcement discretion
- EPA did not finalize the other proposed sanctions from the final rule:
  - Delinquent payers’ list,
  - Denial of manifest services, and
  - Withdrawal of authority to operate, suspension of ID#s, permit sanctions.

## 7. ADDRESSING CHEMICAL SECURITY CONCERN

## *e-Manifest*

- In proposed Fee Rule, EPA discussed public access in context of who should pay
- Two commenters suggested public access could give rise to chemical security risk:
  - Concern regarding access for info on sites with DHS chemicals of interest (COI) per 6 CFR part 27
  - Concern regarding info on shipment patterns involving these COI
- By DHS Rules, the scope of wastes at issue is limited to the so-called P-List and U-List RCRA wastes that are like pure chemical substances when discarded
  - A subset (58) of the P- and U-List wastes are included on the DHS COI Appendix
- After consulting with DHS, the final rule solution includes masking from public review selected information regarding those manifests with P- and U-List wastes that are also on the DHS COI List
  - For these manifests: waste names, waste codes, quantities, & ship dates not disclosed to public

## 8. PHASE OUT OF PAPER

## *e-Manifest*

- The e-Manifest Act is paper-tolerant, with users electing to use paper or electronic
- The Act requires that EPA's regulations facilitate the transition to electronic manifests
  - Phase I approach and hybrid manifest are examples of initial transition strategy
- Final rule adopts 3-year phase-out of mailed paper submissions by facilities
  - Most TSDf comments supported phase out of mailed manifests – most costly to process
- Final rule also suggests an evaluation in three years of electronic vs. paper trends
  - Goal: Elimination of all paper manifest use in 5 years
  - Also consider fate of hybrid manifest and its phase-out if warranted
  - Commits to referring results of evaluation to the Hazardous Waste e-Manifest System Advisory Board for their input
    - Examine trends and reasons for or impediments to greater use of electronic documents,
    - Consider what incentives or restrictions might be appropriate to facilitate transition to fully electronic system

## 9. OTHER MATTERS ADDRESSED IN THE RULE

## *e-Manifest*

1. Amendment to transporter regulation to allow initial transporter to add or substitute additional transporters on manifest while shipment en route
2. Any interested person can make corrections to a manifest at any time– an open process; no time limit
3. Amendment to generator regulation to allow use of mixed paper/electronic (hybrid) manifest at generator sites
  - Generator could retain ink signed paper copy, with remainder of transaction electronic



## 9. OTHER MATTERS ADDRESSED IN THE RULE

## *e-Manifest*

4. Codification of Act's section 2(h) "long-arm" provision
  - If manifest required by origination or destination state, receiving facilities must close/submit
5. Changes to manifest form and printing spec. for copy distribution
  - 5-copy form with top copy earmarked for submission to EPA system by designated facility
  - Notice to non-RCRA facilities of their responsibilities under the e-Manifest Act
6. Removal of manifest forms and instructions from CFR appendix
7. Rule announces system start-up date and effective date for rules: June 30, 2018

## 10. EFFECT ON STATE PROGRAMS

## *e-Manifest*

- Section 2(g) of Act provides that regulations issued under Act's authority shall take effect in all states on the effective date, and be administered initially by EPA
  - Operates similar to HSWA provisions Congress enacted in 1984
  - States will acquire primacy when they obtain RCRA authorization for program changes
- Fee provisions of rule can only be administered by EPA – non-delegable
- Similar to HSWA, Rule provides that the immediately effective federal rules supersede states' existing laws that are less stringent or inconsistent
  - Uniformity in use of manifest has been program feature for years
- Rule also implements decision made in 2014 One Year Rule that on system's launch date, facilities must submit the Top Copy of final manifest to system
  - Includes conforming change to form printing specifications – a five-copy form
  - States should obtain copies from system, not facilities
  - Congress intended e-Manifest to be the national reporting hub for collecting manifests
- EPA will soon issue authorization guidance and checklists to states
  - Will explain which requirements are authorizable, and which are essential for state programs

## IN SUMMARY

## *e-Manifest*

- Any manifest that begins (signed by the generator) on or after June 30, 2018, needs to use the updated manifest form (EPA Form 8700-22) that will be available from registered printers
  - “Old” manifest forms cannot be used after June 30, 2018.
- Receiving facilities need to submit manifest forms for federal or state regulated waste to EPA within 30 days.
- All manifest submissions will be tracked by the system and result in monthly invoices.
- Invoices will bill facilities the applicable fee for each manifest by submission type.
  - Final user fees to be announced by EPA ahead of system launch.
- Receiving facilities will go on-line to Pay.gov and pay invoices electronically.
- Data may be corrected at any time post-receipt.

# ECONOMIC IMPACTS

## *e-Manifest*

- Affected Universe:
  - Approximately 215,000 industrial entities comprised of generators, transporters, and TSDFs.
  - 33 state governments with manifest programs or requirements, who will interact with the system.
  - Approximately 3,300,000 hazardous waste manifests circulated annually.
- Cost Savings:
  - Annualized net cost savings of \$66 million when discounting at 7% over 6 years; \$90 million in costs savings annually once electronic manifests are widely adopted.
- Key Assumptions in the Analysis:
  - Count of manifests
  - Rate of e-Manifest adoption among industry

- In November we held two API technical workshops
  - We went over the registration, process workflows, API keys, JSON schema, sample client, and answered a lot of questions
- We are holding another API workshop (online) at the end of January.
  - We will go over services focusing on submitting paper manifests via services
  - Schema Updates
  - Discuss again, registration, API keys, available services (recap)
- Today we will demonstrate the Update Service

## FOR MORE INFORMATION

## *e-Manifest*

- Submit input/questions to [eManifest@epa.gov](mailto:eManifest@epa.gov)
- Subscribe to the general interest e-Manifest ListServ; send a blank message to: [eManifest-subscribe@lists.epa.gov](mailto:eManifest-subscribe@lists.epa.gov)
- Subscribe to the development-focused e-Manifest ListServ; send a blank email to: [e-ManifestDev-subscribe@lists.epa.gov](mailto:e-ManifestDev-subscribe@lists.epa.gov)
- Visit EPA's Manifest Program webpage at: [www.epa.gov/e-manifest](http://www.epa.gov/e-manifest)
- Track the progress of e-Manifest at: <https://github.com/USEPA/e-manifest/>