NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Hazardous Waste Electronic Manifest Rule
(LAC 33:V.109, 1107, 1301, 1307 and 1516) (HW117ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.109, 1107, 1301, 1307 and 1516 (Log #HW117ft).

This Rule is identical to federal regulations found in 79 FR 26, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule adopts the federal electronic manifest system for tracking shipments of hazardous waste in Louisiana. Louisiana's hazardous waste program operates under a federal grant from the U.S. EPA. In order to maintain this grant, the state's hazardous waste regulations are required to be equivalent to or more stringent than the corresponding federal regulations. The basis and rationale of this Rule are to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

This Rule has no known impact on poverty as described in R.S. 49:973.

This Rule has no known impact on providers as described in HCR 170 of 2014.

A public hearing will be held on February 25, 2016, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW117ft. Such comments must be received no later than February 25, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-4068 or by e-mail to deidra.johnson@la.gov.
comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW117ft. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel
Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

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Electronic Manifest (or e-Manifest)—the electronic format of the hazardous waste manifest that is obtained from EPA’s national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

Electronic Manifest System (or e-Manifest System)—EPA’s national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

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Manifest—the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator or offeror in accordance with the instructions in the Appendix to 40 CFR Part 262 and the applicable requirements of 40 CFR Parts 262 – 265.

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User of the Electronic Manifest System—a hazardous waste generator; a hazardous waste transporter; an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility; or any other person that:

1. ______ is required to use a manifest to comply with:
   a. ______ any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or
   b. ______ any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

2. ______ elects to use the system to obtain, complete, and transmit an electronic manifest format supplied by the EPA electronic manifest system; or

3. ______ elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with LAC 33:V.1516.B.1.e.

[NOTE: These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.]

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

Chapter 11. Generators

Subchapter A. General

§1107. The Manifest System

A. – A.8. …

9. Electronic Manifest. In lieu of using the manifest form specified in Paragraph A.1 of this Section, a person required to prepare a manifest under Paragraph A.1 of this Section may prepare and use an electronic manifest, provided that the person:

a. complies with the requirements in LAC 33:V.1107.F for use of electronic manifests; and

b. complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

B. – E.2. …

F. Use of the Electronic Manifest
1. Legal Equivalence to Paper Manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with LAC 33:V.1107.A.9, and used in accordance with this Section in lieu of EPA Forms 8700-22 and 8700-22A 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.

   a. Any requirement in these regulations 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 LAC 33:V.1107.G.

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

   c. Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator’s 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.

   d. No generator may be held liable for the inability to produce an electronic manifest for inspection under this Section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

2. A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator’s site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.
3. Restriction on Use of Electronic Manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.

4. Requirement for One Printed Copy. To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest.

5. Special Procedures When Electronic Manifest is Unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions in the appendix to 40 CFR Part 262, and use these paper forms from this point forward in accordance with the requirements of LAC 33:V.1107.D.

6. Special Procedures for Electronic Signature Methods Undergoing Tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and 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 generator shall also sign with an ink signature the generator/offeror certification on the printed copy of the manifest provided under LAC 33:V.1107.F.4.
7. Imposition of User Fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.

G. Electronic Manifest Signatures

1. Electronic signature methods for the e-Manifest system shall be a:
   a. legally valid and enforceable signature under applicable EPA and other federal requirements pertaining to electronic signatures; and
   b. method that is designed and implemented in a manner that EPA considers to be as cost effective and practical as possible for the users of the manifest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.


Chapter 13. Transporters

§1301. Applicability

A. The revised manifest form and procedures in 40 CFR Part 262 and the Appendix to Part 262 shall be effective as 260.10, 261.7, 263.20, and 263.21, had an effective date of
September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, 263.20, and 263.21, contained in 40 CFR Parts 260 to 265, edition revised as of July 1, 2004, were applicable until September 5, 2006. This Chapter establishes standards that apply to persons transporting hazardous waste within the state of Louisiana if the transportation requires a manifest under LAC 33:V.1516.

B. – H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), LR 24:1694 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 38:789 (March 2012), amended by the Office of the Secretary, Legal Division, LR 42:**.

§1307. The Manifest System

A. A transporter may not accept hazardous waste from a generator or another transporter unless it is accompanied by a manifest form (EPA Form 8700-22, and if necessary, EPA Form 8700-22A), signed by the generator in accordance with the provisions of LAC 33:V.1107, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with LAC 33:V.1107.A.9, and signed with a valid and enforceable electronic signature as described in LAC 33:V.1107.G. The transportation of any hazardous wastes without a manifest shall be deemed a violation of these regulations and the Act. In the case of exports other than those subject to LAC 33:V.1125, a transporter may not accept such waste from a primary exporter or other person:

1. …

2. unless, in addition to a manifest signed by the generator, such waste is also accompanied by an EPA Acknowledgment of Consent, which, except for shipments by rail, is
attached to the manifest, or shipping paper for exports by water (bulk shipment). For exports of hazardous waste subject to the requirements of LAC 33:V.1125, a transporter may not accept hazardous waste without a tracking document that includes all information required by LAC 33:V.1127.D.

B. – H.4. …

I. ______ Use of Electronic Manifest – Legal Equivalence to Paper Forms for Participating Transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with LAC 33:V.1107.A.9, and used in accordance with this Section in lieu of EPA Forms 8700-22 and 8700-22A, 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, carry, provide, give, use, or retain a manifest.

1. ______ Any requirement in these regulations 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 LAC 33:V.1107.G.

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

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 waste shipment, except that to the extent that the hazardous materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a
paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

4. Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter’s account on the 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 transporter may be held liable for the inability to produce an electronic manifest for inspection under this Section, if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

J. A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter’s own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

K. Special Procedures When Electronic Manifest is not Available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then the following requirements shall be met:

1. The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to LAC 33:V.1307.I.1.c, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the
transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste;

2. On each printed copy, the transporter shall include a notation in the special handling and additional description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not pre-printed on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically;

3. A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy; and

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

L. Special Procedures for Electronic Signature Methods Undergoing Tests. If a transporter 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 transporter shall sign the electronic manifest electronically, and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with LAC 33:V.1307.I.1.c. This printed copy bearing the generator’s and transporter’s ink signatures shall also be presented by the transporter to the designated facility to
sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the
owner/operator of the designated facility has signed this printed manifest copy with its ink
signature, the printed manifest copy shall be delivered to the designated facility with the waste
materials.

M. Imposition of User Fee for Electronic Manifest Use. A transporter who is a user
of the electronic manifest may be assessed a user fee by EPA for the origination or processing of
each electronic manifest. EPA shall maintain and update from time-to-time the current schedule
of electronic manifest user fees, which shall be determined based on current and projected
system costs and level of use of the electronic manifest system. The current schedule of
electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.

N. Electronic Manifest Signatures. Electronic manifest signatures shall meet the
criteria described in LAC 33:V.1107.G.

Authoritative Note: Promulgated in accordance with R.S. 30:2180 et seq.

Historical Note: Promulgated by the Department of Environmental Quality, Office
of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended
LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1109 (October 1994), amended
by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), amended
by the Office of Environmental Assessment, Environmental Planning Division, LR 27:710 (May
2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006),
amended by the Office of the Secretary, Legal Division, LR 42:**.

Chapter 15. Treatment, Storage, and Disposal Facilities

§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities

A. – A.2. …

B. Use of the Manifest System

B.1. – B.1.d. …
e. retain at the facility a copy of each manifest for at least three years from the date of delivery. Within 30 days of delivery, send the top copy (Page 1) of the manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system 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 subparagraph 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 electronic manifest system; and

f. retain at the facility a copy of each manifest for at least three years from the date of delivery.

B.2. – D.7. …

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E. Reserved.

F. Legal Equivalence to Paper Manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with LAC 33:V.1107.A.9, 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 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 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 electronic manifest system for which the owner or operator bears no responsibility.

G. An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner’s or operator’s electronic equipment, or by accessing the 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 shall 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 one copy of the paper replacement manifest back to the final transporter.

3. Within 30 days of delivery of the 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 electronic manifest system.

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 three 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 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 LAC 33:V.1516.B.1.e. 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 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. Electronic manifest signatures shall meet the criteria described in 40 CFR 262.25.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:1012 (June 2008), LR 38:777, 789 (March 2012), amended by the Office of the Secretary, Legal Division, LR 42:**.