

## § 262.83

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status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) may restrict certain waste imports or exports. Such restrictions continue to apply without regard to this Subpart.

(4) Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in §262.80(a), these wastes are subject to the red-list controls; or

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in §262.80(a), such wastes may move as though they appeared on the green list.

(b) *General conditions applicable to transfrontier movements of hazardous waste.* (1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transfrontier movement must be in compliance with applicable international transport agreements; and

NOTE TO PARAGRAPH (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD member country must be conducted in compliance with all applicable international and national laws and regulations.

(c) *Provisions relating to re-export for recovery to a third country.* (1) Re-export of wastes subject to the amber-list control system from the U.S., as the importing country, to a third country listed in §262.58(a)(1) may occur only after a notifier in the U.S. provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification must comply with the notice and consent procedures in §262.83 for all concerned countries and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned coun-

tries have 30 days to object to the proposed movement.

(i) The 30-day period begins once the competent authorities of both the initial exporting country and new importing country issue Acknowledgements of Receipt of the notification.

(ii) The transfrontier movement may commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) Re-export of waste subject to the red-list control system from the original importing country to a third country listed in §262.58(a)(1) may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with §262.83. The transfrontier movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

(3) In the case of re-export of amber or red-list wastes to a country other than those in §262.58(a)(1), notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in paragraphs (c)(1) and (c)(2) of this section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

### § 262.83 Notification and consent.

(a) *Applicability.* Consent must be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this Subpart. Hazardous wastes subject to amber-list controls are subject to the requirements of paragraph (b) of this section; hazardous wastes subject to red-list controls are subject to the requirements of paragraph (c) of this section; and wastes not identified on any list

are subject to the requirements of paragraph (d) of this section.

(b) *Amber-list wastes.* The export from the U.S. of hazardous wastes as described in §262.80(a) that appear on the amber list is prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(i) *Notification.* At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with the words “Attention: OECD Export Notification” prominently displayed on the envelope. This notification must include all of the information identified in paragraph (e) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

(ii) *Tacit consent.* If no objection has been lodged by any concerned country (*i.e.*, exporting, importing, or transit countries) to a notification provided pursuant to paragraph (b)(1)(i) of this section within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement may commence. Tacit consent expires one calendar year after the close of the 30 day period; renotification and renewal of all consents is required for exports after that date.

(iii) *Written consent.* If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement may commence immediately after all necessary consents are re-

ceived. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country’s consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Shipments to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) The notifier must provide EPA the information identified in paragraph (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with the words “OECD Export Notification—Pre-approved Facility” prominently displayed on the envelope.

(ii) Shipments may commence after the notification required in paragraph (b)(1)(i) of this section has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.

(c) *Red-list wastes.* The export from the U.S. of hazardous wastes as described in §262.80(a) that appear on the red list is prohibited unless notice is given pursuant to paragraph (b)(1)(i) of this section and the notifier receives *written* consent from the importing country and any transit countries prior to commencement of the transfrontier movement.

(d) *Unlisted wastes.* Wastes not assigned to the green, amber, or red list that are considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to the notification and consent requirements established for red-list wastes in accordance with paragraph (c) of this section. Unlisted wastes that are not considered

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hazardous under U.S. national procedures as defined in §262.80(a) are not subject to amber or red controls when exported or imported.

(e) *Notification information.* Notifications submitted under this section must include:

- (1) Serial number or other accepted identifier of the notification form;
- (2) Notifier name and EPA identification number (if applicable), address, and telephone and telefax numbers;
- (3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;
- (4) Consignee name (if not the owner or operator of the recovery facility) address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;
- (5) Intended transporters and/or their agents;
- (6) Country of export and relevant competent authority, and point of departure;
- (7) Countries of transit and relevant competent authorities and points of entry and departure;
- (8) Country of import and relevant competent authority, and point of entry;
- (9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;
- (10) Date foreseen for commencement of transfrontier movement;
- (11) Designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and
- (12) Certification/Declaration signed by the notifier that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement.

Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

NOTE TO PARAGRAPH (e)(12): The U.S. does not currently require financial assurance; however, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

**§ 262.84 Tracking document.**

(a) All U.S. parties subject to the contract provisions of §262.85 must ensure that a tracking document meeting the conditions of §262.84(b) accompanies each transfrontier shipment of wastes subject to amber-list or red-list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or exchanged by the consignee prior to shipment to the final recovery facility, except as provided in §§262.84(a)(1) and (2).

(1) For shipments of hazardous waste within the U.S. solely by water (bulk shipments only) the generator must forward the tracking document with the manifest to the last water (bulk shipment) transporter to handle the waste in the U.S. if exported by water, (in accordance with the manifest routing procedures at §262.23(c)).

(2) For rail shipments of hazardous waste within the U.S. which originate at the site of generation, the generator must forward the tracking document with the manifest (in accordance with the routing procedures for the manifest in §262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the U.S. if exported by rail.

(b) The tracking document must include all information required under §262.83 (for notification), and the following:

- (1) Date shipment commenced.
- (2) Name (if not notifier), address, and telephone and telefax numbers of primary exporter.
- (3) Company name and EPA ID number of all transporters.
- (4) Identification (license, registered name or registration number) of means of transport, including types of packaging.
- (5) Any special precautions to be taken by transporters.
- (6) Certification/declaration signed by notifier that no objection to the shipment has been lodged as follows: