

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management
Rule No. 335-14-3-.09
Rule Title: Transboundary Shipments of Hazardous Waste for Recovery within
the Organization for Economic Cooperation and Development (OECD)

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Mandy Elliott

Date October 22, 2012

APA-2
11/96

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE: 335-14-3-.09 Transboundary Shipments of Hazardous Waste for Recovery within the Organization for Economic Cooperation and Development (OECD) (Amend)


INTENDED ACTION: Revise Division 14 of the ADEM Administrative Code.

SUBSTANCE OR PROPOSED ACTION: Revise portions of Division 14 Regulations to incorporate changes to ensure consistency with State and Federal Statutes; to adopt certain State specific requirements; and to provide clarification of State requirements for the management of hazardous waste.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Comments may be submitted in writing or orally at a public hearing to be held Thursday, December 13, 2012 at 10:00 a.m. in the Main Hearing Room at the ADEM Central Office located at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Thursday, December 13, 2012 at 5:00 p.m.

CONTACT PERSON AT AGENCY: James L. Bryant, Chief of the Environmental Services Branch, ADEM Land Division (334/271-7771)



Lance R. LeFleur
Director

335-14-3-.09 Transboundary Shipments of Hazardous Waste for Recovery within the Organization for Economic Cooperation and Development (OECD).

(1) Applicability.

(a) The requirements of 335-14-3-.09 apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in 335-14-3-.05(9)(a)1. A waste is considered hazardous under U.S. national procedures if the waste:

1. Meets the definition of hazardous waste in 335-14-2-.01(3); and
2. Is subject to either the manifesting requirements at 335-14-3-.02, the universal waste management standards of 335-14-11, or the export requirements in the spent lead-acid battery management standards of 334-14-7-.07.

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under 335-14-3-.09.

(2) [Reserved]

(3) General conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in 335-14-3-.09(1)(a). The OECD Green and Amber lists are incorporated by reference in 335-14-3-.09(10)(d).

1. Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) are subject to the Amber control procedures set forth in 335-14-3-.09.

2. Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), are subject to the Amber control procedures set forth in 335-14-3-.09.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in 335-14-3-.05(9)(a)1. that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(I) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(II) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.

[Note to 335-14-3-.09(3)(a)2.: Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of 335-14-3-.09. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply without regard to 335-14-3-.09.]

3. Procedures for mixtures of wastes.

(i) Green waste that is mixed with one or more other Green waste such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

[Note to 335-14-3-.09(3)(a)3.(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.]

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

[**Note to 335-14-3-.09(3)(a)3.(ii):** The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a *de minimus* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.]

4. Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), such wastes are subject to the Green control procedures.

(b) General conditions applicable to transboundary 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 transboundary movement must be in compliance with applicable international transport agreements; and

[**Note to 335-14-3-.09(3)(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 control procedures from the United States, as the country of import, to a third country listed in rule 335-14-3-.05(9)(a)1. may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in

335-14-3-.09(4) for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.

(i) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

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

2. In the case of re-export of Amber wastes to a country other than those listed in rule 335-14-3-.05(9)(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 335-14-3-.09(3)(c)1., 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 country of import.

(d) Duty to return or re-export wastes subject to the Amber control procedures. When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of 335-14-3-.09(3)(c) apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

1. Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in 335-14-3-.09(4)(b)1.(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

2. Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the

need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with 335-14-3-.09(8)(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

1. Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in 335-14-3-.09(4)(b)1.(i) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

2. Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with 335-14-3-.09(8)(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in 335-14-3-.09(4) and for the movement document as set forth in 335-14-3-.09(5). Additional responsibilities of R12/R13 facilities include:

1. Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.

2. Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.

3. As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent

authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

4. When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

5. When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

(4) Notification and consent.

(a) Applicability. Consent must be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to 335-14-3-.09. Hazardous wastes subject to the Amber control procedures are subject to the requirements of 335-14-3-.09(4)(b); and wastes not identified on any list are subject to the requirements of 335-14-3-.09(4)(c).

(b) Amber wastes. Exports of hazardous waste from the United States as described in 335-14-3-.09(1)(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of 335-14-3-.09(4)(b)1. or (b)2. are met.

1. Transactions requiring specific consent:

(i) Notification. At least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130-1463; with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in 335-14-3-.09(4)(d). 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 exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to 335-14-3-.09(5).

(ii) Tacit consent. If no objection has been lodged by any countries concerned (i.e., exporting, importing, or transit) to a notification provided pursuant to 335-14-3-.09(4)(b)1.(i) within thirty (30) days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one (1) calendar year after the close of the thirty (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 thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) 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. Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter must provide EPA a notification that contains all the information identified in 335-14-3-.09(4)(d) in English, at least ten (10) days in advance of commencing shipment to a pre-approved facility. The notification must indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in 335-14-3-.09(4)(b)1.(i). This information must be sent to both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and the Alabama

Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130-1463; with the words "OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in 335-14-3-.09(4)(b)1.(i) may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to 335-14-3-.09(5).

(ii) Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in 335-14-3-.09(10)(d), but which are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with 335-14-3-.09(4)(b). Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in 335-14-3-.09(10)(d), and are not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) are subject to Green control procedures.

(d) Notifications submitted under this section must include the information specified in 335-14-3-.09(4)(d)1.-(d)14.:

1. Serial number or other accepted identifier of the notification document;

2. Exporter name and EPA identification number (if applicable), address, and telephone, fax numbers, and e-mail address;

3. Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

4. Importer name (if not the owner or operator of the recovery facility) address, and telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 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 transporter(s) and/or their agents; telephone, fax numbers, and e-mail address;

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(s) foreseen for commencement of transboundary movements;
11. Means of transport envisaged;
12. Designation of waste type(s) from the appropriate OECD list incorporated by reference in 335-14-3-.09(10)(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type;
13. Specification of the recovery operation(s) as defined in 335-14-1-.02.
14. Certification/Declaration signed by the exporter 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 transboundary movement."

Name: _____

Signature: _____

Date: _____

[Note to 335-14-3-.09(4)(d)14.: The United States does not currently require financial assurance for these waste shipments; 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.]

(e) Certificate of Recovery. As soon as possible, but not later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under 335-14-3-.09(6).

(5) Movement document.

(a) All U.S. parties subject to the contract provisions of 335-14-3-.09(6) must ensure that a movement document meeting the conditions of 335-14-3-.09(5)(b) accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in 335-14-3-.09(5)(a)1. and (a)2.

1. For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at 335-14-3-.02(4)(c)).

2. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in 335-14-3-.02(4)(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document must include all information required by 335-14-3-.09(4) (for notification), as well as the following:

1. Date movement commenced;
2. Name (if not exporter), address, and telephone, fax numbers, and e-mail 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 envisaged;
5. Any special precautions to be taken by transporter(s);
6. Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

"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, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

- (i) All necessary consents have been received"; or

(ii) The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period"; or

(iii) The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned."

(Delete sentences that are not applicable.)

Name: _____

Signature: _____

Date: _____

7. Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

(c) Exporters also must comply with the special manifest requirements of 335-14-3-.05(5)(a), (b), (c), (e), and (i) and importers must comply with the import requirements of 335-14-3-.06.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (e.g., transporter, importer, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to 335-14-3-.09, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, to the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined in 335-14-1-.02, the facility shall retain the original of the movement document for three (3) years.

(6) Contracts.

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of 335-14-3-.09(6) only if persons assuming obligations under the

contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of 335-14-3-.09(6)(b)1.-4.:

1. The generator of each type of waste;
2. Each person who will have physical custody of the wastes;
3. Each person who will have legal control of the wastes; and
4. The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

1. The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

2. The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts must specify that the importer will provide the notification required in 335-14-3-.09(3)(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

[Note to 335-14-3-.09(6)(e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.]

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of 335-14-3-.09.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 335-14-1-.01(2).

[Note to 335-14-3-.09(6)(g): Although the United States does not require routine submission of contracts at this time, OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.]

(7) Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of 335-14-3-.09 associated with being an exporter or importer.

(8) Reporting and recordkeeping.

(a) Annual reports. For all waste movements subject to 335-14-3-.09, persons (e.g., exporters, recognized traders) who meet the definition of primary exporter in 335-14-1-.02(1)(a) or who initiate the movement document under 335-14-3-.09(5) shall file an annual report with both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or person who initiates the movement document under 335-14-3-.09(5) is required to file an annual report for waste exports that are not covered under 335-14-3-.09, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section). Such reports shall include all of the following:

1. The EPA identification number, name, and mailing and site address of the exporter filing the report;

2. The calendar year covered by the report;

3. The name and site address of each final recovery facility;

4. By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 335-14-2-.03 or 2-.04), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in 335-14-3-.09(10)(d), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to 335-14-3-.09, and number of shipments pursuant to each notification;

5. In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to 335-14-3-.04(2):

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

6. A certification signed by the person acting as primary exporter or initiator of the movement document under 335-14-3-.09(5) that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(b) Exception reports. Any person who meets the definition of primary exporter in 335-14-1-.02(1)(a) or who initiates the movement document under 335-14-3-.09(5) must file an exception report in lieu of the requirements of 335-14-3-.04(3) (if applicable) with both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130 if any of the following occurs:

1. He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

2. Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

3. The waste is returned to the United States.

(c) Recordkeeping.

1. Persons who meet the definition of primary exporter in 335-14-1-.02(1)(a) or who initiate the movement document under 335-14-3-.09(5) shall keep all of the following records:

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery (i.e., movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.

2. The periods of retention referred to in 335-14-3-.09(8) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(9) Pre-approval for U.S. Recovery Facilities (Reserved).

(10) OECD Waste Lists.

(a) General. For the purposes of 335-14-3-.09, a waste is considered hazardous under U.S. national procedures, and hence subject to 335-14-3-.09, if the waste:

1. Meets the definition of hazardous waste in 335-14-2-.01(3); and
2. Is subject to either the manifesting requirements at 335-14-3-.02, to the universal waste management standards of 335-14-11, or the export requirements in the spent lead-acid battery management standards of 335-14-7-.07.

(b) If a waste is hazardous under 335-14-3-.09(10)(a), it is subject to the Amber control procedures, regardless of whether it appears in the OECD Amber List, incorporated by reference in 335-14-.09(10)(d).

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in 335-14-3-.09(3).

(d) The OECD waste lists, as set forth in Annex B (“Green List”) and Annex C (“Amber List”) (collectively “OECD waste lists”) of the 2009 “Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes destined for Recovery Operations,” are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the *Federal Register*. The materials are available for inspection at the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA_2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France.

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