

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. ADEM Admin. Code r. 335-14-3-.05
Rule Title: Exports of Hazardous Waste

 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

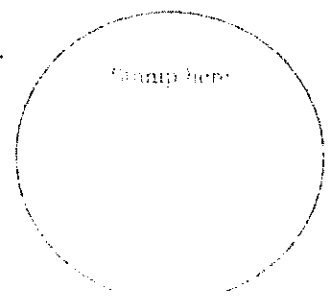
If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

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 Marilyn Elliott

Date 10/21/2015



DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

<u>RULE NO. & TITLE:</u>	335-14-1-.02	<u>Definitions and References</u> (Amend)
	335-14-1-.03	<u>Petitions for Equivalent Testing or Analytical Methods</u> (Amend)
	335-14-2-.01	<u>General</u> (Amend)
	335-14-2-.04	<u>Lists of Hazardous Waste</u> (Amend)
	335-14-2-.05	<u>Exclusions/Exemptions</u> (Amend)
	335-14-2-.07	<u>(Reserved)</u>
	335-14-2-.08	<u>Financial Requirements for Management of Excluded Hazardous Secondary Materials</u> (Add)
	335-14-2-.09	<u>Use and Management of Containers</u> (Add)
	335-14-2-.10	<u>Tank Systems</u> (Add)
	335-14-2-.11	<u>(Reserved)</u>
	335-14-2-.12	<u>(Reserved)</u>
	335-14-2-.13	<u>Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials</u> (Add)
	335-14-2-.14	<u>(Reserved)</u>
	335-14-2-.15	<u>(Reserved)</u>
	335-14-2-.16	<u>(Reserved)</u>
	335-14-2-.17	<u>(Reserved)</u>
	335-14-2-.18	<u>(Reserved)</u>
	335-14-2-.19	<u>(Reserved)</u>
	335-14-2-.20	<u>(Reserved)</u>
	335-14-2-.21	<u>(Reserved)</u>
	335-14-2-.22	<u>(Reserved)</u>
	335-14-2-.23	<u>(Reserved)</u>
	335-14-2-.24	<u>(Reserved)</u>
	335-14-2-.25	<u>(Reserved)</u>
	335-14-2-.26	<u>(Reserved)</u>
	335-14-2-.27	<u>Subpart AA – Air Emission Standards for Process Vents</u> (Add)
	335-14-2-.28	<u>Subpart BB - Air Emission Standards for Equipment Leaks</u> (Add)
	335-14-2-.29	<u>Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers</u> (Add)
	335-14-2	
	Appendix IX	<u>Wastes Excluded Under 335-14-1-.03(2)</u> (Add)
	335-14-3-.03	<u>Pre-Transport Requirements</u> (Amend)
	335-14-3-.05	<u>Exports of Hazardous Waste</u> (Amend)

335-14-3-.08 Special Requirements for Generators of Waste
Destined For Disposal at Commercial Hazardous
Waste Disposal Facilities Located in the State of
Alabama (Amend)
335-14-5-.07 Closure and Post-Closure (Amend)
335-14-5-.15 Incinerators (Amend)

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

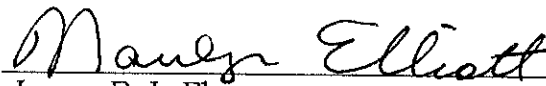
SUBSTANCE OR PROPOSED ACTION: Revise portions of Division 14 Regulations to incorporate changes to ensure consistency with State and Federal Statutes; to adopt certain State specific requirements; and to provide clarification of State requirements for the management of hazardous waste.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held December 16, 2015 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: December 16, 2015

CONTACT PERSON AT AGENCY: Vernon H. Crockett, Chief of the Industrial Hazardous Waste Branch, ADEM Land Division (334/270-5627)


Lance R. LeFleur
Director

335-14-3-.05

Exports of Hazardous Waste.

(1) Applicability. 335-14-3-.05 establishes requirements applicable to exports of hazardous waste. Except to the extent of 335-14-3-.05(9) provides otherwise, a primary exporter of hazardous waste must comply with the special requirements of 335-14-3-.05 and a transporter transporting hazardous waste for export must comply with applicable requirements of Chapter 335-14-4. 335-14-3-.05(9) sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(2) **[Reserved].**

(3) General requirements. Exports of hazardous waste are prohibited except in compliance with the applicable requirements of 335-14-3-.05 and Chapter 335-14-4. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with 335-14-3-.05(4) has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

(4) Notification of intent to export.

(a) A primary exporter of hazardous waste must notify the Department and EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:

1. Name, mailing address, telephone number, and EPA ID number of the primary exporter;

2. By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subparts C and D; and 335-14-2-.03 and 335-14-2-.04 of ADEM Admin. Code Rule), U.S. DOT proper shipping name,

hazardous class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171 through 177;

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.);

(vi) A description of the manner in which the hazardous waste will be treated, stored, or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notifications submitted by mail should be sent to the following addresses: Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130-1463; and 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. Hand-delivered notifications should be delivered to: Alabama Department of Environmental Management, Land Division, 1400 Coliseum Boulevard, Montgomery, AL 36110-2059; and the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export".

(c) Except for changes to the telephone number in 335-14-3-.05(4)(a)1., changes to 335-14-3-.05(4)(a)2.(v) and decreases in the quantity indicated pursuant to 335-14-3-.05(4)(a)2.(iii) when the conditions specified on the original notification change (including any exceedence of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide the Department and EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to 335-14-3-.05(4)(a)2.(viii) and in the ports of entry to and

departure from transit countries pursuant to 335-14-3-.05(4)(a)2.(iv)) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA or the Department, a primary exporter shall furnish to the appropriate requestor (EPA or the Department) any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of 335-14-3-.05(4)(a). Where a claim of confidentiality is asserted with respect to any notification information required by 335-14-3-.05(4)(a), EPA and the Department may find the notification not complete until any such claim is resolved in accordance with 335-14-1-.01(2).

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of 335-14-3-.05(5)(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

(5) Special manifest requirements. A primary exporter must comply with the manifest requirements of 335-14-3-.02(1) through 335-14-3-.02(4) except that:

(a) In lieu of the name, site address, and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address, and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(c) In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and ~~State~~state) from the United States.

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any

significant discrepancies (as defined in 335-14-5-.05(3)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of 335-14-3-.02(1)(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

1. Renotify EPA and the Department of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with 335-14-3-.05(4)(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

2. Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

3. Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which must accompany the hazardous waste shipment.

For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with 335-14-4-.02(1)(g)4.

(6) Exception reports. In lieu of the requirements of 335-14-3-.04(3), a primary exporter must file an exception report with 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 and the Director if any of the following occurs::

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

(7) Annual reports.

(a) Primary exporters of hazardous waste shall file with the Administrator and the Director no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

1. The EPA identification number, name, and mailing and site address of the exporter;
2. The calendar year covered by the report;
3. The name and site address of each consignee;
4. By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D; and 335-14-2-.03 and 335-14-2-.04 of ADEM Admin. Code Rule), DOT hazard class, the name and USEPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;
5. Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to 335-14-3-.04(2) in even numbered years:
 - (i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
 - (ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.
6. A certification signed by the primary exporter which 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) Annual reports submitted by mail should be sent to the following mailing addresses: Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130-1463; and 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. Hand-delivered reports should be delivered to: Alabama Department of Environmental Management, Land Division, 1400 Coliseum Boulevard, Montgomery, AL 36110-2059; and the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International

Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

(8) Recordkeeping.

(a) For all exports a primary exporter must:

1. Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

2. Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

3. Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

4. Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in 335-14-3-.05(8) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator or the Director.

(9) International agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to and from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in 335-14-3-.05(9)(a)1. is subject to 335-14-3-.09. The requirements of 335-14-3-.05 and 3-.06 do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in 335-14-2-.01(3) and is subject to either the manifest requirements of 335-14-3-.02, or 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.

1. For the purposes of 335-14-3-.09, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

2. For the purposes of 335-14-3-.09, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD Member country for purposes other than recovery

(e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of 335-14-3-.05 and 3-.06 and is not subject to the requirements of 335-14-3-.09.

Authors: Stephen C. Maurer; Steven O. Jenkins; Amy P. Zachry; Bradley N. Curvin; Theresa A. Maines, Heather M. Jones; Metz P. Duites

Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-14.

History: November 19, 1980.

Amended: April 9, 1986, September 29, 1986; August 24, 1989; December 6, 1990; January 1, 1993; March 28, 1997; March 27, 1998; April 13, 2001; April 13, 2001; March 31, 2005; April 4, 2006; April 3, 2007; March 31, 2011-; XXXXX, 2016.