

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. Rule 335-13-16-.04
Rule Title: Notification and/or Registration Application Requirements

X New 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 action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

Does the proposed rule have an economic impact? YES

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 Services Agency.

Signature of certifying officer Mandy Elliott

Date: July 22, 2019

(DATE FILED)
(STAMP)

APA-2

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE:

335-13-16-.01 Purpose (New)
335-13-16-.02 Definitions (New)
335-13-16-.03 Specific Requirements for Land Application of By-Product Materials
(New)
335-13-16-.04 Notification and/or Registration Application Requirements (New)
335-13-16-.05 Operating Criteria for Land Application of By-Product Materials (New)
335-13-16-.06 Recordkeeping and Reporting Requirements (New)
335-13-16-.07 Variances (New)

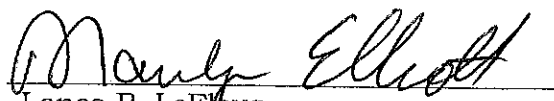
INTENDED ACTION: Revise Division 13 of the ADEM Administrative Code.

SUBSTANCE OR PROPOSED ACTION: The Alabama Department of Environmental Management proposes to amend the ADEM Administrative Code to adopt new standards for the beneficial use of by-product materials for the purpose of land application.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Comments may be submitted in writing or orally at a public hearing to be held September 5, 2019 at 10:30 AM in the Main Hearing Room at the ADEM Central Office located at 1400 Coliseum Boulevard, Montgomery, Alabama 36110-2400.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 5, 2019

CONTACT PERSON AT AGENCY: Eric L. Sanderson, Chief of the Solid Waste Branch, ADEM Land Division (334-271-7755)


Lance R. LeFleur
Director

335-13-16-.04 Notification and/or Registration Application Requirements.

(1) Initial Notification. In order for the Department to develop the universe of potential regulated entities, the Department requires the following information.

(a) All generators and distributors or suppliers that handle and/or use by-product material for beneficial use, must within 90 days of the effective date of these rules, notify the Department in writing of the following information.

1. The quantity of by-product materials in dry tons handled during the previous calendar year; and,
2. Type(s) of by-product materials land applied in the past calendar year; or
3. Counties within the State where the land application has occurred within the past calendar year.

(2) Registration Application Requirements.

(a) Generators that handle 100 dry tons per year or more of eligible by-product material for beneficial use must submit the following items to the Department:

1. A completed application form with the applicable fees, and;
2. A list of distributors or suppliers that handle the by-product material and a copy of their Operations Plan(s).

(b) Distributors or Suppliers that handle 100 dry tons per year or more of eligible by-product material for beneficial use must submit the following items to the Department:

1. A completed application form with the applicable fees,
2. Site-specific NRCS Comprehensive Nutrient Management Plan(s) detailing at a minimum the following:
 - (i) Application site location(s) and property description;
 - (ii) Brief description of the operation;
 - (iii) Crops and soils information;
 - (iv) Yield goal information;
 - (v) Timing and method of applications; and,
 - (vi) Best management practices.
3. An Operations Plan for handling and transportation of the by-product material which shall include best management practices for minimizing the following:
 - (i) Vectors and birds;

- (ii) Odors;
- (iii) Spills; and,
- (iv) The amount of time in transit.

(c) All entities subject to 335-13-16-.04(2)(a) or (2)(b) shall submit a registration application to the Department within one hundred eighty (180) days of the effective date of 335-13-16. New entities desiring to begin operation after the effective date of 335-13-16 must submit a completed registration application to the Department prior to beneficially using a by-product as required by 335-13-16-.04(2)(a) or (2)(b).

(3) Upon the review and determination that an application is consistent with these regulations, the Department shall issue a registration to the applicant, subject to the following conditions:

(a) Registrations issued by the Department are only valid for uses conducted within the state of Alabama.

(b) Upon utilization of the material, a by-product for which a Registration has been issued shall no longer be subject to 335-13-1 through 335-13-15 regulations provided the by-product is utilized in a manner consistent with the terms and conditions of the Registration.

(c) The placement, dumping or other use of a by-product materials in a manner inconsistent with the Registration may be considered an unauthorized dump as defined in under 335-13-1-.03 and the responsible party may be subject to enforcement actions by the Department under 335-13-1-.13.

(d) The issuance of a Registration does not exempt the generator, distributor, nor end user from compliance with applicable water quality and air quality regulations when managing or beneficially using a by-product under these regulations. Best management practices should include procedures for land application which minimize the creation of fugitive air-borne dust which could leave the application site.

(e) If an applicant is determined to be in significant noncompliance with the requirements of this chapter, the registration may be revoked or the application for registration denied by the Director.

(4) All generators and distributors or suppliers that handle less than 100 dry tons per year of eligible by-product material for beneficial use along with all applicers and end users must maintain records on-site as contained in paragraphs (2)(b)2. and 3. of this section.

(a) The placement, dumping or other use of a by-product in a manner inconsistent with the requirements of this chapter may be considered an unauthorized dump as defined in under 335-13-1-.03 and the responsible party may be subject to enforcement actions by the Department under 335-13-1-.13.

Author: S. Scott Story

Statutory Authority: Code of Alabama 1975, §22-27-9 and §22-27-12

History: Proposed: July 22, 2019.

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 335 Department or Agency Environmental Management

Rule No: Rule 335-13-16-.04

Rule Title: Notification and/or Registration Application Requirements

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

This rule regulates by-product materials that are beneficially used throughout the State.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

This rule requires a one-time minimal fee to provide funding to support a notification and registration program for the management of by-product materials that are beneficially used.

3. EFFECT OF THIS RULE ON COMPETITION:

This rule affects all entities in the state equally.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEORGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

There will be only a minimal effect due to this rule, and it will not affect one geographic area more than another.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

There will be only a minimal effect on employment, if any, as a result of this rule.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

Fees are required for those entities that are required to register under this rule.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

The short-term impact would be a one-time minimal fee to fund the program placed on the generators or suppliers of the beneficially used material.

There should not be any long-impact from this rule.

The public will benefit from this rule since ADEM will have the ability to oversee the land application of beneficial use materials to ensure that human health and the environment are protected.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

None that ADEM is aware.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

This rule will allow ADEM to implement and oversee the beneficial use of by-product materials to ensure human health and the environment are protected.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

By not implementing this rule, entities throughout the State may handle and/or apply by-product materials in a manner inconsistent with the proposed rule, which can lead to human health and environment issues such as spills, runoff, vectors, and odors.