

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-14-7-.14
Rule Title: Conditional Exemption for Low-Level Mixed Waste Storage,
Treatment, Transportation, and Disposal

 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 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? 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 Services Agency.

Signature of certifying officer *Mandy Elliott*

Date November 18, 2022

REC'D & FILED
NOV 18 2022
LEGISLATIVE SVC AGENCY

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE:

335-14-7-.06 Recyclable Materials Utilized for Precious Metal Recovery (Amend)
335-14-7-.07 Spent Lead-Acid Batteries Being Reclaimed (Amend)
335-14-7-.13 Military Munitions (Amend)
335-14-7-.14 Conditional Exemption for Low-Level Mixed Waste Storage, Treatment,
Transportation, and Disposal (Amend)
335-14-7-.16 Hazardous Waste Pharmaceuticals (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 January 24, 2023, at 2:00 pm 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: January 24, 2023

CONTACT PERSON AT AGENCY: Lynn Roper, Chief, Office of Land Services (334-271-7728)



Lance R. LeFleur
Director

335-14-7-.14 Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation, and Disposal.

(1) [Reserved]

(2) Storage and treatment conditional exemption applicability.
The storage and treatment conditional exemption exempts LLMW from the regulatory definition of hazardous waste in 335-14-2-.01(3) if the waste meets the eligibility criteria in 335-14-7-.14(3) and the generator meets the conditions in 335-14-7-.14(4).

(3) Storage and treatment conditional exemption eligibility.
LLMW is eligible for this conditional exemption if it is generated and managed under a single NRC or NRC Agreement State license. (Mixed waste generated at a facility with a different license number and shipped to another facility for storage or treatment requires a permit and is ineligible for this exemption. In addition, NARM waste is ineligible for this exemption.)

(4) Storage and treatment conditional exemption generator conditions.

(a) In order for LLMW to qualify for this exemption, the generator must notify the Department in writing by certified delivery that a conditional exemption for the stored LLMW is being claimed. The dated notification must include the generator's name, location address, EPA identification number, NRC or NRC Agreement State license number, the waste code(s) and storage unit(s) for which the exemption is sought, and a statement that the conditions of 335-14-7-.14(4) have been met. The notification must be signed by an authorized representative who certifies that the information in the notification is true, accurate, and complete. The Department must receive the notification either within 90 days after the effective date of this rule or within 90 days after a storage unit is first used to store conditionally exempt LLMW.

(b) To qualify for and maintain an exemption for LLMW, the generator must:

1. Store the waste in tanks or containers in compliance with the requirements of the NRC or NRC Agreement State license that apply to the proper storage of LLW (not including those license requirements that relate solely to recordkeeping);

2. Store the waste in tanks or containers in compliance with chemical compatibility requirements of a tank or container in 335-14-5-.09(8), 335-14-5-.10(10), 335-14-6-.09(8), or 335-14-6-.10(10);

3. Certify that facility personnel who manage stored conditionally exempt LLMW are trained in a manner that ensures that the conditionally exempt waste is safely managed and includes training in chemical waste management and hazardous materials incidents response that meets the personnel training standards found in 335-14-6-.02(7)(a)3.;

4. Conduct an inventory of stored conditionally exempt LLMW at least annually (no more than 365 days from the date of the previous annual inventory) and inspect it at least quarterly (no more than 90 days from the date of the previous quarterly inspection) for compliance with 335-14-7-.14; and

5. Maintain an accurate emergency plan and provide it to all local authorities who may have to respond to a fire, explosion, or release of hazardous waste or hazardous constituents. The plan must describe emergency response arrangements with local authorities; describe evacuation plans; list the names, addresses, and telephone numbers of all facility personnel qualified to work with local authorities as emergency coordinators; and list emergency equipment.

(5) Storage and treatment conditional exemption waste treatment. The generator may treat LLMW within a tank or container in accordance with the terms of the generator's NRC or NRC Agreement State license and the Alabama Hazardous Waste Management and Minimization Act. Treatment that cannot be done in a tank or container without a RCRA permit (such as incineration) is not allowed under this exemption.

(6) Loss of storage and treatment conditional exemption.

(a) LLMW will automatically lose the storage and treatment conditional exemption if the generator fails to meet any of the conditions specified in 335-14-7-.14(4). LLMW that has lost the exemption must immediately be managed as RCRA hazardous waste and the storage unit storing the LLMW immediately becomes subject to RCRA hazardous waste container and/or tank storage requirements.

1. A generator who fails to meet any of the conditions specified in 335-14-7-.14(4) must report to ADEM and the NRC, or the oversight agency in the NRC Agreement State, in writing by certified delivery within 30 days after learning of the failure. The report must be signed by an authorized representative certifying that the information provided is true, accurate, and complete. This report must include:

(i) The specific condition(s) which the generator failed to meet;

(ii) A description of the LLMW (including the waste name, hazardous waste codes and quantity) and storage location at the facility; and

(iii) The date(s) on which the failure(s) occurred.

2. If the failure to meet any of the conditions may endanger human health or the environment, the generator must also immediately notify ADEM orally within 24 hours and follow up with a written notification within five days after the failure. Failures that may endanger human health or the environment include, but are not limited to, discharge of a CERCLA reportable quantity or other leaking or exploding tanks or containers, or detection of radionuclides above background or hazardous constituents in the leachate

collection system of a storage area. If the failure may endanger human health or the environment, the provisions of the emergency plan must be implemented.

(b) The Department may terminate the conditional exemption for LLMW, or require additional conditions to claim a conditional exemption, for serious or repeated noncompliance with any requirement(s) of 335-14-7-.14.

(7) Reclaiming a lost storage and treatment conditional exemption.

(a) A generator may reclaim a lost storage and treatment exemption for LLMW if:

1. The conditions specified in 335-14-7-.14(4) are met; and

2. The generator notifies ADEM by certified delivery that a lost exemption for LLMW is being reclaimed. The notice must be signed by an authorized representative certifying that the information contained in the notice is true, complete, and accurate. The notice must:

(i) Explain the circumstances of each failure.

(ii) Certify that the generator has corrected each failure that caused the exemption for LLMW to be lost and that the generator again meets all the conditions as of the date of the notice.

(iii) Describe plans that have been implemented, listing specific steps taken, to ensure the conditions will be met in the future.

(iv) Include any other information ADEM should consider when reviewing the notice reclaiming the exemption.

(b) The Department may terminate a reclaimed conditional exemption if the generator's claim is found to be inappropriate based on factors including, but not limited to, the following: failure to correct the problem; unsatisfactory explanation of the circumstances of the failure; or failure to implement a plan with steps to prevent another failure to meet the conditions of 335-14-7-.14(4). In reviewing a reclaimed conditional exemption under this section, the Department may add conditions to the exemption to ensure that waste management during storage and treatment of the LLMW will protect human health and the environment.

(8) Storage and treatment conditional exemption recordkeeping.

(a) In addition to those records required by the NRC or NRC Agreement State license, the following records must be maintained:

1. Initial notification records, return receipts, reports of failure(s) to meet the exemption conditions, and all records supporting any reclaim of an exemption;

2. Records of LLMW annual inventories and quarterly inspections;

3. Certification that facility personnel who manage stored mixed waste are trained in safe management of LLMW including training in chemical waste management and hazardous materials incidents response; and

4. Emergency plan as specified in 335-14-7-.14(4)(b).

(b) Records concerning notification, personnel trained, and the emergency plan must be maintained for as long as this exemption is claimed and for three years thereafter, or in accordance with NRC regulations under 10 CFR part 20 (or equivalent NRC Agreement State regulations), whichever is longer. Records concerning annual inventories and quarterly inspections must be maintained for three years after the waste is sent for disposal, or in accordance with NRC regulations under 10 CFR part 20 (or equivalent NRC Agreement State regulations), whichever is longer.

(9) Storage and treatment conditional exemption ineligibility.

(a) When LLMW has met the requirements of the generator's NRC or NRC Agreement State license for decay-in-storage and can be disposed of as non-radioactive waste, then the conditional exemption for storage no longer applies. On that date, the waste is subject to hazardous waste regulation under the relevant sections of 335-14-1 through 335-14-9, and the time period for accumulation of a hazardous waste as specified in 335-14-3-.01(~~6~~3) or (7) begins.

(b) When conditionally exempt LLMW which has been generated and stored under a single NRC or NRC Agreement State license number is removed from storage, it is no longer eligible for the storage and treatment exemption. However, the waste may be eligible for the transportation and disposal conditional exemption at 335-14-7-.14(11).

(10) Storage unit closure. Interim status and permitted storage units that have been used to store only LLMW prior to the effective date of 335-14-7-.14 and, after that date, store only LLMW which becomes exempt under 335-14-7-.14, are not subject to the closure requirements of 335-14-5 and 335-14-6. Storage units (or portions of units) that have been used to store both LLMW and non-mixed hazardous waste prior to the effective date of 335-14-7-.14 or are used to store both after that date remain subject to closure requirements with respect to the non-mixed hazardous waste.

(11) Transportation and disposal conditional exemption applicability. The transportation and disposal conditional exemption exempts waste from the regulatory definition of hazardous waste in 335-14-2-.01(3) if the waste meets the eligibility criteria of 335-14-7-.14(12) and the generator meets the conditions in 335-14-7-.14(13).

(12) Transportation and disposal conditional exemption eligibility.

(a) Eligible waste must be:

1. A LLMW, as defined in 335-14-1-.02, that meets the waste acceptance criteria of a LLRWDF; and/or

2. An eligible NARM waste, defined in 335-14-1-.02.

(b) Reserved.

(13) Transportation and disposal conditional exemption conditions.

(a) To qualify for and maintain the transportation and disposal conditional exemption, the following conditions must be met:

1. The eligible waste must meet or be treated to meet LDR treatment standards, as described in 335-14-7-.14(14).

2. The generator must manifest and transport the exempted waste according to NRC regulations, as described in 335-14-7-.14(15).

3. The exempted waste must be in containers when it is disposed of in the LLRWDF, as described in 335-14-7-.14(18).

4. The exempted waste must be disposed of at a designated LLRWDF, as described in 335-14-7-.14(17).

(b) Reserved.

(14) Transportation and disposal conditional exemption treatment standards. LLMW or eligible NARM waste must meet LDR treatment standards specified in 335-14-9-.04.

(15) Transportation and disposal conditional exemption manifest and transportation condition. If the generator is not already subject to NRC or NRC Agreement State equivalent manifest and transportation regulations for the shipment of waste, the generator must meet the manifest requirements under 10 CFR 20.2006 (or NRC Agreement State equivalent regulations) and the transportation requirements under 10 CFR 1.5 (or NRC Agreement State equivalent regulations) to ship the exempted waste.

(16) Transportation and disposal conditional exemption effective date.

(a) The exemption becomes effective once all the following have occurred:

1. The eligible waste meets the applicable LDR treatment standards;

2. The generator has received return receipts confirming notification of ADEM and the LLRWDF, as described in 335-14-7-.14(19);

3. The waste has been packaged and prepared for shipment according to NRC Packaging and Transportation regulations found under 10 CFR 71 (or NRC Agreement State equivalent regulations) and a manifest has been prepared according to NRC manifest regulations found under 10 CFR 20 (or NRC Agreement State equivalent regulations); and

4. The waste has been placed on a transportation vehicle destined for a LLRWDF licensed by NRC or an NRC Agreement State.

(b) Reserved.

(17) Transportation and disposal conditional exemption acceptable disposal facilities. Exempted waste must be disposed of in a LLRWDF that is regulated and licensed by NRC under 10 CFR 61 or by an NRC Agreement State under equivalent State regulations, including State of Alabama NARM licensing regulations for eligible NARM.

(18) Transportation and disposal conditional exemption container requirements.

(a) Exempted waste must be placed in containers before it is disposed.

(b) The container must be:

1. A carbon steel drum; or

2. An alternative container with equivalent containment performance in the disposal environment as a carbon steel drum; or

3. A high integrity container as defined by NRC.

(19) Transportation and disposal conditional exemption notification requirements.

(a) A one-time notice must be provided to ADEM stating that the transportation and disposal conditional exemption is being claimed prior to the initial shipment of an exempted waste to a LLRWDF. The dated written notice, sent by certified delivery, must include facility name, address, phone number, and EPA identification number.

(b) The LLRWDF receiving the exempted waste must be notified by certified delivery before each shipment of exempted waste. The waste must not be shipped until after the generator has received the return receipt of the notice to the LLRWDF. This notification must include the following:

1. A statement by the generator claiming the exemption for the waste;

2. A statement that the eligible waste meets applicable LDR treatment standards;

3. The facility's name, address, and EPA identification number;

4. The applicable hazardous waste codes prior to the exemption of the waste streams;

5. A statement that the exempted waste must be placed in a container according to 335-14-7-.14(18) prior to disposal in order for the waste to remain exempt under the transportation and disposal conditional exemption of 335-14-7-.14;

6. The manifest number of the shipment that will contain the exempted waste; and

7. A certification that all the information provided is true, complete, and accurate. An authorized representative of the generator must sign the statement.

(20) Transportation and disposal conditional exemption recordkeeping.

(a) In addition to those records required by an NRC or NRC Agreement State license, the generator must maintain the following records:

1. Documents required by the applicable recordkeeping requirements of 335-14-5-.05(4), 335-14-6-.05(4), and 335-14-9-.01(7) to demonstrate that the waste has met LDR treatment standards prior to claiming the exemption;

2. Copies of all notifications and return receipts required by 335-14-7-.14(21) and 335-14-7-.14(22) for three years after the exempted waste is sent for disposal;

3. Copies of all notifications and return receipts required by 335-14-7-.14(19)(a) for three years after the last exempted waste is sent for disposal;

4. Copies of the notification and return receipts required by 335-14-7-.14(19)(b) for three years after the exempted waste is sent for disposal; and

(b) If not already required by the NRC or NRC Agreement State equivalent manifest and transportation regulations, all other documents related to tracking the exempted waste as required under 10 CFR 20.2006 or NRC Agreement State equivalent regulations, including applicable NARM requirements, in addition to the records specified in 335-14-7-.14(20)(a)1. through 4.

(21) Loss of transportation and disposal conditional exemption.

(a) Any waste will automatically lose the transportation and disposal exemption if the generator fails to manage it in accordance with all of the conditions specified in 335-14-7-.14(13).

1. When failing to meet any of the conditions specified in 335-14-7-.14(13) for any wastes, the generator must report to ADEM, in writing by certified delivery, within 30 days after learning of the failure. The report must be signed by an authorized representative certifying that the information provided is true, accurate, and complete. This report must include:

(i) The specific condition(s) that the generator failed to meet for the waste;

(ii) A description of the waste (including the waste name, hazardous waste codes and quantity) that lost the exemption; and

(iii) The date(s) on which the failure(s) occurred.

2. If the failure to meet any of the conditions may endanger human health or the environment, the generator must also immediately notify ADEM orally within 24 hours and follow up with a written notification within 5 days after learning of the failure.

(b) The Department may terminate a generator's ability to claim a conditional exemption, or require additional conditions to claim a conditional exemption, for serious or repeated noncompliance with any requirement(s) of 335-14-7-.14.

(22) Reclaiming a lost transportation and disposal conditional exemption.

(a) A generator may reclaim the transportation and disposal exemption for a waste after receiving a return receipt confirming that ADEM received a notification of the loss of the exemption specified in 335-14-7-.14(21)(a) and if:

1. The generator again meets the conditions specified in 335-14-7-.14(13) for the waste; and

2. The generator notifies ADEM, by certified delivery, that the exemption for the waste is being reclaimed. The notice must be signed by an authorized representative certifying that the information provided is true, accurate, and complete and must:

(i) Explain the circumstances of each failure;

(ii) Certify that each failure that caused the loss of the exemption for the waste has been corrected and that the generator again meets all conditions for the waste as of the date of the notice;

(iii) Describe plans that have been implemented, listing the specific steps taken, to ensure that conditions will be met in the future; and

(iv) Include any other information ADEM should consider when reviewing the notice reclaiming the exemption.

(b) The Department may terminate a reclaimed conditional exemption if the generator's claim is found to be inappropriate based on factors including, but not limited to: failure to correct the problem; unsatisfactory explanation of the circumstances of the failure; or failure to implement a plan with steps to prevent another failure to meet the conditions of 335-14-7-.14(13). In reviewing a reclaimed conditional exemption under 335-14-7-.14, the Department may add conditions to the exemption to ensure that transportation and disposal activities will protect human health and the environment.

Author: Michael B. Champion; Vernon H. Crockett; Bradley N. Curvin. Jonah L. Harris

Statutory Authority: Code of Alabama 1975, §§ 22-30-10, 22-30-11, 22-30-12, 22-30-14, 22-30-15, 22-30-16, 22-30-19, 22-30-20.

History: March 15, 2002.

Amended: May 27, 2004; March 31, 2005; March 31, 2009; April 6, 2018.;

Proposed: November 18, 2022.