

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-14-4-.02
Rule Title: Compliance with the Manifest System and Recordkeeping

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

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? NO

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 Mary Elliott

Date October 19, 2018

-(DATE FILED)
(STAMP)

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Environmental Management

RULE NO. & TITLE: 335-14-1-.01 General
335-14-1-.02 Definitions and References
335-14-1-.03 Rulemaking Petitions
335-14-2-.01 General
335-14-2-.05 Exclusions/Exemptions
335-14-2-.08 Financial Requirements for Management of Excluded Hazardous
Secondary Materials
335-14-2-.13 Emergency Preparedness and Response for Management of
Excluded Hazardous Secondary Materials
335-14-3-.01 General
335-14-3-.02 Manifest Requirements Applicable to Small and Large Quantity
Generators
335-14-3-.09 Transboundary Movements of Hazardous Waste for Recovery or
Disposal
335-14-3 Appendix I Uniform Hazardous Waste Manifest and Instructions
(EPA Forms 8700 22 and 8700 22A and their Instructions)
335-14-4-.02 Compliance with the Manifest System and Recordkeeping
335-14-5-.05 Manifest System, Recordkeeping and Reporting
335-14-5-.29 Subpart CC Air Emission Standards For Tanks, Surface
Impoundments, And Containers
335-14-6-.05 Manifest System, Recordkeeping and Reporting
335-14-6-.29 Subpart CC Air Emission Standards For Tanks, Surface
Impoundments, And Containers
335-14-17-.05 Standards for Used Oil Transporter and Transfer Facilities
335-14-17-.06 Standard for Used Oil processors and Re-refiners

INTENDED ACTION: Revise

SUBSTANCE OF PROPOSED ACTION: Revisions to the ADEM Admin. Code r. 335-14 are being proposed to adopt three newly codified and revised federal rules promulgated by EPA. The first of these is the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule, 82 FR 60894, (hereinafter "the Confidentiality Rule") finalized on December 26, 2017. This rule amends existing regulations regarding the export and import of hazardous wastes from and into the United States. The second is the Hazardous Waste Electronic Manifest System User Fee Rule, 83 FR 420 (hereinafter "the e-Manifest fee rule") promulgated on January 3, 2018 and is the second in a series of new rules that implement the national electronic manifest system. Finally, the third rule is the Revisions to the Definition of Solid Waste, Response to Vacatur of Certain

Provisions of the Definition of Solid Waste Rule, 83 FR 24664, (hereinafter "the Vacatur Rule") promulgated on May 30, 2018 in response to vacatur orders by the United States Court of Appeals for the District of Columbia Circuit. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Comments may be submitted in writing or orally at a public hearing to be held December 7, 2018 at 10:30 AM 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 7, 2018

CONTACT PERSON AT AGENCY:

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Lance R. LeFleur
Director

335-14-4-.02
Recordkeeping.

Compliance with the Manifest System and

(1) The manifest system.

(a) Manifest requirement

1. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of 335-14-3-.02(4) or 335-14-3-.02(5).

2. Exports. In the case of exports other than those subject to 335-14-3-.09, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgement of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgement of Consent which, except for shipments by rail, is attached to the manifest [or shipping paper for exports by water (bulk shipment)]. For exports of hazardous waste subject to 335-14-3-.09, a transporter may not accept hazardous waste without a movement document that includes all information required by 335-14-3-.09(4).

3. Compliance Date for Form Revisions. Compliance with the revisions to the Manifest form and procedures announced in the regulation published by EPA on March 4, 2005 were not required until September 4, 2006. The revised Manifest form and procedures had an effective date of September 5, 2006. The Manifest form and procedures revised as of July 1, 2004, were applicable until September 5, 2006.

4. Use of electronic manifest -- legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.02(1)(a)3., and used in accordance with 335-14-4-.02(1)(a)4. in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy any requirement to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtain a valid and enforceable electronic signature with the meaning of 40 C.F.R. § 262.25(a).

(ii) Any requirement to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the electronic manifest system.

(iii) Any requirement for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the transporter must carry a paper document to comply with 49 C.F.R. § 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the electronic manifest system, provided that such copies are readily available for viewing and production if requested by EPA or the Department.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the electronic manifest system for which the transporter bears no responsibility.

5. A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

6. Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to 335-14-4-.02(1)(a)4.(iii), or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not preprinted on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests. 7.

If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with 335-14-4-.02(1)(a)4.(iii). This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

7. Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with 335-14-4-.02(1)(a)4.(iii). This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

8. [Reserved].

9. Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in 335-14-5-.05(2)(1), which applies to corrections made to either paper or electronic manifest records.

(b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 335-14-3-.09(4) also accompanies the hazardous waste. In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 335-14-3-.09(3) also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

1. Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

2. Retain one copy of the manifest in accordance with 335-14-4-.02(3); and

3. Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of 335-14-4-.02(1)(c), (d), and (f) do not apply to water (bulk shipment) transporters if:

1. The hazardous waste is delivered by water (bulk shipment) to the designated facility; and

2. A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, the state manifest document number, the generator certification and signatures) and, for exports or imports, a movement document that includes all the information required by 335-14-3-.09(4) or (5) accompanies the hazardous waste; and

3. The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

4. The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

5. A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with 335-14-4-.02(3).

(f) For shipments involving rail transportation, the requirements of 335-14-4-.02(1)(c), (d), and (e) do not apply and the following requirements do apply:

1. When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(I) The next non-rail transporter, if any; or

(II) The designated facility, if the shipment is delivered to that facility by rail; or

(III) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with 335-14-4-.02(3).

2. Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, the state manifest document number, the state waste numbers, generator certification and signatures) and, for exports or imports, an a movement document that includes all information required by 335-14-3-.09(4) or (5) accompanies the hazardous waste at all times.

[**Note:** Intermediate rail transporters are not required to sign either the manifest, movement document or shipping paper.]

3. When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with 335-14-4-.02(3).

4. When delivering hazardous waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with 335-14-4-.02(3).

5. Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States must:

1. Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

2. Retain one copy in accordance with 335-14-4-.02(3)(d);

3. Return a signed copy of the manifest to the generator; and

4. For paper manifests only:

(i) Send a copy of the manifest to the e-Manifest system in accordance with the allowable methods specified in 335-14-5-.05(2)(a)1.(v); and

(ii) For shipments initiated prior to the AES filing compliance date, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter transporting hazardous waste from a small quantity generator need not comply with the requirements of 335-14-4-.02(1), or those of 335-14-4-.02(3), provided that:

1. The waste is being transported pursuant to a reclamation agreement as provided for in 335-14-3-.01(1)(e);

2. The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

3. The transporter carries this record when transporting waste to the reclamation facility; and

4. The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(2) Compliance with the manifest.

(a) Except as provided in 335-14-4-.02(2)(b), the transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

1. The designated facility listed on the manifest; or

2. The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

3. The next designated transporter; or

4. The place outside the United States designated by the generator.

(b) If the hazardous waste cannot be delivered in accordance with 335-14-4-.02(2)(a),

1. Emergency condition. If the hazardous waste cannot be delivered in accordance with 335-14-4-.02(2)(a) because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

2. Transporters without agency authority. Transporters without agency authority. If the hazardous waste is not delivered to the next designated transporter in accordance with 335-14-4-.02(2)(a)3., and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) The hazardous waste is not delivered in accordance with 335-14-4-.02(2)(a)3. because of an emergency condition; or

(ii) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new

transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

3. Transporters with agency authority. If the hazardous waste is not delivered to the next designated transporter in accordance with 335-14-4-.02(2)(a)3., and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(ii) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: "Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf;" and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

4. Generator liability. The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under 335-14-4-.02(2)(a)3. does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter, or grant any additional authority to the transporter to act on behalf of the generator.

(c) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

1.(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with 335-14-4-.02(3), and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 335-14-5-.05(3)(e)1. through 6. or 335-14-5-.05(3)(f)1. through 6. or 335-14-6-.05(3)(e)1. through 6. or 335-14-6-.05(3)(f)1. through 6.

2.(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with 335-14-4-.02(3), and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 335-14-5-.05(3)(e)1. through 6. or 335-14-6-.05(3)(e)1. through 6.

(3) Recordkeeping.

(a) A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in 335-14-4-.02(1)(e)2. for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) For shipments of hazardous waste by rail within the United States:

1. The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in 335-14-4-.02(1)(f)2. for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

2. The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

[**Note:** Intermediate rail transporters are not required to keep records pursuant to 335-14-4.]

(d) A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(e) The periods of retention referred to in 335-14-4-.02(3) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

(4) Required Records.

(a) A transporter of hazardous waste must maintain a copy of the current hazardous waste transporter permit with each vehicle actively transporting hazardous wastes.

(b) A transporter of hazardous waste must maintain a copy of the contingency plan required by rule 335-14-8-.09(4)(g) with each vehicle actively transporting hazardous wastes. This plan should be designed in accordance with the applicable United States Department of Transportation regulations under 49 CFR parts 172.602, 172.604, and 172.606.

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Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-15, 22-30-17, 22-30-18 and 22-30-21.

History: November 19, 1980.

Amended: September 29, 1986; February 15, 1988; August 24, 1989; January 5, 1995; March 28, 1997; March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; April 3, 2007; March 31, 2011; March 31, 2017; April 6, 2018; Proposed: October 19, 2018.